

INTRODUCED BY: _____
RESOLUTION NO. 223

RESOLUTION AUTHORIZING A PRELIMINARY FUNDING AGREEMENT
WITH OLD SMOKE HOUSE INVESTMENT GROUP, L.L.P., FOR THE
PURPOSE OF ESTABLISHING AN ESCROW ACCOUNT FOR FUNDING COSTS
ASSOCIATED WITH CONSIDERATION OF ENTERING INTO A
REDEVELOPMENT AGREEMENT FOR THE DEVELOPMENT OF THE
CHESTERFIELD GROVE SITE AND POTENTIAL USE OF TAX INCREMENT
FINANCING

WHEREAS, Old Smoke House Investment Group, L.L.P. (the "Developer"), owns or has contract rights to acquire, 26.8 acres within the Chesterfield Valley Redevelopment Area in the City of Chesterfield ("Municipality"), said property is bounded on the North by U.S. 40-64, the South by the Southwestern Railroad line and the West by Chesterfield Airport Road (the "Chesterfield Grove Site"); and

WHEREAS, the Developer intends to make certain improvements to and develop the Chesterfield Grove Site (the "Development"); and

WHEREAS, the Developer has advised the Municipality of an intention to submit a request relating to the redevelopment of the Chesterfield Grove Site, including consideration of the use of Tax Increment Financing ("TIF") for partial funding of the Development; and

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

WHEREAS, the City Council has determined that further consideration of the Developer's request for designation of the Development as a redevelopment project 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 Municipality to retain the services of consultants and special legal counsel; and

WHEREAS, the City Council believes certain costs to the Municipality associated with further consideration of the TIF Application relating to the redevelopment of the Chesterfield Grove Site and the use of TIF should be borne by the Developer initiating such review and not by other taxpayers of the Municipality; and

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

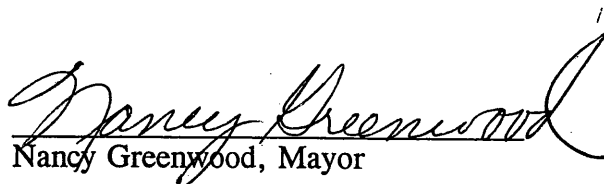
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHESTERFIELD, MISSOURI, AS FOLLOWS:

THAT, the City Administrator is hereby authorized and directed to enter into a Preliminary Funding Agreement with the Developer for the purpose of establishing an escrow account for funding certain costs anticipated to be incurred by the Municipality in further considering the TIF Application relating to the Development. Said Preliminary Funding Agreement is attached hereto as Attachment A and incorporated herein by reference as if fully set forth herein.

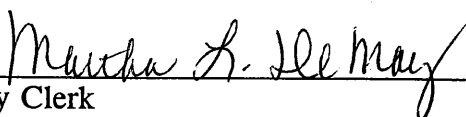
FURTHER, THAT the Director of Finance and Administration and City Administrator are hereby directed and authorized to deposit any and all funds received pursuant to said Preliminary Funding Agreement authorized hereby into a special escrow account and to disburse such funds for such expenses as may, 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.

FURTHER, THAT the City Administrator is authorized and directed to do and perform all such acts and things and to sign all such documents and certificates, as may be necessary or advisable, or convenient and proper, to carry out the intent of this Resolution and fully to comply with the intent of Attachment A.

PASSED AND APPROVED THIS 21st DAY OF JULY, 1997.


Nancy Greenwood, Mayor

Attest:


City Clerk

Attachment A

PRELIMINARY FUNDING AGREEMENT

THIS PRELIMINARY FUNDING AGREEMENT ("Agreement") is made and entered into as of the ___ day of _____, 1997, by and between the City of Chesterfield, Missouri, a third class city located in St. Louis County, Missouri (the "Municipality"), and Old Smoke House Investment Group, L.L.P. (the "Developer").

RECITALS

A. The Municipality has validly adopted The Chesterfield Valley Tax Increment Financing Redevelopment Plan, dated August 17, 1994 (the "Redevelopment Plan").

B. The Developer owns, or has contract rights to acquire, 26.8 acres within the Chesterfield Valley Redevelopment Area in the Municipality, said property is bounded on the North by U.S. 40-64, the South by the Southwestern Railroad line, and the West by Chesterfield Airport Road (hereinafter referred to as the "Chesterfield Grove Site").

C. The Developer desires to redevelop the Chesterfield Grove Site and other infrastructure improvements ("Redevelopment Project") as all set forth in a Application for Tax Increment Financing Assistance, dated June 9, 1997, previously submitted to the Municipality.

D. The Municipality desires to further explore the feasibility of (i) performing certain infrastructure improvements and related activities 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 (the "TIF Act").

E. Subject to the terms of this Agreement, the Municipality desires the Developer to assist the Municipality in considering the Redevelopment Project by advancing to the Municipality funds to allow the Municipality to pay certain preliminary TIF redevelopment start-up costs, which costs will be reimbursed to the 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 Municipality hereby acknowledges receipt from the Developer of Sixty-Five Thousand Five Hundred and No/100 Dollars (\$65,000) to be used as preliminary funding in connection with the consideration by the Municipality of the Redevelopment Project as set forth in the Recitals (the "Preliminary Funds"). The Municipality shall allocate and use the Preliminary Funds as a source of payment of actual costs incurred by the Municipality, on or after July 1, 1997, for the work generally described in the Work

Program, attached hereto and incorporated in this Agreement as Exhibit A. Such work shall be performed by the contractors described in the Work Program at their respective regular hourly rates and the Municipality shall pay for such work only in accordance with paragraph 2 below.

2. Disbursement. The Municipality shall disburse the Preliminary Funds to pay the fees and expenses of the Municipality'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 Municipality. 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 Municipality (collectively, a "Disbursement Request"). The Director of Finance and Administration for the Municipality (the "Finance Director") shall examine each such Disbursement Request and all disbursements made by the Municipality shall be authorized in writing by the Finance Director. The Finance Director shall use reasonable care in ascertaining that all amounts charged to the Municipality 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 Municipality receives a Disbursement Request, the Municipality shall forward a copy of such Disbursement Request to the Developer as set forth herein; provided that, the Municipality reserves the right to omit confidential and privileged statements. In the event the Developer has questions regarding any Disbursement Request, the Developer shall direct such questions to the Finance Director; provided, however, that the Finance Director shall not be required to obtain the Developer's approval of payment of any and all Disbursement Requests.

4. Repayment of Preliminary Funds. The Preliminary Funds shall be repaid to the Developer from proceeds of any Obligations (as that term is defined in the TIF Act) issued by the Municipality, in connection with the Redevelopment Plan, for the Improvements, prior to issuance of Obligations for the payment of any other eligible project costs.

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

6. Right of Termination.

a. The Developer shall have the right to terminate this Agreement at any time in its sole discretion upon giving the Municipality 10 days written notice; whereupon 10 days following the Developer's delivery of said notice this Agreement shall be deemed terminated. Upon receipt of said notice the Municipality shall pay to the Developer

within 60 days of said notice the then existing balance of the Preliminary Funds remaining after the Municipality's payment of any invoices for work performed by any contractor under the Work Program through the date of termination.

b. The Municipality shall have the right to terminate if the Municipality makes a request, in the manner provided herein, for further advance and no further advance is provided within fifteen (15) days of such request. Provided, further, that the Municipality shall have the absolute right, in its sole discretion, to terminate this Agreement, if the approval of the redevelopment agreement is rejected by the City Council.

7. Excess Preliminary Funds. In the event the Municipality does not expend all of the Preliminary Funds as provided herein on or before ____, 1997, or such other date as agreed to by the parties in writing, the Municipality shall immediately return the remainder of the Preliminary Funds to the 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 Municipality for any purpose whatsoever.

8. No Third Party Beneficiaries. The parties hereby agree that this Agreement shall be a contract solely between the Municipality 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 the Developer:

Old Smoke House Investment Group, L.L.P.
c/o Arbor Land Company
300 Hunter Avenue, Suite 101
St. Louis, Missouri 63124
Attention: Fairfax F. Pollnow

If to the Municipality:

City of Chesterfield
922 Roosevelt Parkway
Chesterfield, Missouri 63017-2080
Attention: Michael G. Herring

With 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:

Old Smoke House Investment Group, L.L.P.

By: _____

Title: _____

Municipality:

City of Chesterfield, Missouri

By: Michael S. Jensen
City Administrator

EXHIBIT A

WORK PROGRAM

1. Special TIF Counsel.

Primary legal counsel for the TIF approval and redevelopment process.

Attend TIF Commission and/or Chesterfield Community Development Corporation meetings, public hearings and City Council meetings, as required.

Review redevelopment proposals and conduct negotiations resulting in a Redevelopment Agreement for consideration by the City Council.

Draft all necessary ordinances and resolutions related to the TIF process for approval, as to form, by City Attorney.

Estimated Cost: \$20,000

2. Bond Counsel

Primary legal counsel for review and coordination of all aspects of the TIF program related to the issuance of TIF Obligations. Bond Counsel will actively coordinate with Special TIF Counsel and City staff with respect to the Redevelopment Project.

Bond Counsel will review the TIF process and Redevelopment Agreement to insure that all steps are taken in compliance with the TIF Act in order that unqualified bond counsel opinion can be rendered for any TIF Obligations issued.

Bond Counsel will advise City staff on tax matters in connection with issuance of any TIF Obligations.

Bond Counsel will advise Special TIF Counsel and Investment Banker on the structure of and form of TIF Obligations contemplated to be issued as the matter is negotiated as part of the Redevelopment Agreement.

Estimated Cost: \$20,000

3. Investment Banker

Review revenue projections and other financial data presented in the TIF Plan. Evaluate financial projections and proposed structure of any TIF Obligations.

Review and evaluate credit issues and evidence of financial commitment.

Participate in the negotiation of those aspects of the Redevelopment Agreement affecting structure and marketability of TIF Obligations.

Perform financial aspects of City's due diligence assessment of the Developer.

Attend City Council meetings, as required.

Estimated Cost: \$20,000

4. City Attorney

Review TIF Plan and Redevelopment Agreement.

Advise City's Consultants on issues related to City legal practices and procedures.

Review drafts of implementing legislation, as to form.

Estimated Cost: \$5,500