BROWNFIELD REVOLVING LOAN FUND
LOAN AGREEMENT BETWEEN THE
SOUTH MAIN SHOPPING CENTER AND THE CITY OF ROCKFORD

Rockford Watch Factory

This Loan Agreement (the "Agreement") is made and entered into on this____day_____ , by and between the South Main Shopping Center, a not-for-profit corporation, ("SMSC") and the City of Rockford, an Illinois municipal corporation "City").

RECITALS

WHEREAS, the City is the recipient of a grant (the "Grant") to establish the Revolving Loan Fund ("RLF") from the U.S. Environmental Protection Agency ("USEPA") and is authorized to make loans pursuant to the Small Business Liability Relief and Brownfields Revitalization Act, Section 104(k) of CERCLA, 42 U.S.C. 9604(k), and as a condition of awarding the Grants, the EPA has placed requirements on the use of the Grants as documented in Cooperative Agreement numbered BF-00E45801 , as amended, (the "CA"); and

WHEREAS, the City is the fee simple owner of real property located in the City of Rockford, Illinois, 325 South Madison Street, the "Rockford Watch Factory" and site, legally described in Attachment A (the "Property"); and

WHEREAS, it is the mission of the SMSC to perform activities which assist in the economic redevelopment of the Rockford area; and

WHEREAS, the SMSC is an eligible Borrower for the RLF Program, having been the Borrower for an earlier project under the RLF Program, and is not a PRP at this site; and

Whereas, the SMSC has developed real property in Rockford, Illinois, and is willing to coordinate and conduct the remedial environmental actions on this Property to Remove Asbestos at this property, which is owned by the City, as part of the development of the Indoor Sports Facility also known as the Downtown Sports Complex; and

WHEREAS, a determination of Site Eligibility was prepared for Hazardous Substances and Petroleum by Fehr-Graham and Associates. These documents were approved by the USEPA. Subsequently the determinations demonstrated qualification of the Property for consideration of funding through the U.S. Environmental Protection Agency (EPA) Brownfields Cleanup Grant Program and Brownfields Revolving Loan Fund (RLF). And

WHEREAS, the Phase I Environmental Site Assessments were performed and completed on July 14, 2014, and

WHEREAS, the City has enrolled the Property in the Voluntary Site Remediation Program (SRP) of the Illinois Environmental Protection Agency (IEPA); and

WHEREAS, Phase II Environmental Site Assessment Work limited to an asbestos survey has been performed for the site; and

WHEREAS, Asbestos is present within the building and requires abatement prior to the demolition of the additions to the structure and prior to the repurposing of the original Rockford Watch Factory Structure; and

WHEREAS, the total cost of asbestos removal within the structure as a whole exceeds the available RLF funds of $265,000, and

WHEREAS, Asbestos Removal at this time will be confined to the additions to the original structure unless additional funding becomes available; and

WHEREAS, The USEPA has granted preliminary approval to fund the removal of the asbestos with the USEPA RLF Program, conditioned on the execution of satisfactory loan documents, and the preparation of an Administrative Record to include the Brownfields Cleanup Alternatives (ABCA), Community Involvement Plan (CIP); a Quality Assurance Project Plan and a Public Comment Period; and

WHEREAS the Administrative Record is established, the Public Hearing will be held on October November 24th, 2014 and the Public Comment Period, established on November 10, 2014, is scheduled to be completed on December 10, 2014; and

WHEREAS,, City and the SMSC have entered into this Agreement to provide for the disbursement and repayment of a loan as part of a project (the "Project") consisting of asbestos removal on the Property in the manner described in the Action Memo approved by USEPA, described in IIIA, below and provided as Attachment F; and

WHEREAS, the RLF Project is a component of a major Redevelopment Project referred to as the Indoor Sports Complex (Downtown Sports Complex) at Ingersoll which will convert much of the former Rockford Watch Factory Parking into parking to support the Indoor Sports Complex to be operated by the Rockford Park District. This Indoor Sports Complex will serve all youths within the Rockford area for indoor sports during the week at no charge and provide a tournament venue for youth indoor sports on the weekends; and

WHEREAS, the Indoor Sports complex is a $24 million dollar project of which over $12 million will be City debt service to be paid by a General Obligation Bond by the City over a period of 20 years; and

WHEREAS, the Project will be undertaken by general contractors ("Contractors") and overseen by an environmental consultant ("Consultant") to be selected by the City; and

WHEREAS, there will be separate subcontractor for the asbestos removal at the Rockford Watch Factory;

NOW, THEREFORE, the City and SMSC agree as follows:

I. FUNDING

A. **Promissory Note.** Contemporaneously with the execution of this Agreement, the SMSC shall execute a promissory note (the "Note") in favor of the City in the form attached as Attachment E hereto.

B. **Disbursements**. From the USEPA RLF Grant, BF00E45801, the City shall, following the execution of this agreement, disburse to the SMSC up to the total aggregate principal sum of up to Two Hundred Sixty-Five Thousand Dollars (the "Loan") in payment of Asbestos Removal(Hazardous Substances) Project Costs, Each disbursement hereunder shall be referred to as a "Disbursement" and, collectively, as the "Disbursements."

C. **Disbursement Schedule**. All Disbursements shall be payable in accordance with the term of the Note, no later than October 1, 2016, or two years after the date of this Agreement, whichever comes first.

D. **Source of Repayment**. Repayment of the Note will come from one or more or any combination of the following: (a) state or local (non-federal) grants that SMSC is able to obtain for the Project, (b) proceeds realized from the sale of some or all of the Property, (c) annual Tax Increment Finance (TIF) receipts received from the Property, (d) proceeds from the sales of TIF bonds on the Property, (e) proceeds realized from other loans that may be made to the Project and (f) general funds budgeted specifically by, in its annual budget, and approved by City of Rockford.

E. **Repayment Amount and Schedule:** Repayment of Seventy percent of the loan with a maximum discount of $200,000 is for the RLF programs. The repayment amount is not to exceed $185,500. This repayment shall be required when this property is sold, leased or rented at Market Rate to a for-profit corporation. When this occurs, the repayment amount of up to $185,500 (seventy percent of the loan amount (including contingencies) that is expended with a maximum discount of $200,000), shall be paid in full within 12 years of the sale lease or rental noted above. There will be no interest charged.

II. CONTRACT AND PROJECT OVERSIGHT

The City shall review and approve the contract between the SMSC and the Contractor for the Project prior to execution, which review shall include confirmation that the contract includes such cross-cutting requirements as may be required by the EPA.

III. PERMITTED USES

A. **Use of Proceeds**. Disbursements made pursuant to this Agreement shall be used to pay for ***approved*** Project Costs actually incurred during the period from December 10, 2014 to December 10, 2016 (the "Funding Period") in connection with the completion of the Project in accordance with the following (items 3 through 5 are, collectively, "the RAP"):

1. The project schedule (the "Project Schedule", Attachment C).

2. The project budget (the "Project Budget", Attachment D), which shall include but not be limited to the Project Costs.

3. Asbestos Survey for 325 South Madison Street, to be prepared by Anderson Environmental.

4. Additional Investigation & Remedial Action Plan Addendums.

5. Project Manual Specifications and Contract Documents For the Rockford Watch Factory Building, 325 South Madison Street; prepared by Anderson Environmental;

B. **Project Costs**. Hazardous Substances Project Costs shall be defined as costs and expenses incurred during the Funding Period in connection with the Project, including, but not limited to, the costs of labor, supplies, materials, program costs and services and Brownfield's oversight fees associated with the Project for the other areas of the project including asbestos removal. Project Costs shall be further specified in the Project Budget.

C. **Funding Procedure**. All Disbursements under this Agreement shall be made pursuant to a Draw Request (the "Draw Request") approved by the SMSC consisting of invoices coded to the EPA RLF funding source SMSC and reviewed and compiled by the City. Each draw request shall reference invoices that have been reviewed and approved by SMSC, and/or such other information as the City may require. On the date specified in the Draw Request, if all the terms and conditions of this Agreement have been complied with by SMSC, if no default exists under this Agreement, the City shall, as promptly as possible thereafter, disburse the amount of the draw to SMSC, which amount shall be re-disbursed by SMSC to each of the contractors and/or consultants entitled to receive any of such proceeds, by check or wire transfer, the amounts set forth in such Draw Request.

D. **Project Budget and Project Changes.** The City will obtain the SMSC's written approval of any material changes in the Project Budget. The City will provide the SMSC with all bid requests, project bids, and information regarding costs of the Project as the SMSC shall require.

E. **Project Matching Funds**. SMSC agrees that at least 20% of the total Project Budget for the Project shall be obtained as matching funds from any non-federal source to be spent for Project Costs.

IV. ACCOUNTING AND PROJECT MANAGEMENT RECORDS.

A. **Accounting and Project Management Records.** The SMSC will document the use of Disbursements, and maintain adequate records consistent with industry standard accounting. The SMSC shall thereafter maintain documentation on the uses of Disbursements, including bid information, executed contracts, on-site inspection reports, Draw Requests, accompanying invoices and information sufficient to evidence in proper detail the nature of expenditures and other information as deemed appropriate by the SMSC or the City such that the City is in compliance with 40 C.F.R. Section 31.42. The documents required hereunder shall be maintained for a period of three (3) years following completion of the Project (submittal of the final financial status report) , unless any claim, negotiation, audit or other action involving records begins before the expiration of the 3-year retention period. In this case, the records will be retained 3 years after the resolution of the last of these actions.

V. PROJECT REQUIREMENTS.

A. SMSC agrees to periodically inspect the site. Site security will be provided by the contractor(s). SMSC agrees to erect a sign on the Property, approved by the City, stating that the Project is being financed in part by U.S. EPA RLF Funds, the City and State of Illinois, and providing the appropriate contacts for obtaining information on activities being conducted at the Property and for reporting suspected criminal activities. The sign erected on the Property shall comply with 40 CFR Part 35, Subpart O (Section 35.6105 (a) (2) (ii)).

B. SMSC certifies that it is not a PRP at the site.

C. SMSC certifies that it is not and has not and, to its knowledge, any Contractor(s):

i. Are not presently or proposed to be debarred or suspended, declared ineligible, or voluntarily excluded from federal, state or local (hereinafter "public") transactions; and

ii. Have not within the preceding three years had a public transaction terminated for cause or default.

D. The Project shall be carried out in accordance with all applicable state, local and federal laws, regulations, orders, writs, judgments, injunctions, decrees or awards, including but not limited to the following, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.) ("CERCLA"); Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (40 C.F.R. Part 31); the National Oil and Hazardous Substances Contingency Plan ("NCP"), 40 C.F.R. Part 300, all applicable cross-cutting requirements, including those federal requirements agreed between the USEPA and the City defined by the Cooperative Agreement Number (B F-00E45801), OSHA Worker Health & Safety Standard 29 C.F.R. 1910.120; the Uniform Relocation Act, Historic Preservation Act, Endangered Species Act; and Permits required by Section 404 of the Clean Madison Act; Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. 327-333), the Anti-Kickback Act (40 U.S.C. 276c) and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250.

E SMSC shall comply (and cause Contractor and any subcontractor employed in connection with the Project to comply) with Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 C.F.R. 60-4 relating to federally-assisted construction contracts.

F. SMSC shall carry out (and cause Contractor and any subcontractor employed in connection with the Project to carry out) the Project in accordance with the relevant requirements of CERCLA 104 (k) and with the Davis-Bacon Act of 1931 (CERCLA § 104(g) (1), 40 U.S.C. § 276a to 276a-5 and 42 U.S.C. § 3222 as set forth in CERCLA § 104(g)). Compliance with the Davis-Bacon Act requires payment of federal prevailing wage rates. Contractor must obtain recent and applicable wage rates from the U.S. Department of Labor and incorporate them into the construction contract.

G. Any Contract entered by SMSC on the Property shall substantially contain the same language as shown in Attachment F, attached hereto.

H. SMSC shall keep Project in good repair and condition, and from time to time make necessary repairs, renewals, and replacements so that Project shall be fully and efficiently preserved and maintained.

I. SMSC shall comply (and cause Contractor and any subcontractor employed in connection with the Project to comply) with the statutes prohibiting discrimination on the grounds of race, color, national origin, sex and disability. In addition, Contractor shall undertake good faith efforts in compliance with 40 C.F.R. 31.36(e) to give opportunities to qualified Small Business Enterprises, Minority Business Enterprises and Women-Owned Business Enterprises to submit

proposals and bids and provide services on contracts and subcontracts for services and supplies. Contractor shall submit a report of such efforts at the request of SMSC.

J. SMSC shall commence the Project on or before, January 31 2015, and shall complete the Project on or before, January 31, 2016, subject only to force majeure or a written extension agreed to and signed by Finance. SMSC shall notify the City when the Project is complete.

K. The contractor(s) retained to conduct the Project have not, within a three year period preceding this Agreement, been convicted or had a civil judgment rendered against them for (i) fraud or commission of a criminal offense in connection with obtaining, attempting to obtain or performing a public transaction or contract under a public transaction, (ii) violation of federal or state antitrust laws, or (iii) embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.

L. The contractor(s) retained to conduct the Project, are not presently indicted for or otherwise criminally or civilly charged by a public entity with commission of any of the offences enumerated under the section above.

VI. EVENTS OF DEFAULT

The following shall constitute Events of Default:

A. Default by SMSC in any payment when due of principal or interest under the Promissory Note;

B. Any representation or warranty made by SMSC hereunder or in the Loan Documents proves false or misleading in any material respect;

C. Use of the Loan Proceeds for purposes other than those stated in Section III.A. or approved in writing by the City; and

D. Default by SMSC in the performance of any other term, covenant or agreement contained herein, or in the Loan Documents, which default is not cured within thirty (30) days of receipt of a notice of default (or such longer period as shall be reasonably necessary to cure such default provided SMSC promptly commences such cure and thereafter diligently pursues such cure to completion).

VII. FINANCE REMEDIES

In the event of a default by SMSC in the payment or performance of any obligation hereunder, the City may accelerate payment of the remaining balance of the Note and terminate any obligation to make additional Disbursements hereunder.

VIII. REPRESENTATIONS AND WARRANTIES

A. **Environmental Representations and Warranties**. The City represents and warrants that:

1. The Property is not listed or, to the City's knowledge, proposed for listing on the National Priorities List of the U.S. Environmental Protection Agency.

2. The City did not generate hazardous substances, pollutants or contaminants at or to the Property.

3. The City is not a potentially responsible party under Section 107 of CERCLA, 42 U.S.C. Section 9607.

4. The City acquired the Property after the disposal or placement of hazardous substances, pollutants and contaminants on the Property and has not caused, contributed to, permitted or exacerbated the release of such substances, pollutants or contaminants on or from the Property. The City is not otherwise a responsible person as defined in Illinois Statutes.

5. The Property is not subject to a unilateral administrative order, court order, and administrative order on consent or judicial consent decree issued to or entered by parties under CERCLA.

6. The Property is not subject to the jurisdiction, custody or control of the United States government.

7. The Property satisfies the definition of a Brownfield site as defined in Section 101(39) of CERCLA, 42 U.S.C. 9601(39).

8. The City certifies that it, the SMSC, the Contractor and the Consultant are not now, and have not in the past, been subject to any penalties resulting from environmental non-compliance at the Property.

B. **No Violation**. The execution and performance by SMSC of this Agreement does not violate any provision of federal, state or local law, or result in a breach of or constitute a default under any agreement, indenture or other instrument to which the SMSC is a party or by which the SMSC may be bound.

C. **Authorization**. The City Council of the City of Rockford and the Board of Directors of the SMSC have authorized the execution and delivery of this Agreement.

D. **Litigation**. There are no pending or, to SMSC's knowledge, threatened actions or proceedings before any court or administrative agency that may adversely affect the financial condition or operation of SMSC.

E. **Not Excluded from Public Transactions**. SMSC is not presently or proposed to be debarred or suspended, declared ineligible, or voluntarily excluded from federal, state, or local (hereinafter "public") transactions.

F. **No Termination for Cause or Default.** SMSC has not within the preceding three years had a public transaction terminated for cause or default.

G. **No Civil Judgments**. Neither SMSC nor its respective officers or contractor(s) retained to conduct the Project have, within a three year period preceding this Agreement, have been convicted or had a civil judgment rendered against them for (i) fraud or commission of a criminal offence in connection with obtaining, attempting to obtain or performing a public transaction or contract under a public transaction, (ii) violation of federal or state antitrust laws, or (iii) embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.

H. **No Criminal or Civil Indictments**: Neither SMSC, nor its respective officers or contractor(s) retained to conduct the Project, are presently indicted for or otherwise criminally or civilly charged by a public entity with commission of any of the offences enumerated under the section above.

I. **Acknowledgement**. SMSC acknowledges that a Cooperative Agreement with the USEPA is the source of the Loan and that the City is under no obligation to lend any of its own funds.

J. **Survival of Representations:** All representations and warranties shall survive the execution of this Agreement.

IX. MISCELLANEOUS

A. **Successors**. This Agreement shall be binding upon the permitted assigns or successors of SMSC and the City. This Agreement shall not be assigned or transferred by SMSC without the written consent of the City and any purported assignment or transfer without such prior written consent shall be void.

B. **Notices**. Any notice, consent, waiver, request or other communication required or permitted to be given under this Agreement shall be in writing and shall be given as follows:

To SMSC

South Main Shopping Center

To the City:

City of Rockford

C. **Attachments**. All attachments mentioned herein shall be deemed incorporated herein by reference as though fully set forth herein.

D. **Entire Agreement**. This Agreement shall supersede any prior loan agreements, oral or written, regarding the subject matter of this Agreement between the City and SMSC. This Agreement may not be amended or modified without the written consent of the parties hereto.

E. **Inconsistency**. If any conflicts arise between the terms and conditions of this Agreement and the terms and conditions of the attached exhibits or any documents expressly incorporated by reference, the terms and conditions of this Agreement shall control, except where federal statutes or regulations are controlling.

F. **Severability**. If any part of this Agreement is determined to be illegal or unenforceable, all other parts shall be given effect separately and shall be in effect.

G. **Governing Law**. This Agreement shall be construed in accordance with and governed by the laws of the State of Illinois except where superseded by federal statutes or regulations.

H. **Counterparts**. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute one instrument.

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

City of Rockford
Department of Law
By (print):
By (sign):
Its:

South Main Shopping Center

By (print):
By (sign):
Its:

ATTACHMENT A
LEGAL DESCRIPTION OF PROPERTY

ATTACHMENT B
Eligibility Determination

ATTACHMENT C
PROJECT SCHEDULE

I. Execution of the Loan Documents: November, 2014

II. Finalize the Bid Documents for Asbestos Removal : November, 2014

III. Release the Bid Documents: November, 2014

IV. Onsite Inspection and Pre-Bid Meeting: December, 2014

V. Bid Opening and Award: December , 2014

VI. Asbestos Removal: December-January, 2014-2015

ATTACHMENT D
PROJECT BUDGET

Overall Project Budget

Ingersoll Site: Budget Summary

Task Item:	Preliminary Cost Estimate
1) Rockford Watch Factory: Asbestos Removal in the additions to the original structure	$265,000
Total	$265,000
Funding Summary: Proposed Funding RLF	$265,000
USEPA RLF Hazardous Funds or Program Income	$265,000
Repayment Amount: 70% of the RLF Funds used with a maximum discount of $200,000. (Deferred until or unless the property is sold, leased or rented to a for-profit corporation at Market Rate)	$185,500

USEPA Hazardous Substance/ Program Income Budget

Budget – USEPA Hazardous Substance RLF

	Project Tasks							
Budget Categories	**1[1] ($)**	**2[2] ($)**	**3[3] ($)**	**4[4] ($)**	**5[5] ($)**	**6[6] ($)**	**7[7] ($)**	**Total ($)**
Personnel	0	0	0	0	0	0	0	0
Travel	0	0	0	0	0	0		0
Equipment	0	0	0	0	0	0	0	0
Supplies	0	0	0	0	0	0	0	
Contractual		0	$2,500	0	0			$3,698
Other	0	0	$262,500	0	0	0	0	$262,500
Subtotal	**0**	**0**	**$265,000**	**0**	**0**	**0**	**0**	**$265,000**
Local match	3,000	3,000	37,310	2,200	**3,000**	4,490		53,000

Note: $350,000 is the total available Hazardous Substance RLF available. Program Income RLF will be used for the completion of the Project.

Task 1 = Establishing and Marketing the Revolving Loan Fund
The $3,000 "local match of the IEPA Grant" consists of legal services involved in preparing standard documents, including preparation of the templates for the loan agreement and related documents (promissory note, loan guaranty).

[2]-Task 2 = Review and Approval of Loan Applications
The "local match of the IEPA Grant" line item consists of an estimated $3,000 of contracted expertise devoted to loan processing, including legal review, and contracted environmental consultant expertise in managing federal environmental grants.

[3]- Task 3 =Asbestos Removal Oversight, Asbestos Removal, CIP Contibution
The $265,000 "other" line item represents the Asbestos Removal Oversight ($2,500) under contractual, Asbestos Removal Costs ($262,500) under other, and the local contribution expected to be CIP funds to complete the project ($37,310.

[4] - Task 4 = Day-To-Day Management of the Loan Account
The City of Rockford will pay for staff time devoted to these activities with other local funding sources as a match for the IEPA Grant. A budget of $2,200 is indicated.

[5] - Task 5 = Site-Specific Community Involvement

The "local match of the IEPA Grant" line item represents an additional $3,000 intended for the publication of a public notice in the local paper for each cleanup site and other community involvement.

[6]- Task 6 = Cleanup Oversight

The "local share" line item represents the estimated City staff time in this oversight activity.

[7]- Task 7 = Grant Administration

The "local share" line item represents the estimated staff time devoted to meeting the reporting requirements, including Quarterly Reporting and Acres updating.

ATTACHMENT E

PROMISSORY NOTE
$265,000
City of Rockford
2014

FOR VALUE RECEIVED, up to $265,000 the undersigned promises to pay to the order of the City of the Rockford, or it assigns, the sum of One Hundred Eighty-five Thousand, Five Hundred Dollars which is 70% of the Loan amount with a maximum discount of $200,000, in accordance with a certain Brownfield Cleanup Revolving Loan Fund – Intergovernmental Loan Agreement dated as of even date herewith (the "Loan Agreement").

This Note shall bear interest at an annual rate equal to 0.00 %. The Full Principal on this Note shall be payable in 12 annual installments, starting with the one year anniversary of the sale, lease or rental of the property at market rate to a for-profit corporation. The undersigned may prepay this note in part or in whole at any time without penalty.

This Note is issued under and is governed by the Loan Agreement, the terms and conditions of which are hereby incorporated herein by reference.

Protest and notice of demand and protest are hereby waived. This Note shall be governed by and construed in accordance with the laws of the State of Illinois.

IN WITNESS WHEREOF, this Note has been duly executed by the undersigned as of the day and year set forth above.

South Main Shopping Center (SMSC)

By_____
Its_____

Attachment F

Action Memo Approved by USEPA