

IN THE CIRCUIT COURT OF FRANKLIN COUNTY  
STATE OF MISSOURI

BANK OF WASHINGTON,	)	
	)	
Plaintiff,	)	No.
	)	
v.	)	
	)	
LAND CLEARANCE FOR	)	
REDEVELOPMENT AUTHORITY	)	
OF THE CITY OF ST. LOUIS	)	
Serve: Executive Director	)	
Otis Williams	)	
1520 Market Street, Suite 2000	)	
St. Louis, MO 63103	)	
	)	
LCRA HOLDINGS CORPORATION	)	
Serve: Executive Director	)	
Otis Williams	)	
1520 Market Street, Suite 2000	)	
St. Louis, MO 63103	)	
	)	
	)	
NORTHSIDE REGENERATION, LLC	)	
Serve: (hold service for entry)	)	
	)	
Defendants.	)	

**PETITION**

COMES NOW Plaintiff Bank of Washington and states as follows:

**The Parties**

1. Plaintiff Bank of Washington (the “Bank”) is a Missouri banking corporation in good standing.
2. Defendant Land Clearance for Redevelopment Authority of the City of St. Louis (“LCRA”) is a public body organized and existing under the laws of the State of Missouri.
3. Defendant LCRA Holdings Corporation (“LCRAH”) is a Missouri not-for-profit organization in good standing.

4. Defendant Northside Regeneration, LLC (“NSR”) is a Missouri limited liability company in good standing and is joined in this case as a nominal defendant because NSR is a party to the agreements at issue.

### **Venue**

5. Venue is proper in this Court pursuant to RSMo §508.010.4 because the tortious conduct hereinafter alleged caused the Bank to release certain deeds of trust and to relinquish lien rights in other collateral for substantially less than it would have otherwise, therefore, the Bank was first injured by the fraudulent and negligent misrepresentations at its principal place of business in Washington, Missouri.

### **Introduction and Summary of Claims**

6. The Bank was and is a lender to NSR in connection with its redevelopment of roughly 1,500 acres in north St. Louis known as the Northside Redevelopment Area. The Bank’s involvement began early on as NSR began assembling the ground necessary to support the revitalization of this long-neglected area of the City of St. Louis (the “City”). NSR’s redevelopment efforts were interrupted by the collapse of the real estate market, and then by lawsuits challenging NSR’s redevelopment rights and the constitutionality of land assemblage tax credit legislation designed to foster large-scale redevelopment efforts such as NSR’s.

7. Nonetheless, NSR was able to use its assemblage of land to attract the relocation of the National Geospatial-Intelligence Agency (“NGA”) to its redevelopment area. The relocation of the NGA facility promises a \$1.7 billion investment in north St. Louis. It is a redevelopment project that will keep 3,100 high-skilled, high-wage jobs in the City, and which will create thousands of new construction jobs and generate extraordinary growth opportunities for the surrounding area.

8. In 2015, the Bank and NSR began negotiating a series of related agreements with representatives of LCRA and LCRAH. The agreements contemplated NSR's transfer of its land within the NGA site (the "NSR NGA Property") and NSR's assignment of valuable economic activity taxes to support the NGA facility. The agreements also contemplated the Bank's release of its liens on the NSR NGA Property and consent to NSR's transfer of other collateral. During those negotiations, LCRA and LCRAH represented that they spoke on behalf of the City of St. Louis.<sup>1</sup> Also as part of those agreements, the City Parties agreed, among other things, that they would not declare a default under NSR's redevelopment agreement so long as NSR met certain deadlines and that they would enter into a new redevelopment agreement on specified terms.

9. The Bank and NSR honored all of their promises. The City Parties not only did not honor their promises, but they have made public statements suggesting that they never had any intention of doing so. The Bank considers the City Parties' conduct to be consistent with other efforts that the City Parties have made to impede NSR's redevelopment progress.

10. But for the representations and contractual promises made by LCRA and LCRAH, the Bank would not have released its lien rights on the NSR NGA Property or consented to the transfer of other collateral. Those rights were extremely valuable and were a critical component of the Bank's collateral package securing its support of the redevelopment of north St. Louis.

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<sup>1</sup> The Bank may sometimes hereinafter refer to (i) the City and (ii) the parties who executed the series of related agreements as the "City Parties."

## Background

### A. NSR's Effort To Redevelop North St. Louis

11. Over the last sixty years, north St. Louis has suffered from debilitating blight compounded by indifference from the development community. The City Board of Aldermen's attorneys recently described the predicament to the Missouri Supreme Court as follows:

The abandonment of the City has been felt acutely on its north side, and in particular in the redevelopment area at issue in this suit. As far back as 1947, the City's Comprehensive Plan reclassified much of this area as "obsolete or blighted." As the trial court noted, this area today "suffers from declining population, higher than average crime rates, low owner occupancy of residential premises, and a fairly high percentage of dilapidated housing...." Today, approximately 44% of the redevelopment area is vacant or contains vacant structures, and much of its infrastructure (sewers, utilities and roads) is outdated, deteriorated and incapable of supporting the needs of modern development.

Substitute Brief of Appellants The City of St. Louis, etc., submitted by Carmody MacDonald, PC in *Smith v. City of St. Louis*, 395 S.W.3d 20 (Mo. 2013)("Aldermen's Brief") at p. 5.

12. NSR concluded that reversing the pervasive blight affecting north St. Louis would require a project of extraordinary scale because piecemeal redevelopment efforts had been ineffective.

13. NSR developed a redevelopment strategy that sought to acquire property within a 1,500 acre area of north St. Louis and combine it with the land already owned by the City to create a project of scale. The partnership and support of the City was thus a critical component from the outset – NSR was only willing to take the assemblage risk (and the Bank was only willing to underwrite that risk) if the City would sell its scattered property to allow NSR to assemble developable sites.

14. In the early 2000s, NSR began assembling property and the Bank provided financing for the assemblage.

15. In 2008, NSR brought its redevelopment project to the City and began to work with the City on the terms of a Redevelopment Agreement. By then, NSR had purchased over 800 separate parcels (constituting almost 100 acres) in the proposed redevelopment area.

16. In 2009, the City approved NSR's redevelopment plan and, on December 14, 2009, the City and NSR entered into a redevelopment agreement (the "Original Redevelopment Agreement"), which was subsequently amended and restated in 2014 (the "2014 Redevelopment Agreement").

17. The execution of the Original Redevelopment Agreement coincided with the collapse of the local and national real estate market plunging the economy into a debilitating recession. The great recession impeded NSR's redevelopment efforts just as it impacted virtually every segment of the American economy.

18. In 2009, local residents also filed a legal challenge to NSR's redevelopment rights that was not resolved until the Missouri Supreme Court ruled in NSR's favor in April 2013. *Smith v. City of St. Louis*, 395 S.W.3d 20 (Mo. 2013).

19. In 2007, the Missouri legislature approved the Distressed Area Land Assemblage Tax Credit Act, Sec. 99.1205 RSMo. ("DALATC") designed to support the large-scale assemblage of property impacted by urban decay, such as NSR's redevelopment effort. In 2009, and again in 2011, citizens brought lawsuits challenging DALATC. Both of the lawsuits were resolved in favor of NSR and DALATC. *See Nelson v. Dept. of Econ. Devel.*, No. 1122-CC0027 (St. Louis City Circuit Court); *Manzara v. State*, 343 S.W.3d 656 (Mo. 2011).

**B. NSR Delivers The NGA Facility To North St. Louis**

20. In late 2012, NSR began courting NGA to relocate its new western headquarters facility to NSR's redevelopment area. When NSR determined that NGA was interested in relocating to north St. Louis, NSR involved the City in the NGA discussions, primarily because it would be necessary to use the City's power of eminent domain to acquire the remaining properties within the proposed NGA site that NSR did not own.

21. Ultimately, NGA selected north St. Louis for the relocation of its new facility, at a 99 acre site at the northeast corner of the intersection of Jefferson and Cass Avenues, within the NSR redevelopment area. NSR owned some 330 parcels (roughly 50 acres) within the NGA site, making NSR the largest property owner within the NGA site.

**C. The City Parties' Fraud**

**1. The Future Assurances Agreement**

**a. The negotiation of the Future Assurances Agreement**

22. Instead of reacting to NSR's delivery of NGA with support, the City threatened to declare NSR in default under the 2014 Redevelopment Agreement, and used that threat in an effort to (i) force a fire sale of NSR's land within the proposed NGA site and (ii) force NSR to hand over all of NSR's interest in the Economic Activity Taxes which would be generated by the NGA project (the "EATs") — a value well into eight figures—which otherwise would have flowed into the TIF account available to reimburse NSR's eligible development costs.

23. The Bank and NSR opposed those efforts to strip NSR of its redevelopment rights, which prompted negotiations over a new set of documents governing NSR's redevelopment project and NSR and the Bank's relationship with the City Parties.

24. The Bank relinquished valuable lien rights in reliance upon the City Parties' fraudulent misrepresentations made in connection with the negotiation and execution of the new agreements.

25. On July 27, 2015 the City Parties delivered a draft term sheet to NSR and the Bank setting forth terms acceptable for the purchase of NSR's NGA property and for a second amendment to the 2014 Redevelopment Agreement (the "Second Amended Redevelopment Agreement"). The City Parties' term sheet contemplated that NSR assign the EATs and that the Bank release its liens on the NSR NGA Property.

26. During the negotiations that followed, LCRA and LCRAH represented that they had authority to negotiate on behalf of and bind all of the City Parties (i.e., the City, LCRA and LCRAH, and related entities).

27. The Bank reasonably relied upon these representations because, among other things:

- (a) LCRA and LCRAH affirmed that they represented all of the City Parties and could and did speak on their behalf;
- (b) Ordinance 69977, adopted in 2015 by the Board of Aldermen of the City, with respect to the NGA Site (and other property) found the subject property blighted, adopted a redevelopment plan proposed by LCRA for the subject property, and approved LCRA's acquisition of property within the NGA Site "through the exercise of eminent domain or otherwise;"
- (c) In furtherance of Ordinance 69977, the City's Board of Aldermen subsequently adopted Resolution No. 112 and Resolution No. 142AA, specifically authorizing LCRA's acquisition of certain property within the NGA Site pursuant to eminent domain, both of which Resolutions expressly recognize that "in order to meet the National Geospatial-Intelligence Agency's directive that property be assembled and consolidated under common ownership as a condition of its selection of a site for relocation [LCRA] has undertaken the project of acquiring all land in the prospective relocation site;"
- (d) On July 10, 2015, the City Board of Aldermen approved Ordinance 70074 authorizing the assembly of the NGA Site and the financing

required for the property acquisitions. Ordinance 70074 authorized actions by “the City, acting directly, through an affiliated entity... or the LCRA...” and authorized the City and its agents, “to take such further actions and execute such other documents as may be necessary or desirable to carry out and comply with the intent of this Ordinance;” and

- (e) The negotiated documents included express representations from the LCRA and LCRAH regarding their authority to sign and perform on behalf of the City Parties.

28. Following extensive negotiations, the parties entered into a series of inter-dependent agreements on January 27, 2016, including:

- (a) A Term Sheet, executed by LCRA, LCRAH, LRA, the Planned Industrial Expansion Authority of the City of St. Louis (“PIEA”), the St. Louis Development Corporation (“SLDC”), NSR and the Bank (a true and accurate copy thereof is attached hereto as Exhibit 1);
- (b) A Future Assurances Agreement, executed by NSR, the Bank, LCRA and LCRAH (the “FAA”) (a true and accurate copy of the FAA dated January 27, 2016, the Amendment to FAA dated February 16, 2017 and the Second Amendment to FAA dated July 12, 2017 are attached hereto collectively as Exhibit 2);
- (c) A Purchase and Sale Agreement, executed by NSR, the Bank, LCRA and LCRAH (the “PSA”) (a true and accurate copy thereof is attached hereto as Exhibit 3);
- (d) An Escrow Agreement, executed by NSR, the Bank, LCRA, LCRAH and U.S. Title Guaranty Company (the “Escrow Agreement”) (a true and accurate copy thereof is attached hereto as Exhibit 4);
- (e) A Second Amendment to Real Estate Acquisition Agreement, executed by LCRA and NSR (a true and accurate copy thereof is attached hereto as Exhibit 5);
- (f) A Second Amendment to Real Estate Acquisition Agreement, executed by LRA and NSR (the “Second Amendment to Real Estate Acquisition Agreement - LRA”) (a true and accurate copy thereof is attached hereto as Exhibit 6); and
- (g) A First Amendment to Real Estate Acquisition Agreement, executed by PIEA and NSR (the “First Amendment to Real Estate Acquisition Agreement - PIEA”) (a true and accurate copy thereof is attached hereto as Exhibit 7).



29. By letter dated January 25, 2016, Mayor Francis Slay acknowledged and approved the substance of the final agreements, enclosing a copy of the Term Sheet as an exhibit to his letter. A copy of the letter is attached as Exhibit 8.

30. After the execution of the January 27, 2016 FAA, the City Parties asked the Bank and NSR to amend it and agree to new terms to accommodate the City's desire to develop a multipurpose sports stadium on land located within NSR's redevelopment area, which resulted in the negotiation and execution of two amendments to the FAA, the last of which occurred on July 12, 2017. *See* Exhibit 2.

**b. The parties' agreements under the FAA and PSA**

31. NSR and the Bank agreed to the following:

- (a) NSR agreed to assign the EATs to the City, an eight figure dollar concession;
- (b) NSR agreed to "New Minimum Development Threshold Requirements" for its redevelopment project, pursuant to which NSR warranted that it would annually commence projects of \$5,000,000 or greater (subject to certain carryover credits from prior years);
- (c) NSR agreed to sell NSR's NGA Property to LCRAH; and
- (d) The Bank agreed to release its liens against the NSR NGA Property.

32. The City Parties agreed to the following:

- (a) To "in good faith negotiate the terms of an amendment and restatement of the [2014] Redevelopment Agreement" - a task much simplified because the FAA sets forth in extensive detail (7-1/2 pages) the *agreed* material terms of the Second Amended Redevelopment Agreement;
- (b) To "cooperate diligently and in good faith to pursue and obtain all necessary aldermanic and other approvals required" for the Second Amended Redevelopment Agreement;
- (c) So long as NSR complied with the New Minimum Development Threshold Requirements and deadlines" under the FAA, the City Parties agreed that they would not claim a default under the 2014

Redevelopment Agreement. This agreement was particularly important to both the Bank and NSR because it meant that the City Parties could not claim any default under any of the negotiated documents so long as NSR met the new thresholds (although the City Parties' express promise has not stopped them from doing so);

- (d) To acquire certain property owned by the state highway department (the "MHTC Excess Property") and to offer the property for sale or lease to NSR;
- (e) To cooperate with NSR toward the development of projects in the vicinity of the NGA Site;
- (f) "If the NGA selects the NGA Site, [to] cause the timely completion of improvements to Jefferson Ave. (from Highway 40 to Natural Bridge) and Cass Ave. (from Tucker Blvd. to Grand Blvd.), substantially consistent with the May 2013 summaries prepared by Cole;" and
- (g) "If the NGA Announcement selects the NGA Site, LCRA and the Developer will work together to qualify Redevelopment Projects (as defined in the [2014] Redevelopment Agreement) as Offsite NGA Project Costs (as defined in the Financing Agreement (including any amendments and supplements thereto) entered into by and among the State of Missouri, the City and the LCRA (the "NGA Financing Agreement")."

33. In the FAA, the LCRA and LCRAH represented and warranted: "The City Related Parties have full power to enter into and perform their respective obligations under this Agreement" and that the FAA was "enforceable in accordance with its terms." In the PSA, the LCRA and LCRAH represented and warranted that they each had "been fully authorized by all requisite actions" and both had "full power to enter into and perform this Agreement in accordance with its terms."

## **2. The Bank and NSR's Performance Under the New Agreements**

34. The Bank and NSR fully performed all of their obligations under the FAA and PSA and the Bank has complied with all conditions precedent to the filing of this lawsuit.

35. In particular, but not by way of limitation:

- (a) NSR conveyed its NGA property and the Bank released its “liens, claims and encumbrances against the [NSR] NGA Property”;
- (b) In December 2017, NSR commenced construction of the Greenleaf Market project, having project costs in excess of \$20 million (satisfying the New Minimum Development Threshold Requirements with respect to 2018, 2019 and 2020);
- (c) NSR has now closed on the sale of the first five of 100 residential lots under contract to a residential homebuilder; and
- (d) NSR provided the City Parties with a draft Second Amended Redevelopment Agreement, consistent with the terms specified under the FAA.

### **3. The City Parties’ Breach of the New Agreements**

36. The City Parties failed to honor their promises made during the negotiation and execution of the FAA and PSA in at least the following respects:

- (a) The City Parties have publicly taken the position that the City is not bound by its agreements under the FAA, despite the City Parties’ representations to the contrary during and since the FAA negotiations, the explicit obligations undertaken by the City under the FAA, and the City’s acceptance of benefits under the FAA. In fact, in their “default letters” under the PIEA and LRA acquisition agreements, the City Parties act as if they never executed the new agreements, referring only to earlier provisions superseded by the January 2016 amendments;
- (b) The City Parties attempted to re-negotiate material terms of the Second Amended Redevelopment Agreement previously agreed to and mandated by the FAA;
- (c) The City Parties have therefore and thereby prevented the submission of the Second Amended Redevelopment Agreement to the Board of Aldermen for approval;
- (d) Contrary to the City Parties’ representations that they intended to and did bind the City, the City has declared NSR to be in default under the 2014 Redevelopment Agreement despite NSR’s satisfaction of the New Minimum Development Threshold Requirements imposed on and assumed by NSR under the FAA;
- (e) The City Parties have failed to undertake good faith efforts to lease or acquire the MHTC Excess Property, and to offer the same for lease or purchase to NSR;

- (f) The City Parties have failed to cooperate—and, in fact, have actively worked to undermine—NSR’s development of projects in the vicinity of the NGA Site;
- (g) LCRA has stated that it will not construct improvements to Jefferson Ave. (from Highway 40 to Natural Bridge) and Cass Ave. (from Tucker Blvd. to Grand Blvd.) in a manner consistent with the requirements of the FAA; and
- (h) LCRA has not cooperated with NSR to qualify Redevelopment Projects (as defined in the 2014 Redevelopment Agreement) as Offsite NGA Project Costs (as defined in the NGA Financing Agreement);
- (i) LRA has declared NSR to be in default under the Real Estate Acquisition Agreement – LRA, because, among other reasons, NSR has failed to meet development deadlines inconsistent with the new minimum thresholds established under the FAA. That declaration was made in bad faith. LRA does not mention its execution of the Second Amendment to Real Estate Acquisition Agreement – LRA, LRA’s express agreement to the new development thresholds or NSR’s satisfaction of the new development thresholds; and
- (j) PIEA has declared NSR to be in default under the Real Estate Acquisition Agreement – PIEA, because, among other reasons, NSR has failed to meet development deadlines inconsistent with the new minimum thresholds established under the FAA . That declaration was made in bad faith. PIEA does not mention its execution of the First Amendment to Real Estate Acquisition Agreement - PIEA, PIEA’s express agreement to the new development thresholds or NSR’s satisfaction of the new development thresholds.

37. Upon information and belief, the City Parties have disavowed their promises because they intended, and intend, to transfer NSR’s redevelopment rights to developers with “favored” status at the City: “It is time to allow other developers a fair chance to improve our neighborhoods....” 6/12/18 Letter from City Counselor Julian Bush. The Bank does not consider it “fair” to allow other developers to capitalize on NSR and the Bank’s long term investment, particularly when these other developers have ignored north St. Louis until the NGA selection.

38. The City Parties' rejection of the FAA, the First Amendment to Real Estate Acquisition Agreement – PIEA and the Second Amendment to Real Estate Acquisition Agreement – LRA constitutes a complete failure of consideration under those agreements.

**4. The City Parties' Efforts to Undermine NSR's Redevelopment of north St. Louis**

39. The City Parties' current position is consistent with their recent efforts to undermine NSR's ability to successfully pursue redevelopment projects in north St. Louis.

40. For example, the head of the City's development agency recently suggested that the City Parties were stringing the Bank and NSR along until the City Parties got NSR's property it needed for NGA: "Williams said the city did not act against McKee sooner for various reasons, including because it needed 330 of his parcels within the site that will house the National Geospatial-Intelligence Agency's new \$945 million western headquarters. The city was competing against a site in St. Clair County, Illinois." 6/12/18 *St. Louis Business Journal*.

41. Despite their promises to cooperate with NSR toward the development of projects in the vicinity of the NGA Site, the City Parties have actively interfered with NSR's efforts to revitalize north St. Louis, including:

- (a) LCRA and/or the City appears to have intervened to influence the State's consideration of NSR's request for tax credits under the Brownfield Remediation Program, administered by the Missouri Department of Economic Development ("DED"), needed by NSR to remediate the Pruitt Igoe site, which has interfered with NSR's ability to develop a hospital on the site. The abandoned nearly 34 acre Pruitt Igoe site sits just south of the NGA site. When NSR's affiliate applied for tax credits, DED demanded that NSR agree that LCRA could purchase Pruitt Igoe *for one dollar* if NSR missed certain development deadlines. This forfeiture provision is, to the Bank's best knowledge, unprecedented. First, assuming that the condition was meant to remedy NSR's failure to implement the remediation, the issuing entity, the State, would not receive any benefit from the transfer of Pruitt Igoe—the benefit would flow instead to a third party, LCRA. Second, Pruitt Igoe is worth many multiples of the Brownfield credits sought. Thus, the forfeiture would be an enormous windfall, even assuming the State would

somehow benefit from it. Upon information and belief, DED was aware of the City's 2016 agreements and promises, was aware of the Bank's mortgage on the Pruitt Igoe site and knew or should have known that its actions threatened to impair the Bank's collateral;

- (b) On January 5, 2018, Alderman Brandon Bosley introduced Board Bill 219, drafted by the City's Planning and Urban Design Agency, which provided for creation of "The NGA Protection and Enhancement Zone Special Use District", a new zoning district covering over 800 acres around the NGA Western Headquarters site, including Pruitt Igoe, the balance of NSR's redevelopment area and a wide area of north St. Louis. No one contacted NSR or the Bank before introducing the bill, even though it would impact the entirety of NSR's development area. The City has taken the position that NGA requested all of the conditions, but NGA has denied doing so; and
- (c) One of NSR's long-standing development objectives has been the construction of a 15,000 square foot, 3 bed hospital on the southwest corner of the abandoned Pruitt-Igoe site, which will provide around the clock emergency room and medical services sorely needed by residents of north St. Louis. By March 2018, after numerous public hearings, NSR had satisfied all conditions to begin work on the hospital except for a building permit, typically a formality. At the final hearing for the building permit, the City sent an SLDC employee to object to the requested permit based on "lack of community input," the "suddenness" of the permit request and the lack of authority of elected Alderpersons to appropriately represent the views of their community.

42. The City Parties' actions have been undertaken with malice and with a conscious disregard for the known rights of the Bank such that the Bank is entitled to an award of punitive damages.

### **Count I**

#### **Fraud**

43. The Bank re-alleges the allegations of paragraphs 1-42.

44. During the negotiations associated with the FAA and related agreements, and in the agreements themselves, LCRA and LCRAH represented (i) that they were authorized to negotiate and agree to the promises and conditions contained in the agreements on behalf of

all themselves and the City , (ii) that all the City Parties intended to and would abide by the promises and conditions, including the promise that LCRA and LCRAH could and did bind the City, (iii) that the City, LCRA and LCRAH would not declare a default under their respective agreements so long as NSR met the New Minimum Development Threshold Requirements, (iv) that all the City Parties would support NSR's redevelopment of north St. Louis, including but not limited to, in the ways promised in the City Parties' agreements, and (v) that the City would agree to a draft of a Second Amended Redevelopment Agreement consistent with the FAA and would present that agreement to the City's Board of Aldermen.

45. LCRA and LCRAH representations were false, false when made and known to be false when made.

46. LCRA and LCRAH (for themselves and on behalf of the City Parties) made the representations without the present intention to perform them.

47. The Bank reasonably relied on LCRA and LCRAH's representations.

48. LCRA and LCRAH's representations were material to the Bank and the Bank would not have entered into the FAA and related agreements absent LCRA and LCRAH's representations and would not have released its liens on the NSR NGA Property or agreed to NSR's transfer of the EATs, but for the LCRA and LCRAH's representations.

49. LCRA and LCRAH knew that the Bank would rely upon their fraudulent representations and intended that the Bank do so.

50. As a result of the Bank's reliance upon LCRA and LCRAH's misrepresentations, the Bank was damaged in that the Bank released its liens on the NSR NGA Property and agreed to NSR's transfer of the EATs, which removed the EATs from the Bank's collateral package.

WHEREFORE, the Bank asks the Court to enter Judgment in its favor and against LCRA and LCRAH for its actual damages in excess of \$25,000, plus punitive damages, costs and interest and such other relief as the Court deems proper.

## **Count II**

### **Negligent Misrepresentation**

51. The Bank re-alleges the allegations of paragraphs 1-50.

52. LCRA and LCRAH made the representations set forth in paragraph 44 in the course of their business.

53. Because of LCRA and LCRAH's failure to exercise reasonable care, the representations were false.

54. LCRA and LCRAH made the false representations for the guidance of the Bank and NSR during the negotiations of the FAA and related agreements.

55. The Bank justifiably relied on the false representations as aforesaid.

56. As a result of the Bank's reliance, the Bank was damaged.

WHEREFORE, the Bank asks the Court to enter Judgment in its favor and against LCRA and LCRAH for its actual damages in excess of \$25,000, plus punitive damages, costs and interest and such other relief as the Court deems proper.

## **Count III**

### **Unjust Enrichment**

57. The Bank re-alleges the allegations of paragraphs 1-56.

58. By its release of its lien rights against the NSR NGA Property and its consent to NSR's transfer of the EATs at the request and insistence of LCRA and LCRAH, the Bank conferred a benefit upon LCRA and LCRAH. Under these circumstances, LCRA and LCRAH's retention of the benefit would be unjust.



WHEREFORE, the Bank asks the Court to enter Judgment in its favor and against LCRA and LCRAH for its actual damages in excess of \$25,000, plus costs and interest and such other relief as the Court deems proper.

**Count IV (Alternative)**

**Equitable Claim for Rescission—Fraud,**

**Negligent Misrepresentation, Failure of Consideration**

59. The Bank re-alleges the allegations of paragraphs 1-58.

60. The Bank hereby offers to tender the return of all consideration received by the Bank at the closing held pursuant to the Escrow Agreement in the event that the Court orders the rescission of the FAA and PSA as requested.

61. By reason of LCRA and LCRAH's fraud and negligent misrepresentation, and because of a failure of consideration under the FAA, the Bank is entitled to rescission of the conditions, promises and provisions between the Bank and LCRA and LCRAH, including the reinstatement of the Bank's liens.

WHEREFORE, the Bank requests that the Court enter Judgment severing and rescinding the provisions of the FAA and PSA applicable to the Bank, restoring the Bank's lien rights on the NSR NGA Property, restoring the Bank's security interest in the EATs transferred by NSR, awarding the Bank its fees, costs and such other relief as the Court deems proper.

**Count V (Alternative)**

**Equitable Claim for Rescission—Mutual Mistake**

62. The Bank re-alleges the allegations of paragraphs 1-61.

63. The parties were operating under a mutual mistake of fact in connection with the negotiation and execution of the FAA and related agreements—namely, LCRA and LCRAH mistakenly represented that they intended to, could and did bind the City to the

promises under the FAA and NSR, and the Bank mistakenly believed and relied upon the fact that LCRA and LCRAH intended to, could and did bind the City to the promises under the FAA.

64. In the event that the Court determines that LCRA and LCRAH could not act for and bind the City to the promises under the FAA, which the Bank denies, then the parties were operating under a mutual mistake of a material fact when they negotiated and executed the FAA and related documents.

65. By reason of the parties' mutual mistake of fact, the Bank is entitled to rescission of the conditions, promises and provisions between the Bank and LCRA and LCRAH, including the reinstatement of the Bank's liens.

WHEREFORE, the Bank requests that the Court enter Judgment severing and rescinding the provisions of the FAA and PSA applicable to the Bank, restoring the Bank's lien rights on the NSR NGA Property transferred by NSR, restoring the Bank's security interest in the EATs transferred by NSR, awarding the Bank its fees, costs and such other relief as the Court deems proper.

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