

AN ORDINANCE AUTHORIZING THE EXECUTION OF A SECOND AMENDED AND RESTATED AGREEMENT WITH THE MONARCH-CHESTERFIELD LEVEE DISTRICT TO PROVIDE FOR IMPROVEMENTS TO THE MONARCH-CHESTERFIELD LEVEE; AND PRESCRIBING OTHER MATTERS RELATING THERETO.

WHEREAS, the City Council of the City, by ordinance, (i) established a Tax Increment Financing Commission (the "*TIF Commission*") pursuant to the Real Property Tax Increment Allocation Redevelopment Act, § 99.800, *et seq.*, RSMo (1994) (the "*TIF Act*"), (ii) upon recommendation of the TIF Commission, designated the Chesterfield Valley Area within the City as a "redevelopment area" and approved a "redevelopment plan" (as amended, the "*Redevelopment Plan*") pursuant to the TIF Act, and (iii) established the Chesterfield Valley Special Allocation Fund (the "*Special Allocation Fund*") for the payment of redevelopment project costs and obligations incurred in the payment thereof; and

WHEREAS, the Redevelopment Plan approves certain redevelopment project costs including reconstruction of and improvements to the existing Monarch-Chesterfield Levee (the "*Levee*") as needed to provide 500-year flood protection from the Missouri River; and

WHEREAS, the Monarch-Chesterfield Levee District (the "*Levee District*") has jurisdiction over the construction, maintenance, oversight and improvement of the Levee and drainage system which protects the Chesterfield Valley Area; and

WHEREAS, the City has responsibility to provide for the general health, safety and welfare of that portion of the Chesterfield Valley Area within the City. Further, the City has been designated by the Federal Emergency Management Agency ("*FEMA*") as flood plain manager and, to that end, has certain responsibilities to the entire flood plain within the Chesterfield Valley Area; recognizing that a breach of a portion of the Monarch-Chesterfield Levee (as occurred in 1993) imperils the property and persons of the City, the City desires to protect existing property and persons and enhance the economic viability of the Chesterfield Valley Area for the overall betterment of the City by undertaking certain obligations with the Levee District consistent with its obligations as defined under state and federal law; and

WHEREAS, the City and the Levee District entered into an Intergovernmental Cooperation Agreement on September 12, 1996, which was amended November 18, 1997 (collectively, the "*1996 Agreement*"). The 1996 Agreement provided for the issuance of three series of Series 2001 TIF Notes (the "*Prior Notes*") by the City to the Levee District to pay a portion of the costs of (i) bringing a portion of the Monarch-Chesterfield Levee up to the 500-year flood elevation (the "*Phase II Levee Improvements*"), (ii) installing internal storm water pumping stations, and (iii) providing wetland mitigation, and the 1996 Agreement is still being performed by both parties; and

WHEREAS, the City and the Levee District entered into a second Intergovernmental Cooperation Agreement on November 1, 1999, (the "*1999 Agreement*") whereby the Levee District, in coordination with the United States Army Corps of Engineers (the "*Corps*"), proposed to make certain improvements to the Levee, including (i) the improvement of the Levee north of Interstate 64 to the 500-year flood protection level generally including (a) the improvement of the existing Levee from Station 170 + 00 to 320 + 00 and from 380 + 00 to 467 + 00 to increase the Levee height by four to five feet, (b) the installation of seepage berms up to 300 feet in width, placement of a four-foot clay blanket on the riverside of the Levee and installation of stability berms on the river side and the protected side of the Levee, (c) the construction and realignment of the Levee to provide protection to Interstate 64 amounting to 3,400 feet of new levee including the construction of a new levee with a height of 20 to 25 feet and the

installation of stability berms on the riverside and the protected side of the Levee, (d) acquisition of materials, borrow areas and easements, (e) the improvement of pump stations to accommodate Levee construction, and (f) the relocation of the electric lines at the sand plant; (ii) the construction of a toe access road for maintenance and monitoring; and (iii) the construction of additional improvements in connection with the Phase II Levee Improvements at a cost in excess of the \$3.4 million allotted for the Phase II Levee Improvements (the “1999 Improvements”); and

WHEREAS, the City and the Levee District entered into an Amended and Restated Intergovernmental Cooperation Agreement on August 21, 2001, (the “*Amended Agreement*”) which expanded the original scope of work to include additional redevelopment project costs including (i) the excavation of a drainage channel and detention basin along the land-side toe of the Monarch-Chesterfield Levee from Station 600+60 eastward to Station 578+50 (Drainage Channel Station 0+00 eastward to 23+99.2); (ii) the installation of fabric and rock lining in the drainage channel and detention basin from Channel Station 0+00 eastward to Station 23+99.2; (iii) construction of a retaining wall and culverts; (iv) the relocation of the MSD force main from approximately Channel Station 18+50 eastward to Station 22+20; (v) the extension of six (6) six-inch (6”) wye lines; and (vi) installation of road ramps, all in accordance with the plans and specifications prepared by Sverdrup Civil, Inc. titled Sanitary Sewage Force Main Relocation Phase IC Levee Improvements, dated June 20, 2001, and in accordance with the plans and specifications for the Phase IC Drainage Channel – Detention Pond and Seepage Berm Supplement prepared by Sverdrup Civil, Inc. dated August, 2001 (the “*Additional Work*”) (collectively, the 1999 Improvements and the Additional Work are referred to herein as the “*Phase III Levee Improvements*” or the “*Project*”).

WHEREAS, the Amended Agreement also (i) provided for the grant of recreation easements by the Levee District to the City; (ii) modified the calculation for interest rate reimbursement under the Agreement, and (iii) expanded the definition of land acquisition costs to include in kind payments made by the Levee District in lieu of cash payments.

WHEREAS, The City and the Levee District desire to amend and restate the Amended Agreement to: (i) modify Exhibit E to include \$225,000 for additional mitigation costs and increase the line item for professional fees; (ii) provide that any Section 211 reimbursement shall be paid to the City except under certain specified conditions; (iii) set a date when the transfer of certain properties to the City shall be completed; (iv) provide for the acceptance of the Chesterfield Athletic Complex pump by the Levee District; (v) provide for cooperation between the City and the District in the City’s undertaking of the US Turf Drainage Project and Ice Sports Complex Pump Station Project (collectively, the “*City Projects*”) and provide for the acceptance of the City Projects by the Levee District; (vi) provide for the extension of water and sewer infrastructure to the western portion of Chesterfield Valley (the “*West End Project*”); and (vii) provide for the funding of the West End Project.

WHEREAS, the City and the Levee District desire to share certain of the costs and other obligations to be incurred in connection with the Phase III Levee Improvements and the West End Project on the terms and conditions as set forth in the Second Amended and Restated Intergovernmental Cooperation Agreement and in accordance with and pursuant to the provisions of Article VI, § 16 of the Missouri Constitution, the TIF Act and Sections 70.210 through 70.325 of the Revised Statutes of Missouri, as amended.

WHEREAS, the City and the Levee District desire to cooperate and to take the reasonable steps necessary to facilitate the prompt design, commencement and completion of the Phase III Levee Improvement and the West End Project; and

WHEREAS, the City Council hereby determines that the fulfillment generally of the Second Amended and Restated Intergovernmental Cooperation Agreement are in the best interests of the City and

the health, safety, morals and welfare of its residents, and in accord with the public purposes specified in the Redevelopment Plan.

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

Section 1. Authorization of Agreement. The City Administrator is hereby authorized and directed to execute, on behalf of the City, the Second Amended and Restated Intergovernmental Cooperation Agreement between the City and the Levee District, and the City Clerk is hereby authorized and directed to attest to the Agreement and to affix the seal of the City thereto. The Agreement shall be in substantially the form attached hereto as **Exhibit A**, which form is hereby approved by the City Council, with such changes therein as shall be approved by the officers of the City executing the same.

Section 2. Further Authority. The officers of the City, including the Mayor, City Administrator, the City Clerk and the Finance Director, shall be, and they hereby are, authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Ordinance and to make ministerial alterations, changes or additions in the foregoing agreements, statements, instrument and other documents herein approved, authorized and confirmed which they may approve and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 3. Severability. If any section or other part of this Ordinance, whether large or small, shall for any reason be held invalid, the invalidity thereof shall not affect the validity of the other provisions of this Ordinance.

Section 4. Governing Law. This Ordinance shall be governed exclusively by and constructed in accordance with the applicable laws of the State of Missouri.

Section 5. Repeal of Conflicting Ordinances. Any ordinances or portions thereof in conflict with the provisions of this Ordinance are hereby repealed but only to the extent of such conflict.

Section 6. Effective Date. This Ordinance shall take effect and be in full force from and after its passage of the City Council and approval by the Mayor; *provided that* the Levee District delivers to the City at least two fully executed copies of the Agreement authorized herein on or before JANUARY 20, 2006.

PASSED AND APPROVED THIS 5th DAY OF ^{DECEMBER} ~~NOVEMBER~~, 2005.

(SEAL)

Attest:

Martha A. Lee May
City Clerk

[Signature]
Mayor

EXHIBIT A

Form of Second Amended and Restated Intergovernmental Cooperation Agreement

(Attached hereto.)

**SECOND AMENDED AND RESTATED
INTERGOVERNMENTAL COOPERATION AGREEMENT**

Between the

CITY OF CHESTERFIELD, MISSOURI

And the

MONARCH-CHESTERFIELD LEVEE DISTRICT

Dated as of

December 30, 2005

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- (5) Automobile Liability
Combined Single Limit \$2,000,000.00

Said Insurance shall be maintained throughout the construction of the Shopping Center Property and the Interchange. The obligation to provide such insurance shall be provided under an "umbrella" policy of insurance.

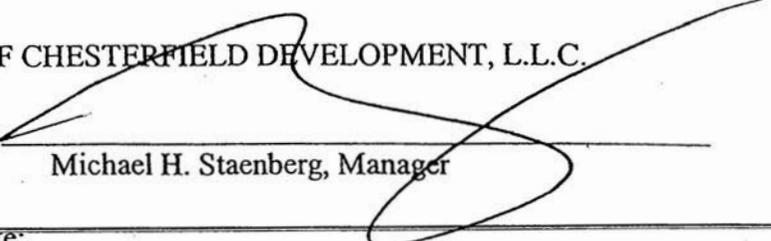
29. Release.

- (a) ~~Notwithstanding anything contained herein to the contrary, neither party shall be liable to the other for damages or otherwise in the event that all or any part of either the TIF Act, or this Agreement shall be declared invalid or unconstitutional 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 party is prevented from performing any of the covenants and agreements herein or is prevented from enjoying the rights and privileges thereof.~~
- (b) All covenants, stipulations, promises, agreements and obligations of the parties to this Agreement contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the entities and not of any of its governing body members, officers, directors, agents, servants or employees in their individual capacities.
- (c) No official, employee or representative of either party shall be personally liable to the other party in the event of a default or breach by any party under this Agreement.

30. Further Actions. THF and Levee District agree to execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of this Agreement or any agreement or document relating hereto or entered into in connection herewith.

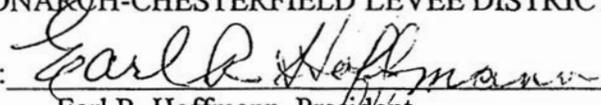
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

THE CHESTERFIELD DEVELOPMENT, L.L.C.

By: 
Michael H. Staenberg, Manager

Date: _____

MONARCH-CHESTERFIELD LEVEE DISTRICT

By: 
Earl R. Hoffmann, President

Date: _____

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FIRST ADDENDUM TO LEVEE AGREEMENT

This First Addendum to Levee Agreement (the "First Addendum") is made and entered into as of this 1st day of September, 1998 by and between MONARCH-CHESTERFIELD LEVEE DISTRICT, a Missouri statutory levee district (the "Levee District") and THF CHESTERFIELD DEVELOPMENT, L.L.C., a Missouri limited liability company ("THF").

WHEREAS, the Levee District and THF entered into a Levee Agreement, which is attached hereto as Exhibit 1, on the 21st day of November, 1997 (the "Levee Agreement") relating to THF's development of approximately 317 acres of real property set forth therein and referred to as the Shopping Center Property; and

WHEREAS, pursuant to the Levee Agreement the Levee District has engaged Sverdrup Civil, Inc. to design the Interchange Levee, which plans and specifications are attached hereto collectively as Exhibit 2 ("Interchange Levee Plans"), and the Bonhomme Creek Levee, which current plans and specifications are attached hereto collectively as Exhibit 3 ("Bonhomme Creek Levee Plans"); and

WHEREAS, the Levee Agreement provides that THF will grant to the Levee District an easement and right to borrow up to 230,000 cubic yards of levee fill material ("Clay") from certain portions of the Shopping Center Property, in return for the Levee District replacing the Clay with up to 230,000 cubic yards of sand; and

WHEREAS, the Levee Agreement further provides that the Levee District will make a portion of its Borrow Site available to THF for removal of up to 600,000 cubic yards of sand for construction of the Interchange.

WHEREAS, since the time of execution of the Levee Agreement, the amount of Clay and/or sand required by THF and the Levee District for their respective projects, being the Development, the Interchange, the Interchange Levee, and the Bonhomme Creek Levee has changed as a result of more detailed plans of the respective projects and more detailed analysis of the borrow/fill needs.

WHEREAS, the Levee District and THF are entering into this First Addendum to account for the changes in the borrow/fill needs for their respective projects.

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

1. Incorporation of the Levee Agreement. The terms and conditions of the Levee Agreement are hereby incorporated by this reference.
2. Recitals. The foregoing recitals are incorporated by this reference.
3. Sand Berm Redesign. A request has been made to the Corps of Engineers to modify the existing 404 Permit which was previously issued by the Corps of Engineers and referred to in Section 13 of the Levee Agreement. This request included additional impacted areas of wetlands now determined necessary for construction of the Interchange and the Interchange Levee. The Levee District and THF understand that the Corps of Engineers intends to grant the modification request. If the Corps of Engineers grants the modification request, the Levee District:
 - a. Covenants to engage Sverdrup Civil, Inc. or such other engineer as Levee District shall designate, in Levee District's sole discretion, to redesign that portion of the sand berm of the Interchange Levee lying east of the west line of the property formerly owned by Chesterfield Valley Golf Center, Inc. ("Redesign Work"); and
 - b. Covenants to construct the redesigned sand berm ("Sand Berm Construction") in a good, workmanlike manner and pursuant to all requirements for similar levees and pursuant to plans and specifications thereof approved by all required governmental authorities.

THF covenants and agrees to promptly reimburse the Levee District for all costs and expenses incurred by the Levee District for the Redesign Work and the Sand Berm Construction ("Sand Berm Costs") with Levee Funds, pursuant to the procedures described in Section 14 of the Levee Agreement. The Sand Berm Costs shall be considered additional Interchange Levee Construction Costs, referred to in Section 4 of the Levee Agreement.

4. The last paragraph within Section 4 of the Levee Agreement, which reads as follows:

"As part of the foregoing obligations, THF shall be solely responsible for all wetlands permitting necessary for the construction of the Interchange Levee. THF covenants and agrees to reimburse the Levee District for all of the Levee District's actual and reasonable costs and expenses related to the construction of the Interchange Levee ("Interchange Levee Construction Costs") subject to the terms and conditions of the Redevelopment

Agreement and provided that the Levee District is not otherwise in default hereunder. THF shall reimburse the Levee District for the Interchange Levee Construction Costs out of Levee Funds from time to time, pursuant to the procedures described in Section 14 hereof. In the construction of the Interchange Levee, Levee District shall abide by all rules, regulations and laws, which may govern the construction, and, furthermore, Levee District agrees to be subject to those provisions of §290.230 RSMo.(1996).”,

is hereby deleted and in lieu thereof, the following is substituted therefore:

“As part of the foregoing obligations, THF shall be solely responsible for all wetlands permitting necessary for the construction of the Interchange Levee (“Interchange Wetlands Permitting”). The Levee District agrees to be responsible for up to a total of Twenty-Thousand Dollars (\$20,000.00) of the cost of the Interchange Wetlands Permitting (“Wetlands Permitting Cost”). THF covenants and agrees to reimburse the Levee District for all of the Levee District's actual and reasonable costs and expenses related to the construction of the Interchange Levee, including its share of the Wetlands Permitting Cost (“Interchange Levee Construction Costs”), subject to the terms and conditions of the Redevelopment Agreement and provided that the Levee District is not otherwise in default hereunder. THF shall reimburse the Levee District for the Interchange Levee Construction Costs out of Levee Funds from time to time, pursuant to the procedures described in Section 14 hereof. In the construction of the Interchange Levee, Levee District shall abide by all rules, regulations and laws, which may govern the construction, and, furthermore, Levee District agrees to be subject to those provisions of §290.230 RSMo.(1996).”

5. Section 5 of the Levee Agreement is hereby deleted and in lieu thereof, the following is substituted therefore:

“5. Bonhomme Creek Levee. Subject to the receipt of the Levee Funds in accordance with the disbursement procedures described in Section 14, the Levee District further covenants and agrees to design and construct the Bonhomme Creek Levee in a good, workmanlike manner and pursuant to all requirements for similar levees and pursuant to plans and specifications therefor approved by all required governmental authorities. As a result of preliminary studies recently completed by the Corps of Engineers, the Levee District and THF acknowledge that the Bonhomme

Creek levee design may need to be further modified. The Levee District covenants and agrees that it shall be completed by the following dates:

Design Plan Commencement: November 20, 1997

Design Plan Substantial Completion
and Submission to Army Corps
of Engineers for Credit Application: February 1, 1998

Approval and Permitting Completed: July 1, 1998

Commencement of Construction: September 1, 1998

Substantial Completion of Construction
Adjacent to Shopping Center Property: 90 Calendar Days after actual
Commencement of Construction.

100% Completion of Construction: 200 Calendar Days after actual
Commencement of Construction.

As part of the foregoing obligations, Levee District shall be solely responsible for all wetlands permitting necessary for the construction of the Bonhomme Creek Levee. THF covenants and agrees to reimburse the Levee District for all of the Levee District's actual and reasonable costs and expenses related to the construction of the Bonhomme Creek Levee, including, but not limited to, the cost of deriving additional borrow material in excess of the Clay referred to in Section 6 hereof, subject to the terms and conditions of the Redevelopment Agreement and provided that the Levee District is not otherwise in default hereunder, including any costs for wetlands permitting ("Bonhomme Creek Levee Construction Costs"). THF shall reimburse the Levee District for the Bonhomme Creek Levee Construction Costs out of the Levee Funds from time to time, pursuant to the procedures described in Section 14 hereof. In the construction of the Bonhomme Creek Levee, Levee District shall abide by all rules, regulations and laws, which may govern the construction, and, furthermore, Levee District agrees to be subject to those provisions of §290.230 RSMO. (1996)."

6. Section 6 of the Levee Agreement is hereby deleted and in lieu thereof, the following is substituted therefore:

- "6. Borrow Easement. THF hereby covenants and hereby grants and conveys to the Levee District an easement and right to borrow ("Borrow Easement") in order to remove up to 200,000 cubic yards of levee fill material (hereinafter "Clay") from certain portions of the Shopping Center Property identified as Areas J, K and L on Exhibit H attached hereto. The Levee District may remove up to 160,000 cubic yards from Areas K and L. The Levee District may remove up to 40,000 cubic yards from Area J.

The excavation of the Clay by the Levee District shall not be deemed to constitute a portion of the final grading plan for the Shopping Center Property. THF shall cooperate with and assist the Levee District in obtaining the necessary permits from the City of Chesterfield for removal of the Clay. Any further grading improvements required to receive the necessary permits from the City of Chesterfield and which are part of the final grading plan for the Shopping Center Property shall be the responsibility of THF. The Levee District covenants and agrees to use its best efforts so as to remove the Clay from Area J within twenty (20) Calendar Days after actual Commencement of Construction of the Bonhomme Creek Levee. Furthermore, the Levee District covenants and agrees to use its best efforts so as to remove the Clay from Areas K and L within ninety (90) Calendar Days after actual Commencement of Construction of the Bonhomme Creek Levee. Levee District shall be solely responsible for the excavation of the Clay, and the placement of the Clay on the Bonhomme Creek Levee. The Levee District covenants and agrees to replace the Clay so taken with up to 200,000 cubic yards of sand ("Replacement Sand"). The Levee District covenants and agrees to commence removal of the Replacement Sand within ninety (90) Calendar Days after the Commencement of Construction of the Interchange Levee. Levee District shall only be responsible for hauling (not the placement of) 160,000 cubic yards of the Replacement Sand to those areas of the Shopping Center Property designated as Areas X and Y on Exhibit H attached hereto. Levee District shall also be responsible for hauling 40,000 cubic yards of the Replacement Sand to that area of the Shopping Center Property designated as Area J on Exhibit H and also leveling the Replacement Sand hauled to Area J. The Levee District's cost to haul the Replacement Sand to Areas X, Y and J and level the Replacement Sand hauled to Area J shall be promptly reimbursed by THF as follows:

- a. With Levee Funds at the Levee District's actual cost, less fifty cents (\$0.50) per cubic yard for Replacement Sand

hauled to Areas X and Y of the Shopping Center Property ("Creek Sand Costs"); and

- b. With Levee Funds at the Levee District's actual cost for Replacement Sand hauled to and leveled in Area J ("Sand/Level Costs"); and
 - c. With funds other than Levee Funds ("Non-Levee Funds"), at fifty cents (\$0.50) per cubic yard for that Replacement Sand hauled to Areas X and Y ("Replacement Sand Cost").
-

THF shall reimburse the Levee District for the Creek Sand Costs and Sand/Level Costs with Levee Funds pursuant to the procedures described in Section 14 hereof. THF shall reimburse the Levee District for the Replacement Sand Cost with Non-Levee Funds pursuant to the procedures described in Section 14 hereof."

It is hereby agreed and understood that Exhibit 4 to this First Addendum is fully incorporated into the Levee Agreement as Exhibit H to the said Levee Agreement.

- 7. Section 7 of the Levee Agreement is hereby deleted and in lieu thereof, the following is substituted therefore:

"7. Additional Sand.

- a. Interchange Sand. The Levee District covenants and agrees to excavate, haul to and spread over an area, which is designated on Exhibit I attached hereto, 310,000 cubic yards of sand for construction of the Interchange by THF ("Interchange Sand"). The sand fill material shall be placed and spread level overtop the sand berm constructed pursuant to the Interchange Levee design in an area south of the Interchange Levee between Station A 0+00 and Station 25+00; north of the Existing Levee between Station 319+02 and Station 345+50; and west of Haul Road/Temporary Access #4. The Levee District shall not charge THF for the cost of the Interchange Sand (the material cost). The Levee District's cost to deliver 269,000 cubic yards of the Interchange Sand, shall be reimbursed by THF at the actual cost to the Levee District to deliver the Interchange Sand, but at a maximum cost of one dollar and seventy-eight cents (\$1.78) per cubic yard ("Interchange Sand Cost"), which is the Levee District's current estimated

cost to deliver the Interchange Sand, with Non-Levee Funds pursuant to the procedures described in Section 14 hereof. The Levee District's cost to deliver 43,000 cubic yards of the Interchange Sand shall be reimbursed by THF ("Interchange Replacement Sand Costs") with Levee Funds pursuant to the procedures described in Section 14 hereof. Measurement for payment shall be made based on in-place measure as determined by the Levee District's Engineer and THF's Engineer. The Interchange Sand shall be excavated, hauled and spread within thirty (30) Calendar Days after actual Commencement of Construction of the Interchange Levee plus an additional seventy (70) days, but in no event less than one hundred twenty (120) days total. Should river/flood conditions prohibit dredge excavation, as determined by the Levee District's Engineer, the number of days to complete the excavation, hauling and spreading of the Interchange Sand shall be extended accordingly. Upon completion of the Interchange, the seepage berm provided for in the Interchange Levee Plans shall be leveled by THF at or above the elevation called for in the Interchange Levee Plans and then shall be seeded and mulched by THF at THF's sole cost and expense.

The Creek Sand Costs, Sand/Level Costs and Interchange Replacement Sand Costs shall hereinafter be collectively referred to as Sand Haul Costs.

- b. Development Sand. The Levee District covenants and agrees to excavate, haul and stockpile an additional 260,000 cubic yards of sand for use by THF for the Shopping Center Property ("Development Sand"). The Levee District shall not charge THF for the cost of the Development Sand (the material cost). The Development Sand will be placed generally in an area as designated on Exhibit I ("Stockpile Area"). THF may remove or cause to have removed the Development Sand for use in construction of the Shopping Center Property. The cost to remove the Development Sand shall be at no cost to the Levee District. The Levee District's engineer shall advise THF as to the exact location of the Development Sand. The Levee District's cost to haul the Development Sand to the Stockpile Area shall be reimbursed by THF at the actual cost to the Levee District to haul the Development Sand, but at a maximum cost of one dollar and seventy-eight

cents (\$1.78) per cubic yard ("Development Sand Cost"), which is the Levee District's current estimated cost to deliver the Development Sand, with Non-Levee Funds pursuant to the procedures described in Section 14 hereof. Measurements for payment shall be made based on stockpiled measure as determined by the Levee District's Engineer and THF's engineer. 100,000 cubic yards of the Development Sand ("Initial Development Sand) shall be excavated, hauled and stockpiled within thirty (30) Calendar Days after actual Commencement of Construction of the Interchange Levee plus an additional one hundred thirty (130) days. THF shall remove or cause to be removed the Initial Development Sand from the stockpile area within sixty (60) days of receipt of Notice of Completion of excavating, hauling and stockpiling the Initial Development Sand. The Remaining Development Sand of 160,000 cubic yards, ("Remaining Development Sand") shall be excavated, hauled and stockpiled within thirty (30) calendar days after actual Commencement of Construction plus an additional two hundred thirty-five (235) days. THF shall have ninety (90) days from receipt of Notice of Completion of excavating, hauling and stockpiling the Remaining Development Sand to remove the Remaining Development Sand from the Stockpile Area and to level the Stockpile Area.

The Replacement Sand Cost, Interchange Sand Cost, and Development Sand Cost shall hereinafter be collectively referred to as "THF Sand Cost".

It is hereby agreed and understood that Exhibit 5 to this First Addendum is fully incorporated into the Levee Agreement as Exhibit I to the said Levee Agreement.

8. Paragraph 8(b) of the Levee Agreement is hereby deleted and in lieu thereof, the following is substituted therefore:

"(b) Acquisition of Novel Property. The Levee District covenants and agrees to use its good faith and diligent efforts to acquire the fee interest in approximately 37.178 acres and is identified on Exhibit D attached hereto ("Novel Property"), including without limitation, the affirmative obligation on the part of the Levee District to initiate condemnation proceedings for the acquisition of said easements. THF shall reimburse the Levee District for the first

\$200,000 of the Acquisition Costs incurred by the Levee District in acquiring the Novel Property from Non-Levee Funds ("Novel Acquisition Costs") pursuant to the procedures described in Section 14 hereof. Acquisition Costs in excess of \$200,000 shall be reimbursed one-half from Non-Levee Funds (to be considered additional Novel Acquisition Costs) and one-half from Levee Funds (to be considered additional Interchange Levee Construction Costs). Notwithstanding Section 15 hereof, the Levee District shall have full authority to acquire the Novel Property at whatever cost it deems appropriate. Notwithstanding THF's obligations regarding reimbursement for the acquisition of the Novel Property, the Levee District shall use its best efforts to minimize the Acquisition Costs for the Novel Property. The Levee District and THF have identified certain non-fill material ("Material") on the Novel Property. THF shall be responsible for the removal of all Material on the Novel Property which is located south of the north line of the right-of-way required for the construction of the Interchange ("THF Area"). THF shall use its best efforts to remove the Material within 45 Calendar Days after actual Commencement of Construction of the Interchange Levee. The Levee District agrees that 25% of the costs to remove the Material from the THF Area shall be reimbursed from Levee Funds, provided that the minimum amount of Levee Funds shall not be less than \$25,000 and the maximum amount shall not be more than \$50,000. The Levee District agrees to cooperate with THF in determining the method and process of removing the Material.

9. Section 16(b) of the Levee Agreement is hereby deleted and in lieu thereof, the following is substituted therefore:

"(b)(i) THF covenants and agrees to reimburse the Levee District for all of Levee District's actual and reasonable costs, and expenses related to the Phase III Design, including any administrative or legal expenses related thereto ("Phase III Costs"). The Phase III Costs shall be reimbursed to Levee District by THF from Levee Funds pursuant to the procedures described in Section 14 hereof. THF's obligation to reimburse Levee District for Phase III Costs shall not exceed Three Hundred Thousand Dollars (\$300,000.00) and Levee District shall not submit a request for reimbursement for any Phase III Costs prior to January 1, 1999.

(ii) The Levee District will need to acquire certain easements (or fee interest), in a form and substance satisfactory to the Levee District in order to construct the Additional Levee Improvements

("Levee Improvement Property"). The Levee District and THF agree that it is in the best interest of the Levee District to acquire certain Levee Improvement Property prior to the distribution of the Balance Funds, as that term is defined in Section 16(c) hereof. The Levee District, at its sole discretion, may acquire certain portions of the Levee Improvement Property. THF covenants and agrees to reimburse the Levee District for all Acquisition Costs incurred by the Levee District in acquiring portions of the Levee Improvement Property ("Improvement Property Costs") with Levee Funds pursuant to the procedures described in Section 14 hereof. THF's obligation to reimburse the Levee District for Improvement Property Costs shall not exceed One Million Five Hundred Thousand Dollars (\$1,500,000.00) and Levee District shall not submit a request for reimbursement for any Improvement Costs prior to February 1, 1999.

(iii) The Phase III Costs and Improvement Property Costs shall herein be collectively referred to as Phase III Design Costs."

10. Section 14(d) of the Levee Agreement is hereby deleted and in lieu thereof, the following is substituted therefore:

"(d) Default in Reimbursement. If THF fails to reimburse Levee District for a properly submitted draw request within thirty (30) days after submission thereof pursuant to Paragraph 14(c), Levee District may suspend, at its sole discretion, any of its obligations under this Agreement. In addition, if THF fails to reimburse Levee District for a properly submitted draw request within sixty (60) days after submission thereof pursuant to Paragraph 14(c), THF shall pay to Levee District an additional sum representing interest in the amount of seven (7) percent per annum from the date of receipt of the reimbursement request ("Default Cost"). THF shall reimburse the Levee District for all Default Cost, as additional THF Costs, as that term is defined in Section 14(b) hereof, pursuant to the procedures described in Section 14 hereof for the reimbursement of THF Costs. Finally, if THF fails to reimburse Levee District for a properly submitted draw request within thirty (30) days after submission thereof pursuant to paragraph 14(c), and thereafter, Levee District provides THF with written notice of the Levee District's intention to draw under the letter of credit provided pursuant to Section 24(b), and THF fails to pay to Levee District such amount owned pursuant to the properly submitted draw requests within fifteen (15) days of such notice, then Levee District may proceed to draw under such letter of credit to satisfy

such amounts as are owned pursuant to the properly submitted draw request."

11. Levee Agreement. Except as specifically amended hereby, the Levee Agreement shall remain in full force and effect and shall be binding and enforceable in accordance with its terms. Capitalized terms found herein shall have the same meaning as originally set forth in the Levee Agreement. In the event of any conflict between the terms found within the Levee Agreement and the terms found within this First Addendum, this First Addendum shall govern.

THF and Levee District agree to execute such further documents and take such further actions as may be reasonably necessary to carry out the provisions and intent of the Levee Agreement, as amended hereby.

IN WITNESS WHEREOF, THF and Levee District have executed this First Addendum as of the day and year first above written.

THF CHESTERFIELD DEVELOPMENT, L.L.C.,
a Missouri limited liability company

By: _____
Michael H. Staenberg, Manager

Date: _____

MONARCH-CHESTERFIELD LEVEE DISTRICT

By: Earl R. Hoffmann
Earl R. Hoffmann, President

Date: _____

SECOND ADDENDUM TO LEVEE AGREEMENT

This Second Addendum to Levee Agreement (the "Second Addendum") is made and entered into as of this 18th day of October, 1999 (the "Effective Date"), by and between the MONARCH-CHESTERFIELD LEVEE DISTRICT, a Missouri statutory Levee District (the "Levee District"), and THF CHESTERFIELD DEVELOPMENT, L.L.C., a Missouri Limited Liability Company and THF CHESTERFIELD DEVELOPMENT TWO, L.L.C., a Missouri Limited Liability Company (together "THF").

WHEREAS, the Levee District and THF entered into a Levee Agreement dated November 21, 1997 ("Original Levee Agreement"), as amended by the First Addendum to Levee Agreement dated September 1, 1998 ("First Addendum"), (collectively referred to as the "Levee Agreement"), relating to THF's development of approximately 317 acres of real property set forth therein and referred to as the Shopping Center Property; and

WHEREAS, the Levee District and THF are entering into this Second Addendum to acknowledge the satisfaction of certain obligations in the Levee Agreement and to amend and to supplement certain terms and conditions of the Levee Agreement.

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

1. Incorporation of the Levee Agreement. Except as amended herein, the terms and conditions of the Levee Agreement are hereby incorporated by this reference.
2. Recitals. The forgoing recitals are incorporated by this reference.
3. Interchange Levee Construction. The Levee District and THF acknowledge that the Interchange Levee has been substantially completed and that the only remaining work to be completed is the following: (1) Sand Berm Construction (contemplated in Paragraph 3 of the First Addendum), (2) final grading; (3) seeding; and (4) mulching (collectively "Remaining Interchange Levee Work"). The Levee District covenants and agrees that it shall use its best efforts to complete the Remaining Interchange Levee Work on or before October 1, 2000. Section 4 of the Levee Agreement is modified accordingly.

The Levee District hereby acknowledges completion of and releases THF from the obligations under paragraph 7.a. of the First Addendum.

4. Bonhomme Creek Levee Construction. The Levee District and THF acknowledge that the Bonhomme Creek Levee has been substantially completed and that the only remaining work to be completed is the following: (1) final grading; (2) seeding; and (3) mulching (collectively "Remaining Bonhomme Creek Levee Work"). The Levee District covenants and agrees that it shall use

its best efforts to complete the Remaining Bonhomme Creek Levee Work on or before October 1, 2000. Section 5 of the Levee Agreement is modified accordingly.

5. Satisfaction and Release of Certain Obligations.

- A. Except as provided in Paragraphs 3 and 4 of this Second Addendum, ~~THF hereby acknowledges that the Levee District has satisfied its obligations with respect to Paragraphs 3-12 of the Levee Agreement, including any subparts thereof, and further acknowledges that the Levee District is not in default in any obligations under the Levee Agreement.~~ Except with respect to the Remaining Interchange Levee Work and the Remaining Bonhomme Creek Levee Work, THF hereby releases and forever discharges the Levee District and all officers, supervisors, agents, representatives and employees thereof from any and all manner of action or actions, claims, demands, damages, loss, costs, right of setoff, or expenses of any nature whatsoever, known or unknown, fixed or contingent, which THF may have, or may hereafter have, against the Levee District arising from or relating to Paragraphs 3-12 of the Levee Agreement, including any subparts thereof.
- B. THF hereby acknowledges satisfaction of all issues contained in that letter dated June 2, 1999 from Alan Bornstein to David Human, which is attached hereto as Exhibit H (Bornstein letter). Furthermore, THF hereby releases and forever discharges the Levee District and all officers, supervisors, agents, representatives and employees thereof from any and all manner of action or actions, claims, demands, damages, loss, costs, right of setoff, or expenses of any nature whatsoever known or unknown, fixed or contingent, which THF may have, or may hereafter have, against the Levee District arising from or relating to those matters contained in the Bornstein Letter.
- C. THF and the Levee District hereby acknowledge that THF has satisfied and performed all of its obligations, and has fully reimbursed the Levee District for THF Sand Cost, and that THF has no further right or obligation to remove Development Sand or Remaining Development Sand from the Stockpile Area.
- D. THF and the Levee District agree that the Borrow Easement is hereby extinguished, and that the Levee District has no further right or obligation to remove Clay from the Borrow Site.
- E. The Levee District acknowledges that it has been fully reimbursed by THF for all of THF's share of the Haynes Acquisition Costs.
- F. The Levee District hereby releases THF from all obligations relative to

Section 8 (b) of the Levee Agreement.

- G. The Levee District acknowledges that it has been fully reimbursed by THF for all of THF's share of the CII Acquisition Costs.
 - H. The Levee District hereby acknowledges that it has been fully reimbursed by THF for all of THF's share of EA Costs.

 - I. The Levee District hereby acknowledges that it has been fully reimbursed by THF for all Creek Acquisition Costs, except that the Levee District reserves the right to request, and THF shall reimburse the Levee District for the cost of title insurance for the THF Creek Property, as defined herein. Payment of said title insurance reimbursement shall be a Creek Acquisition Cost, payable from Non-Levee Funds pursuant to paragraph 10(a) of the Levee Agreement.
6. Bonhomme Creek Levee Access. Upon the City of Chesterfield's (City) acceptance of the dedication of THF Boulevard and RHL Drive from THF, and the conveyance of the THF Creek Property to the Levee District, the Levee District agrees to release its interest in the easements listed on Exhibit I attached hereto and incorporated herein by this reference. In the event, however, that the City does not accept the dedication of RHL Drive at such time as it accepts the dedication of THF Boulevard, the Levee District shall not release its interest in the McBride Access Easement, as defined on Exhibit I hereto. Instead, the Levee District immediately shall have a permanent, non-exclusive license to use RHL Drive to complete the Bonhomme Creek Levee, to complete construction of the drainage improvements on the Shopping Center Property, to inspect and maintain the Bonhomme Creek Levee and for such other use as may be required to conduct a flood fight or other emergency operations relative to the Bonhomme Creek Levee, drainage facilities and related improvements. Further, within thirty (30) days following said non-acceptance of RHL Drive by the City, THF will deliver to the Levee District an easement running over RHL Drive (RHL Easement) in the same form as Exhibit J attached hereto. The Levee District agrees to release its interest in the McBride Access Easement, upon THF's completion of the following: (i) conveying the THF Creek Property to the Levee District; (ii) recording the Plat, as defined below; and, (iii) delivery of the Easement Deed conveying the RHL Easement as provided herein.
7. Novel Property. Simultaneous with the payment under Paragraph 8 of this Second Addendum, the Levee District will quit claim to THF by quit claim deed its interest in that portion of the Novel Property lying south of the north Outer Road and north of the west bound exit ramp depicted or legally described on Exhibit K (Novel Conveyance Property), subject to a retention by the Levee District of a seepage berm easement, the location of which is generally depicted on the attached Exhibit K. Prior to conveyance of the Novel Conveyance Property hereunder, the Levee District shall prepare a metes and bounds

description of said seepage berm easement to be retained, which metes and bounds description shall control. The quit claim deed for the Novel Conveyance Property will be in substantially the same form as Exhibit L. The Levee District agrees that as of the Effective Date, it has not encumbered, and as of the date of conveyance, will not encumber, the Novel Conveyance Property other than an easement granted to Union Electric and the aforementioned seepage berm easement to be retained by the District. Except as expressly provided in the preceding sentence, the Levee District makes no representations or warranties as to the state of title of the Novel Conveyance Property.

8. THF Payment. Simultaneously with the execution of this Second Addendum, THF will pay the Levee District the sum of \$1,823,959.90, which sum the parties acknowledge and agree is the amount of Levee Funds due and owing to the Levee District under the Levee Agreement through the Effective Date. Simultaneously with the execution of this Second Addendum, THF will pay the Levee District the sum of \$338,598.00, which sum the parties acknowledge and agree is the amount of Non-Levee Funds due and owing to the Levee District under the Levee Agreement through the Effective Date. The Levee District and THF acknowledge that including the payment of the aforesaid \$1,828,959.90, THF has paid to the Levee District \$7,968,368.70 of Levee Funds up through and including the Effective Date.

The Levee District hereby waives any Default Costs that may have accrued as of the Effective Date.

9. Levee District Payment. Simultaneous with the receipt by the Levee District from THF, in the aggregate, of the sum of \$9,000,000 in Levee Funds pursuant to the Levee Agreement, the Levee District will pay to THF the sum of \$265,000. THF acknowledges that the Levee District shall be entitled to request from Levee Funds reimbursement in the amount of the \$265,000 paid hereunder; said request to be made by the Levee District as part of the Levee District's final request for reimbursement.

LD can request reimbursement of \$265,000 as part of final payment, before we pay them the \$265,000.

10. Creek Levee Easements. THF represents and warrants that it has acquired good and marketable title to the area of the Creek Levee Easements described on attached Exhibit M (THF Creek Property). In satisfaction of its obligations to convey the Creek Levee Easements under Section 10(a) of the Levee Agreement, THF shall convey the THF Creek Property to the Levee District in fee by special warranty deed, free and clear of all liens, taxes and assessments, simultaneously with the recording of the Chesterfield Commons Subdivision Plat (Plat) designating the THF Creek Property as lots thereon (THF Creek Property Lots). THF represents and warrants that the THF Creek Property Lots contain the same area as the real property described in Exhibit M attached hereto. In the event that the Plat is not recorded within ninety (90) days from the Effective Date, then THF immediately shall convey to the Levee District by special warranty deed the THF Creek Property. THF shall pay all taxes, assessments

and any other municipal charges relative to the THF Creek Property accrued for the entire calendar year of conveyance hereunder.

11. Miscellaneous. Except as specifically amended hereby, the Levee Agreement shall remain in full force and effect and shall be binding and enforceable in accordance with its terms. All conveyances of real estate or interests therein under this Second Addendum shall take place within the time frames specified hereunder, ~~exact time and date to be agreed by the parties, at the offices of Commonwealth Title Company, St. Louis, Missouri.~~ Capitalized terms not otherwise defined in this Second Addendum shall have the same meaning as originally set forth in the Levee Agreement. In the event of any conflict between the terms found within the Levee Agreement and the terms found within this Second Addendum, this Second Addendum shall govern. THF and Levee District agree to execute such further documents and take such further actions as may be reasonably necessary to carry out the provisions and intent of the Levee Agreement, as amended hereby. This Second Addendum may be executed in counterparts and/or via facsimile signature.

[REMAINDER OF THIS PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, THF and Levee District have executed this Second Addendum as of the day and year first above written.

MONARCH CHESTERFIELD LEVEE DISTRICT

By: _____

Earl R. Hoffmann
Earl R. Hoffmann, President

Date: _____

**THF CHESTERFIELD DEVELOPMENT, L.L.C.
a Missouri Limited Liability Company**

By: _____

Michael H. Staenberg, Manager

Date: _____

**THF CHESTERFIELD DEVELOPMENT TWO, L.L.C.
a Missouri Limited Liability Company**

By: _____

Michael H. Staenberg, Manager

Date: _____

IN WITNESS WHEREOF, THF and Levee District have executed this Second Addendum as of the day and year first above written.

MONARCH-CHESTERFIELD LEVEE DISTRICT

By: _____
Earl R. Hoffmann, President

Date: _____

THF CHESTERFIELD DEVELOPMENT, L.L.C.
a Missouri Limited Liability Company

By: _____
Michael H. Staenberg, Manager

Date: _____

THF CHESTERFIELD DEVELOPMENT TWO, L.L.C.
a Missouri Limited Liability Company

By: _____
Michael H. Staenberg, Manager

Date: _____

EXHIBITS TO SECOND ADDENDUM

Exhibit H Letter dated June 2, 1999 from Alan Bornstein to David Human (Bornstein Letter)

Exhibit I Easements to be released on THF Property

~~Exhibit J RHL Easement Deed~~

Exhibit K Description of interest in Novel Property (Novel Conveyance Property)

Exhibit L Form of Quit Claim and Underseepage Berm Deed for Novel Conveyance Property

Exhibit M THF Creek Property legal description

EXHIBIT H TO SECOND ADDENDUM

JUNE 2, 1999 LETTER FROM ALAN BORNSTEIN TO DAVID HUMAN

SONNENSCHN EIN NATH & ROSENTHAL

ONE METROPOLITAN SQUARE
SUITE 3000
ST. LOUIS, MISSOURI 63102

(314) 241-1800
FACSIMILE
(314) 259-5969

Alan Bornstein
314-259-5803
abb@sonnenschein.com

June 2, 1999

EXHIBIT

H

VIA FACSIMILE
David R. Human
Ziercher & Hocker, P.C.
231 S. Bemiston
Eighth Floor
St. Louis, MO 63105

Re: THF/Levee District Issues

Dear David:

I have had an opportunity to review with Michael Staenberg your earlier correspondence and wish to summarize for you our understanding of the issues between THF and the Levee District. Those issues are as follows:

1. Issues Related to Sequencing and Delivery of Materials from Levee District to THF.

- (a) THF has incurred approximately \$100,000 of additional costs with Weber as the result of the need for the delivery of material not available from the Levee District in order to meet the THF construction schedule for the interchange.
- (b) THF has incurred an additional \$269,033 of expenses necessary to mitigate the need for materials in accordance with THF's construction schedule that were not timely available from the Levee District. These are the current additional costs associated with the site development. Additional costs may be incurred if all materials are not delivered prior to July 1, 1999 (the anticipated closing date of the existing bridge). These additional costs could be as much as \$300,000.
- (c) In addition to issues regarding costs associated with sequencing and delivery, THF has claimed a discrepancy in the amount of interchange sand delivery of approximately 25,000 cubic yards.

2. Levee District Claims for Additional Materials.

- (a) The Levee District has claimed 14,781 additional cubic yards of clay from the development site for which the Levee District claims that it has previously given THF topsoil. THF has no record of such topsoil delivery.
- (b) The Levee District is required to remove 18,107 cubic yards to be removed from Borrow Area K. THF contests the timing of the removal of this material by the Levee District. It is THF's position that the Levee District should have previously

David R. Human
June 2, 1999
Page 2

removed this material from Borrow Area K. The failure to timely remove will require that THF incur disposition costs for this material.

-
- (c) The Levee District has requested an additional 13,319 cubic yards of clay from the southwestern corner of the detention pond (Borrow Area K). THF does not object to the Levee District removal of this additional clay material (along with the material described in 2(a)) but has no resolution with the Levee District regarding the amount that the Levee District is prepared to pay for the material. Additionally, the material must be removed immediately so as not to conflict with the construction of pond.

3. Construction Issues.

- (a) THF has cut a temporary ditch across the Levee District's access road easement for Bonhomme Creek levee improvements. The Levee District has requested acceptable alternate access. THF will provide alternate access and will restore original access area at such time as THF installs necessary piping. THF is waiting for City of Chesterfield approval of storm water plan to complete the installation of piping.
- (b) Levee District is required to issue a letter approving the location of THF ponds and ditches. THF does not believe that this is an open issue as a result of the prior approval of the Corp of Engineers, the City of Chesterfield and the supporting documentation of Midwest Testing. THF has made repeated requests for the Levee District engineer to grant similar approval.
- (c) The Levee District has claimed that they have been damaged by the deletion of Borrow Area L. THF does not believe that Borrow Area L was ever an active borrow area as a result of the actions of the City of Chesterfield regarding the storm water plan and the deletion of Borrow Area L as an acceptable borrow area at the inception of the agreement. Additionally, substitute dirt has been provided
- (d) THF has made numerous requests for comments on road plans. Presently there is water sitting against the north outer road that THF contends is the responsibility of the Levee District. To the extent that such water is not removed and damages the outer road, THF will hold the Levee District responsible.
- (e) THF and the Levee District dispute the realignment of the interchange levee. In addition, THF and the Levee District dispute the realignment of the outer road.

SONNENSCHN NATH & ROSENTHAL

David R. Human
June 2, 1999
Page 3

4. Contract Claims

- (a) Levee District has made a claim for approximately \$500,000 of reimbursable costs currently withheld by THF from reimbursement requests. THF has funded but not paid the amount because of the existing disputes.
- (b) Levee District has made claims for a change in calendar days and extension of deadlines pursuant to the Levee Agreement. THF has disputed the claims for additional days.

5. Miscellaneous Issues.

- (a) THF and the Levee District must agree on the timing for the conveyance of the Bonhomme Creek tract and the Novel tract.
- (b) The Levee District and THF need to review the opportunity for cooperative utility (water/sewer) services to the respective sites on the north portion of Highway 40.
- (c) Redesignated Bonhomme Creek Levee will not be completed until January, 2000, (subject to weather delays), which will result in a delayed start of Edison Avenue to January, 2000, at the earliest.

David, after you have had an opportunity to review these items, please call me to confirm your understanding.

Sincerely,

SONNENSCHN NATH & ROSENTHAL

By:



Alan Bornstein

sys

cc. Michael Staenberg

EXHIBIT I TO SECOND ADDENDUM

EASEMENTS TO BE RELEASED ON THE PROPERTY

1. Easement recorded in Book 10353, at Page 1714 of the St. Louis County, Missouri real estate records. (McBride Access Easement)

- ~~2. Easement for Ingress and Egress condemned by Order of the Circuit Court of St. Louis County on June 1, 1998, in the case styled *Monarch-Chesterfield Levee District vs. Virginia M. Stone, et al.*, Cause No. 98CC-001256. (West Pump Station #6 Access Easement)~~

EXHIBIT J TO THE SECOND ADDENDUM

RHL EASEMENT DEED

PERMANENT EASEMENT DEED

THIS PERMANENT EASEMENT DEED is made and entered into this _____ day of _____, _____, by and between THF Chesterfield Development, L.L.C., a Missouri limited liability company and THF Chesterfield Development Two, L.L.C., a Missouri limited liability company (together hereinafter "Owner") to the MONARCH-CHESTERFIELD LEVEE DISTRICT, a Missouri Levee District, and its successors and assigns (hereinafter "Beneficiary"). The Owner hereby gives, grants, extends, confers, declares and establishes the following easements, rights and obligations running to the benefit of Beneficiary:

SECTION I
GRANT OF PERMANENT EASEMENT

For and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, receipt of which is hereby acknowledged, Owner hereby gives, grants, extends, confers, declares and establishes to Beneficiary a perpetual, non-exclusive easement for ingress and egress, and for all other levee purposes, over, upon and across the property depicted as RHL Drive on the Chesterfield Commons Subdivision Plat recorded in Plat Book _____, Page _____ of the St. Louis County, Missouri real estate records. The easement and right-of-way over the Property shall hereinafter be referred to as the "Right-of-Way."

Beneficiary and its employees, agents and contractors, may from time to time, enter upon the Right-of-Way in order to do all things necessary to construct, reconstruct, repair, view or maintain the levee or any related improvements, including but not limited to, constructing a rock-lined ditch and pond and conducting emergency operations, such as a flood fight. Beneficiary shall have no liability or responsibility in the event Beneficiary's emergency use of the Right-of-Way damages the Right-of-Way, except to the extent that Beneficiary receives Federal reimbursement for said damages.

SECTION II
ASSIGNMENT

Beneficiary may assign its rights hereunder to the State of Missouri, County of St. Louis, or any other state or federal political subdivision or district having jurisdiction over Beneficiary.

SECTION III
CONSTRUCTION/BINDING EFFECT

This Permanent Easement Deed has been made and entered into in the County of St. Louis, State of Missouri, and shall be construed in accordance with the laws of the State of Missouri. The Permanent Easement Deed shall be binding upon and shall inure to the benefit of Owner and Beneficiary and their respective successors and assigns.

SECTION IV
DURATION

This easement shall be perpetual.

IN WITNESS WHEREOF, this Permanent Easement Deed has been executed the day and year first above written.

THF CHESTERFIELD DEVELOPMENT,
L.L.C., a Missouri limited liability company

THF CHESTERFIELD DEVELOPMENT
TWO, L.L.C., a Missouri limited liability
company

By: _____
Michael H. Staenberg, Manager

By: _____
Michael H. Staenberg, Manager

Date: _____

Date: _____

STATE OF MISSOURI)
) ss.
COUNTY OF ST. LOUIS)

On this ____ day of _____, _____, before me personally appeared Michael H. Staenberg, to me personally known, who, being by me duly sworn, did say that he is the Manager of THF Chesterfield Development, L.L.C., a Missouri limited liability company and THF Chesterfield Development Two, L.L.C., a Missouri limited liability company, and said Michael H. Staenberg acknowledged that he executed this instrument on behalf of said limited liability companies, and said Michael H. Staenberg acknowledged said instrument as the free act and deed of said limited liability companies.

In Testimony Whereof, I have hereunto set my hand and affixed my notarial seal, the day and year first above written.

My commission expires:

Notary Public

EXHIBIT K TO SECOND ADDENDUM

LEGAL DESCRIPTION OF NOVEL CONVEYANCE PROPERTY

SEE DRAWING ATTACHED HERETO, AND MADE A PART HEREOF BY THIS REFERENCE

METES AND BOUNDS LEGAL DESCRIPTION BASED ON SURVEY
~~TO BE PROVIDED BEFORE CONVEYANCE SHALL CONTROL~~

EXHIBIT L TO SECOND ADDENDUM

QUIT-CLAIM AND UNDERSEEPAGE BERM DEED

THIS DEED, Made and entered into this ____ day of _____, _____, by and between

MONARCH-CHESTERFIELD LEVEE DISTRICT, a statutory levee district
~~organized under the laws of the State of Missouri,~~

of the County of St. Louis, State of Missouri party or parties of the first part, and

THE CHESTERFIELD DEVELOPMENT, L.L.C.,
a Missouri limited liability company,

whose address is: 955 Executive Parkway, Suite 210, St. Louis, MO 63141

of the County of St. Louis State of Missouri party or parties of the second part.

WITNESSETH, that the said party or parties of the first part, for and in consideration of the sum of One Dollar and other valuable considerations paid by the said party or parties of the second part, the receipt of which is hereby acknowledged, does or do by these presents **REMISE, RELEASE AND FOREVER QUIT CLAIM** unto the said party or parties of the second part, the following described Real Estate in the County of St. Louis and State of Missouri, to-wit:

Attached hereto as Exhibit A

TO HAVE AND TO HOLD the same, together with all rights and appurtenances to the same belonging, unto the said party or parties of the second part, and to the heirs and assigns of such party or parties forever, subject to the retention of a perpetual and assignable right and easement to construct, maintain, repair, operate, patrol and replace a flood protection levee, a storm water pump station, related storm water drainage improvements, including all appurtenances thereto, and a right of ingress and egress benefitting party of the first part, its successors and assigns, over that area legally described in Exhibit A, and said area identified in Exhibit A also shall be subject to those protective restrictions which are identified on Exhibit B attached hereto. Except with respect to such rights as reserved to party of the first part herein, neither the said party or parties of the first part, nor their heirs, nor any other person or persons for them or in their names or behalf, shall or will hereafter claim or demand any right or title to the aforesaid premises, or any part thereof, but they and every one of them shall, by these presents, be excluded and forever barred.

Exhibit A to Quit Claim and Underseepage Berm Deed for Novel Conveyance Property

Metes and Bounds Legal Description of Novel Conveyance Property

Exhibit B to the Quit Claim and Underseepage Berm Deed for the Novel Conveyance Property

Seepage Berm Restrictions on Novel Conveyance Property

PERMANENT UNDERSEEPAGE BERM PROTECTIVE RESTRICTIONS

The Underseepage Berm Easement is subject to the following restrictions:

1. No use that would alter, diminish, damage or interfere with the Monarch-Chesterfield Levee or the Underseepage Berm Easement is permitted.
2. No excavation, penetration or exploration hole which extends below the surface of the Underseepage Berm Easement by more than one foot is permitted. Material shall not be removed from the Underseepage Berm Easement.
3. Additional fill over and above the surface of the Underseepage Berm Easement is permissible at any time.
4. Requests to construct any improvements or to use the Underseepage Berm Easement for any purpose shall be subject to review and approval of the District prior to initiating construction of the proposed improvements or use of the Underseepage Berm Easement, which approval shall not be unreasonably withheld and which will be evidenced by a permit issued by the Levee District. Prior to initiating any construction of the proposed improvements or use of the Underseepage Berm Easement, the applicant must receive written approval of the request. Upon receipt of a request to construct any improvements or to use the Underseepage Berm Easement, the Monarch-Chesterfield Levee District shall forward said request to the U.S. Army Corps of Engineers (the "Corps") for review and comment.

EXHIBIT M TO SECOND ADDENDUM

LEGAL DESCRIPTION OF THE CREEK PROPERTY

SLAIS (ETAL) PROPERTY

Locator No. 17U310048

~~A TRACT OF LAND BEING PART OF LOTS 1 THROUGH 5 OF THE HERMAN FICKE ESTATE SUBDIVISION, U.S. SURVEYS 125 AND 2031, TOWNSHIP 45 NORTH, RANGE 4 EAST, ST. LOUIS COUNTY, MISSOURI, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:~~

COMMENCING AT THE NORTHEAST CORNER OF A TRACT OF LAND CONVEYED TO CHESTERFIELD INDUSTRIAL INVESTORS, AS RECORDED IN DEED BOOK 7853, PAGE 1771 OF THE ST. LOUIS COUNTY, MISSOURI RECORDS, SAID POINT ALSO BEING ON THE SOUTHERLY LINE OF CHESTERFIELD AIRPORT (100 FOOT WIDE) ROAD;

THENCE SOUTH 00 DEGREES 19 MINUTES 53 SECONDS WEST, ALONG THE EASTERLY LINE OF SAID CHESTERFIELD INDUSTRIAL INVESTORS TRACT, A DISTANCE OF 1718.78 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT;

THENCE NORTH 83 DEGREES 22 MINUTES 16 SECONDS EAST, A DISTANCE OF 169.10 FEET TO A POINT;

THENCE NORTH 83 DEGREES 42 MINUTES 59 SECONDS EAST, A DISTANCE OF 87.45 FEET TO A POINT;

THENCE NORTH 79 DEGREES 09 MINUTES 15 SECONDS EAST, A DISTANCE OF 192.07 FEET TO A POINT;

THENCE NORTH 79 DEGREES 25 MINUTES 25 SECONDS EAST, A DISTANCE OF 106.18 FEET TO A POINT;

THENCE NORTH 81 DEGREES 16 MINUTES 52 SECONDS EAST, A DISTANCE OF 248.47 FEET TO A POINT;

THENCE NORTH 81 DEGREES 52 MINUTES 16 SECONDS EAST, A DISTANCE OF 331.65 FEET TO A POINT;

THENCE NORTH 81 DEGREES 38 MINUTES 32 SECONDS EAST, A DISTANCE OF 271.78 FEET TO A POINT;

THENCE NORTH 75 DEGREES 44 MINUTES 52 SECONDS EAST, A DISTANCE OF 1.09 FEET TO A POINT ON THE WESTERLY LINE OF A TRACT OF LAND CONVEYED TO ELIZABETH J. SHANDS, AS RECORDED IN DEED BOOK 7857, PAGE 903 OF THE ST.

LOUIS COUNTY, MISSOURI RECORDS, AND BEING THE WESTERLY LINE OF LOT 6 OF SAID HERMAN FICKE ESTATE SUBDIVISION;

THENCE SOUTH 00 DEGREES 20 MINUTES 59 SECONDS WEST, ALONG SAID WESTERLY LINE, A DISTANCE OF 199.49 FEET TO A POINT;

THENCE SOUTH 80 DEGREES 44 MINUTES 10 SECONDS WEST, A DISTANCE OF 418.15 FEET TO A POINT;

THENCE SOUTH 81 DEGREES 16 MINUTES 52 SECONDS WEST, A DISTANCE OF 400.05 FEET TO A POINT;

THENCE SOUTH 79 DEGREES 25 MINUTES 25 SECONDS WEST, A DISTANCE OF 102.35 FEET TO A POINT;

THENCE SOUTH 79 DEGREES 09 MINUTES 15 SECONDS WEST, A DISTANCE OF 199.81 FEET TO A POINT;

THENCE SOUTH 83 DEGREES 42 MINUTES 59 SECONDS WEST, A DISTANCE OF 288.52 FEET TO A POINT ON THE AFOREMENTIONED EASTERLY LINE OF A TRACT OF LAND CONVEYED TO CHESTERFIELD INDUSTRIAL INVESTORS;

THENCE NORTH 00 DEGREES 19 MINUTES 53 SECONDS EAST, ALONG SAID EASTERLY LINE, A DISTANCE OF 206.36 FEET TO THE POINT OF BEGINNING, SAID TRACT CONTAINING 287,467 SQUARE FEET OR 6.599 ACRES, MORE OR LESS, AS CALCULATED BY KENNETH BALK & ASSOCIATES, INC. DURING FEBRUARY 1998.

SHANDS PROPERTY
Locator No. 17U34-0012

A TRACT OF LAND BEING PART OF LOTS 6 AND 7 OF THE HERMAN FICKE ESTATE SUBDIVISION, U.S. SURVEYS 125 AND 2031, TOWNSHIP 45 NORTH, RANGE 4 EAST, ST. LOUIS COUNTY, MISSOURI, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

~~COMMENCING AT THE NORTHEAST CORNER OF A TRACT OF LAND CONVEYED TO RICHARD J. SLAIS, ET AL., AS RECORDED IN DEED BOOK 6842, PAGE 898 OF THE ST. LOUIS COUNTY, MISSOURI RECORDS, SAID POINT ALSO BEING THE NORTHEAST CORNER OF LOT 5 OF SAID HERMAN FICKE ESTATE SUBDIVISION, AND ON THE SOUTHERLY LINE OF CHESTERFIELD AIRPORT (100 FOOT WIDE) ROAD;~~

THENCE SOUTH 00 DEGREES 20 MINUTES 59 SECONDS WEST, ALONG THE EASTERLY LINE OF SAID LOT 5, A DISTANCE OF 1520.38 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT;

THENCE NORTH 75 DEGREES 44 MINUTES 52 SECONDS EAST, A DISTANCE OF 124.04 FEET TO A POINT;

THENCE NORTH 79 DEGREES 39 MINUTES 07 SECONDS EAST, A DISTANCE OF 414.14 FEET TO A POINT;

THENCE NORTH 77 DEGREES 01 MINUTES 45 SECONDS EAST, A DISTANCE OF 46.01 FEET TO A POINT ON THE WESTERLY LINE OF A TRACT OF LAND CONVEYED TO VIRGINIA M. STONE AND ELIZABETH WILLI, AS RECORDED IN DEED BOOK 8603, PAGE 1164 OF THE ST. LOUIS COUNTY, MISSOURI RECORDS, AND BEING ON THE WESTERLY LINE OF LOT 8 OF SAID HERMAN FICKE ESTATE SUBDIVISION;

THENCE SOUTH 00 DEGREES 20 MINUTES 58 SECONDS WEST, ALONG THE WESTERLY LINE OF SAID LOT 8, A DISTANCE OF 211.70 FEET TO A POINT;

THENCE SOUTH 77 DEGREES 01 MINUTES 45 SECONDS WEST, A DISTANCE OF 1.91 FEET TO A POINT;

THENCE SOUTH 79 DEGREES 39 MINUTES 07 SECONDS WEST, A DISTANCE OF 498.72 FEET TO A POINT;

THENCE SOUTH 80 DEGREES 44 MINUTES 10 SECONDS WEST, A DISTANCE OF 80.97 FEET TO A POINT ON THE AFOREMENTIONED EASTERLY LINE OF LOT 5 OF THE HERMAN FICKE ESTATE SUBDIVISION;

THENCE NORTH 00 DEGREES 20 MINUTES 59 SECONDS EAST, ALONG SAID THE EASTERLY LINE OF SAID LOT 5, A DISTANCE OF 199.49 FEET TO THE POINT OF BEGINNING, SAID TRACT CONTAINING 119,333 SQUARE FEET OR 2.740 ACRES, MORE OR LESS, AS CALCULATED BY KENNETH BALK & ASSOCIATES, INC. DURING FEBRUARY 1998.

VIRGINIA M. STONE AND ELIZABETH WILLI PROPERTY
17T110058

A TRACT OF LAND BEING PART OF LOT 4 OF THE SUBDIVISION OF LUDWELL BACON'S ESTATE AND PART OF LOTS 8, 9, AND 10 OF THE HERMAN FICKE ESTATE SUBDIVISION, IN U.S. SURVEY 2031, TOWNSHIP 45 NORTH, RANGE 4 EAST, ST. LOUIS COUNTY, MISSOURI, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE SOUTHERLY LINE OF OLIVE STREET (60 FOOT WIDE) ROAD WITH THE EASTERLY LINE OF A TRACT OF LAND CONVEYED TO ELIZABETH J. SHANDS, AS RECORDED IN DEED BOOK 7857, PAGE 903 OF THE ST. LOUIS COUNTY, MISSOURI RECORDS, SAID POINT ALSO BEING THE EASTERLY LINE OF LOT 7 OF SAID SUBDIVISION OF HERMAN FICKE ESTATE;

THENCE SOUTH 00 DEGREES 20 MINUTES 58 SECONDS WEST, ALONG SAID EASTERLY LINE, A DISTANCE OF 1357.60 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT;

THENCE NORTH 80 DEGREES 15 MINUTES 54 SECONDS EAST, A DISTANCE OF 191.44 FEET TO A POINT;

THENCE ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 282.00 FEET, THE CHORD OF WHICH BEARS NORTH 68 DEGREES 34 MINUTES 50 SECONDS EAST FOR A DISTANCE OF 112.86 FEET, AN ARC DISTANCE OF 113.62 FEET TO A POINT;

THENCE NORTH 58 DEGREES 29 MINUTES 20 SECONDS EAST, A DISTANCE OF 239.64 FEET TO A POINT;

THENCE ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 813.00 FEET, THE CHORD OF WHICH BEARS NORTH 84 DEGREES 17 MINUTES 22 SECONDS EAST FOR A DISTANCE OF 670.63 FEET, AN ARC DISTANCE OF 691.27 FEET TO A POINT.

THENCE SOUTH 74 DEGREES 11 MINUTES 43 SECONDS EAST, A DISTANCE OF 198.19 FEET TO A POINT;

THENCE NORTH 81 DEGREES 08 MINUTES 13 SECONDS EAST, A DISTANCE OF 707.45 FEET TO A POINT;

THENCE NORTH 81 DEGREES 01 MINUTES 53 SECONDS EAST, A DISTANCE OF 44.98 FEET TO A POINT;

ON THE WESTERLY LINE OF A TRACT OF LAND CONVEYED TO VIRGINIA M. STONE AND ELIZABETH WILLI, AS RECORDED IN DEED BOOK 8603, PAGE 1164 OF THE ST. LOUIS COUNTY, MISSOURI RECORDS, SAID POINT ALSO BEING ON THE WESTERLY LINE OF LOT 4 OF THE SUBDIVISION OF JAMES LONG ESTATE;

THENCE SOUTH 01 DEGREES 34 MINUTES 46 SECONDS WEST, ALONG SAID WESTERLY LINE, A DISTANCE OF 205.21 FEET TO A POINT;

THENCE SOUTH 82 DEGREES 06 MINUTES 11 SECONDS WEST, A DISTANCE OF 179.55 FEET TO A POINT;

THENCE SOUTH 81 DEGREES 45 MINUTES 31 SECONDS WEST, A DISTANCE OF 500.66 FEET TO A POINT;

THENCE NORTH 86 DEGREES 23 MINUTES 23 SECONDS WEST, A DISTANCE OF 174.04 FEET TO A POINT;

THENCE NORTH 75 DEGREES 33 MINUTES 03 SECONDS WEST, A DISTANCE OF 313.71 FEET TO A POINT;

THENCE SOUTH 89 DEGREES 59 MINUTES 32 SECONDS WEST, A DISTANCE OF 134.44 FEET TO A POINT;

THENCE SOUTH 74 DEGREES 56 MINUTES 06 SECONDS WEST, A DISTANCE OF 145.38 FEET TO A POINT;

THENCE SOUTH 40 DEGREES 25 MINUTES 59 SECONDS WEST, A DISTANCE OF 62.56 FEET TO A POINT;

THENCE SOUTH 62 DEGREES 38 MINUTES 06 SECONDS WEST, A DISTANCE OF 382.67 FEET TO A POINT;

THENCE SOUTH 77 DEGREES 01 MINUTES 45 SECONDS WEST, A DISTANCE OF 296.65 FEET TO A POINT ON THE AFOREMENTIONED EASTERLY LINE OF SAID ELIZABETH J. SHANDS TRACT;

THENCE NORTH 00 DEGREES 20 MINUTES 58 SECONDS EAST, ALONG SAID EASTERLY LINE, A DISTANCE OF 212.63 FEET TO THE POINT OF BEGINNING, SAID TRACT CONTAINING 429,640 SQUARE FEET OR 9.865 ACRES, MORE OR LESS, AS CALCULATED BY KENNETH BALK & ASSOCIATES, INC. DURING MARCH 1998.

EXHIBIT J
Permanent Underseepage Berm Protective Restrictions



* 2001022100409 *

JANICE M. HAMMONDS, RECORDER OF DEEDS
ST. LOUIS COUNTY MISSOURI
41 SOUTH CENTRAL, CLAYTON, MO 63105

TYPE OF INSTRUMENT GRANTOR TO GRANTEE
RESTR MONARCH CHESTERFIELD LEVEE DISTRICT

PROPERTY DESCRIPTION: CHESTERFIELD COMMONS LOT 7 PB 438 PG 554

Lien Number

Notation

Locator

NOTE: I, the undersigned Recorder of Deeds, do hereby certify that the information shown on this Certification Sheet as to the TYPE OF INSTRUMENT, the NAMES of the GRANTOR and GRANTEE as well as the DESCRIPTION of the REAL PROPERTY affected is furnished merely as a convenience only, and in the case of any discrepancy of such information between this Certification Sheet and the attached Document, the ATTACHED DOCUMENT governs. The Recorder's official Grantor/Grantee indices are created from the information contained in the actual Document attached hereto. Only the DOCUMENT NUMBER, the DATE and TIME of filing for record, and the BOOK and PAGE of the recorded Document is taken from this CERTIFICATION SHEET.

RECORDER OF DEEDS DOCUMENT CERTIFICATION

STATE OF MISSOURI)

Document Number
409

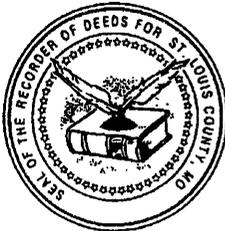
SS.

COUNTY OF ST. LOUIS)

I, the undersigned Recorder of Deeds for said County and State, do hereby certify that the following and annexed instrument of writing, which consists of 6 pages, (this page inclusive), was filed for record in my office on the 21 day of February 2001 at 11:24 AM and is truly recorded in the book and at the page shown at the top and/or bottom of this page.

In witness whereof I have hereunto set my hand and official seal the day, month and year aforesaid.

J. Allen
Deputy Recorder



Janice M. Hammonds
Recorder of Deeds
St. Louis County, Missouri

- ___ N.P.
- ___ N.P.C
- ___ N.N.C.
- ___ N.N.I.

RECORDING FEE \$30.00
(Paid at the time of Recording)

Mail to

[Empty box for mailing address]

B-12880 P-0888/0893

Destination code: | P | Do Not Remove This Page

PERMANENT UNDERSEEPAGE BERM PROTECTIVE RESTRICTIONS
CHESTERFIELD, MISSOURI

THIS PERMANENT UNDERSEEPAGE BERM PROTECTIVE RESTRICTIONS effective as of the 16th day of January, 2001, are hereby imposed by MONARCH-CHESTERFIELD LEVEE DISTRICT (the "District") and accepted by THF CHESTERFIELD DEVELOPMENT, L.L.C. and THF CHESTERFIELD DEVELOPMENT TWO, L.L.C., both Missouri limited liability companies (both referred to as "THF"), and the CITY OF CHESTERFIELD, MISSOURI (the "City").

1. Contemporaneously with the recording of this instrument, the District has joined in the execution of the subdivision plat of Chesterfield Commons recorded in Plat Book 438 at Page 554 of the real estate records of St. Louis County, Missouri (the "Subdivision Plat") and consented to the dedication of RHL Boulevard, THF Boulevard and Edison Avenue as shown on the Subdivision Plat (collectively the "Roads").
2. As referenced in script of the Subdivision Plat, the portions of the Roads located to the South of Lot 7 of Chesterfield Commons are located on an underseepage berm owned or controlled by the District (the "Underseepage Berm"), and such portions of the Roads are subject to the following protective restrictions:
 - A. The City and THF will not use the portions of the Roads running over the Underseepage Berm, or allow the portions of the Roads running over the Underseepage Berm to be used by any person, in any manner that would alter, diminish, damage or interfere with the District or the Underseepage Berm. Notwithstanding the foregoing, the District has approved the construction and use of the Roads in the areas shown on the Subdivision Plat as public roads.
 - B. The City and THF will not perform, or allow any person to perform, any excavation, penetration or exploration on the Roads which extends below the surface of the Underseepage Berm by more than one foot.
 - C. The City and THF will not remove, or allow any person to remove, any material from the Underseepage Berm.
 - D. The City and THF, at its own expense, may add fill over and above the surface of the Underseepage Berm at any time.
 - E. Subject to obtaining a written permission as required in the next subparagraph, the City and THF may use the Underseepage Berm generally for the following purposes: farming, parking lots and roadways.
 - F. Requests to construct any improvements or to use the Underseepage Berm for any purpose, including those uses provided for in the preceding subparagraph, shall be

subject to review and approval of the District prior to initiating any construction of the proposed improvements on, or use of, the Underseepage Berm, which approval shall not be unreasonably withheld. Prior to initiating any construction of proposed improvements or use of the Underseepage Berm, the applicant must receive written approval of the request. Upon receipt of a request to construct any improvements or to use the Underseepage Berm, the District may forward said request to the U.S. Army Corps of Engineers for review and comment. As of the date of this instrument, the District has approved the construction and use of the Roads in the areas shown on the Subdivision Plat as public roads.

3. The protective restrictions contained herein shall run with the land making up the Roads and shall be binding upon and shall inure to the benefit of the respective successors and assigns of the District and the City. Either the District or the City may specifically enforce the protective restrictions imposed by this instrument. The protective restrictions may not be abrogated, modified, rescinded or amended in whole or in part without the prior written consent of the District and the City, or their respective successors or assigns. This instrument may be executed in any number of counterparts, each of which shall be an original, and all of such counterparts together shall be deemed to constitute one original agreement. If any term or provision of this instrument, or the application of it to any person or circumstance, shall to any extent be invalid and unenforceable, the remainder of this instrument, or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this instrument shall be valid and shall be enforced to the extent permitted by law. This instrument is governed by the law of the State of Missouri.

IN WITNESS WHEREOF, the District has executed these Restrictions as of the date first above written.

MONARCH-CHESTERFIELD LEVEE DISTRICT

By: *[Signature]*
Name: David R. Human
Title: Executive Director



(SEAL)

STATE OF MISSOURI)
) SS.
COUNTY OF ST. LOUIS)

On this 3rd day of January, 2001, before me appeared David R. Human, to me personally known, who, being by me duly sworn, did say that he she is the Executive Director of the Monarch-Chesterfield Levee District, a political subdivision established under the laws of the State of Missouri, and said official acknowledged that he/she executed this instrument on behalf of the Monarch-Chesterfield Levee District and said official acknowledged said instrument as the free act and deed of the Monarch-Chesterfield Levee District.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid on the day and year above written.

[Signature]
Notary Public
My Commission Expires:



IN WITNESS WHEREOF, THF has executed these Restrictions as of the date first above written.

THF CHESTERFIELD DEVELOPMENT,
L.L.C., a Missouri limited liability company

By: _____
Michael H. Staenberg, Manager

Date: 1/2/01

THF CHESTERFIELD DEVELOPMENT,
TWO, L.L.C., a Missouri limited liability company

By: _____
Michael H. Staenberg, Manager

Date: 1/2/01

STATE OF MISSOURI)
 St. Charles) ss.
COUNTY OF ST. LOUIS)

On this 2ND day of January, 2001, before me personally appeared Michael H. Staenberg, to me personally known, who, being by me duly sworn, did say that he is the Manager of THF Chesterfield Development, L.L.C., a Missouri limited liability company, and THF Chesterfield Development Two, L.L.C., a Missouri limited liability company, and said Michael H. Staenberg acknowledged that he executed this instrument on behalf of said limited liability companies, and said Michael H. Staenberg acknowledged said instrument as the free act and deed of said limited liability companies.

In Testimony Whereof, I have hereunto set my hand and affixed my notarial seal, the day and year first above written.

My commission expires: 9/29/03 Jacqueline G. Jacobs
Notary Public

JACQUELINE G. JACOBS
Notary Public - Notary Seal
STATE OF MISSOURI
St. Charles County
My Commission Expires: Sept. 29, 2003

IN WITNESS WHEREOF, City has executed these Restrictions as of the date first above written.

CITY OF CHESTERFIELD, MISSOURI

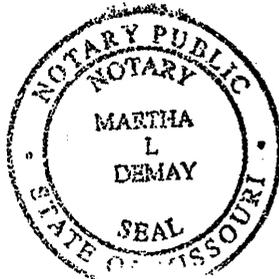
By: *Michael E. Herring*
Name: MICHAEL E. HERRING
Title: CITY ADMINISTRATOR

(SEAL)

STATE OF MISSOURI)
) SS.
COUNTY OF ST. LOUIS)

On this 16TH day of JANUARY, 2001, before me appeared MICHAEL E. HERRING, to me personally known, who, being by me duly sworn, did say that he/she is the CITY ADMINISTRATOR of the City of Chesterfield, Missouri, a political subdivision established under the laws of the State of Missouri, and said official acknowledged that he/she executed this instrument on behalf of the City of Chesterfield, Missouri and said official acknowledged said instrument as the free act and deed of the City of Chesterfield, Missouri.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid on the day and year above written.



Martha L. Demay
Notary Public
My Commission Expires: MARTHA L. DEMAY
NOTARY PUBLIC STATE OF MISSOURI
ST. LOUIS COUNTY
MY COMMISSION EXP MAY 11, 2001

EXHIBIT K
Drainage Facilities Easement

3

DRAINAGE FACILITY EASEMENT

TO WHOM IT MAY CONCERN:

KNOW ALL MEN BY THESE PRESENTS: That THF CHESTERFIELD DEVELOPMENT, L.L.C., a Missouri limited liability company and THF CHESTERFIELD DEVELOPMENT TWO, L.L.C., a Missouri limited liability company (together referred to as the "Grantor"), for and in consideration of the sum of One Dollar (\$1.00) and other valuable consideration to Grantor, paid by the Monarch-Chesterfield Levee District, a Missouri statutory levee district (the "Grantee"), 231 S. Bemiston, 8th Floor, Clayton, Missouri 63105, the receipt of which is hereby acknowledged, does hereby give, grant, extend and confer on the Grantee the right to build and maintain a sewer or drainage related improvements, including storm water improvements and all appurtenances thereto, legally described on Exhibit A hereto and depicted on Exhibit B hereto, both Exhibit A and Exhibit B made a part hereof, and to use such additional space adjacent to the easement so granted as may be required for working room during the construction, reconstruction, maintenance or repair of the aforementioned sewer or drainage related improvements, including storm water improvements and all appurtenances thereto. Grantee shall have the right, but not the obligation, from time to time to enter upon said premises to construct, reconstruct, maintain or repair the aforesaid sewer or drainage related improvements, including storm water improvements and all appurtenances thereto, and may assign its rights herein to the State, County, City, or other political subdivisions of the State of Missouri. The easement hereby granted is a non-exclusive easement and Grantor retains all rights in easement area, except to the extent said rights interfere with or are inconsistent with the easement granted hereunder. The easement hereby granted is irrevocable and shall continue forever.

IN WITNESS WHEREOF, the Grantor has executed this Drainage Facility Easement effective this 26th day of March, 2000.

THF CHESTERFIELD DEVELOPMENT, L.L.C., a Missouri limited liability company

THF CHESTERFIELD DEVELOPMENT TWO L.L.C., a Missouri limited liability company

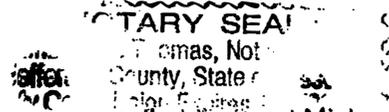
By: Michael H. Staenberg, Manager

By: Michael H. Staenberg, Manager

Date: March 29, 2000

Date: March 29, 2000

STATE OF MISSOURI)
) ss.
COUNTY OF ST. LOUIS)



On this 26th day of March, 2000, before me personally appeared Michael H. Staenberg, to me personally known, who, being by me duly sworn, did say that he is the Manager of THF Chesterfield Development, L.L.C., a Missouri limited liability company, and THF Chesterfield Development Two, L.L.C., a Missouri limited liability company, and said Michael H. Staenberg acknowledged that he executed this instrument on behalf of said limited liability companies, and said Michael H. Staenberg acknowledged said instrument as the free act and deed of said limited liability companies.

In Testimony Whereof, I have hereunto set my hand and affixed my notarial seal, the day and year first above written.

By Commission Expires: 1/26/2003

Hubert J. Mamer



EXHIBIT A

Engineers
Land Planners
Land Surveyors

5933 South Highway 94, Suite 201
St. Charles, Missouri 63304-5611
314-939-5155
314-939-5138 FAX

January 27, 2000

CF

Re: Chesterfield Valley Stormwater
Easement - East Tract
5259-18

A tract of land being part of Lots 3, 4 and 5 of the Subdivision of James Longs Estate, in U.S. Survey 2031, Township 45 North - Range 4 East, St. Louis County, Missouri and being more particularly described as:

Commencing at the intersection of the East line of property conveyed to THF Chesterfield Development, L.L.C. by deed recorded in Book 11684, Page 1138 of the St. Louis County Records with the South right of way line of Old Olive Street Road, 60 feet wide; thence South 01 degree 36 minutes 59 seconds West 380.05 feet along said East line of property conveyed to THF Chesterfield Development, L.L.C. to the actual point of beginning of the tract herein described; thence North 81 degrees 03 minutes 11 seconds East 96.13 feet to a point; thence North 87 degrees 42 minutes 20 seconds East 381.93 feet to a point; thence North 88 degrees 02 minutes 58 seconds East 808.66 feet to the West line of a Stormwater Control Easement conveyed to the Metropolitan St. Louis Sewer District by deed recorded in Book 7985, Page 421 of the St. Louis County Records; thence South 09 degrees 58 minutes 20 seconds West 115.00 feet along said West line of the Stormwater Control Easement granted to the Metropolitan St. Louis Sewer District to a South line of property conveyed to THF Chesterfield Development, L.L.C. by deed recorded in Book 12208, Page 2329 and Book 12208, Page 2334 of the St. Louis County Records; thence Westwardly along said South line of property conveyed to THF Chesterfield Development, L.L.C. the following courses and distances: North 85 degrees 00 minutes 03 seconds West 96.27 feet, South 88 degrees 51 minutes 04 seconds West 100.02 feet, South 87 degrees 42 minutes 21 seconds West 89.00 feet, South 88 degrees 02 minutes 58 seconds West 500.04 feet, South 87 degrees 42 minutes 20 seconds West 375.81 feet and South 81 degrees 03 minutes 11 seconds West 108.97 feet to said East line of property conveyed to THF Chesterfield Development, L.L.C.; thence North 01 degree 36 minutes 59 seconds East 101.72 feet along said East line of property conveyed to THF Chesterfield Development, L.L.C. to the point of beginning and containing 2.952 acres according to calculations by Volz, Inc. during January, 2000.

EXHIBIT L
Map of West End Project Area

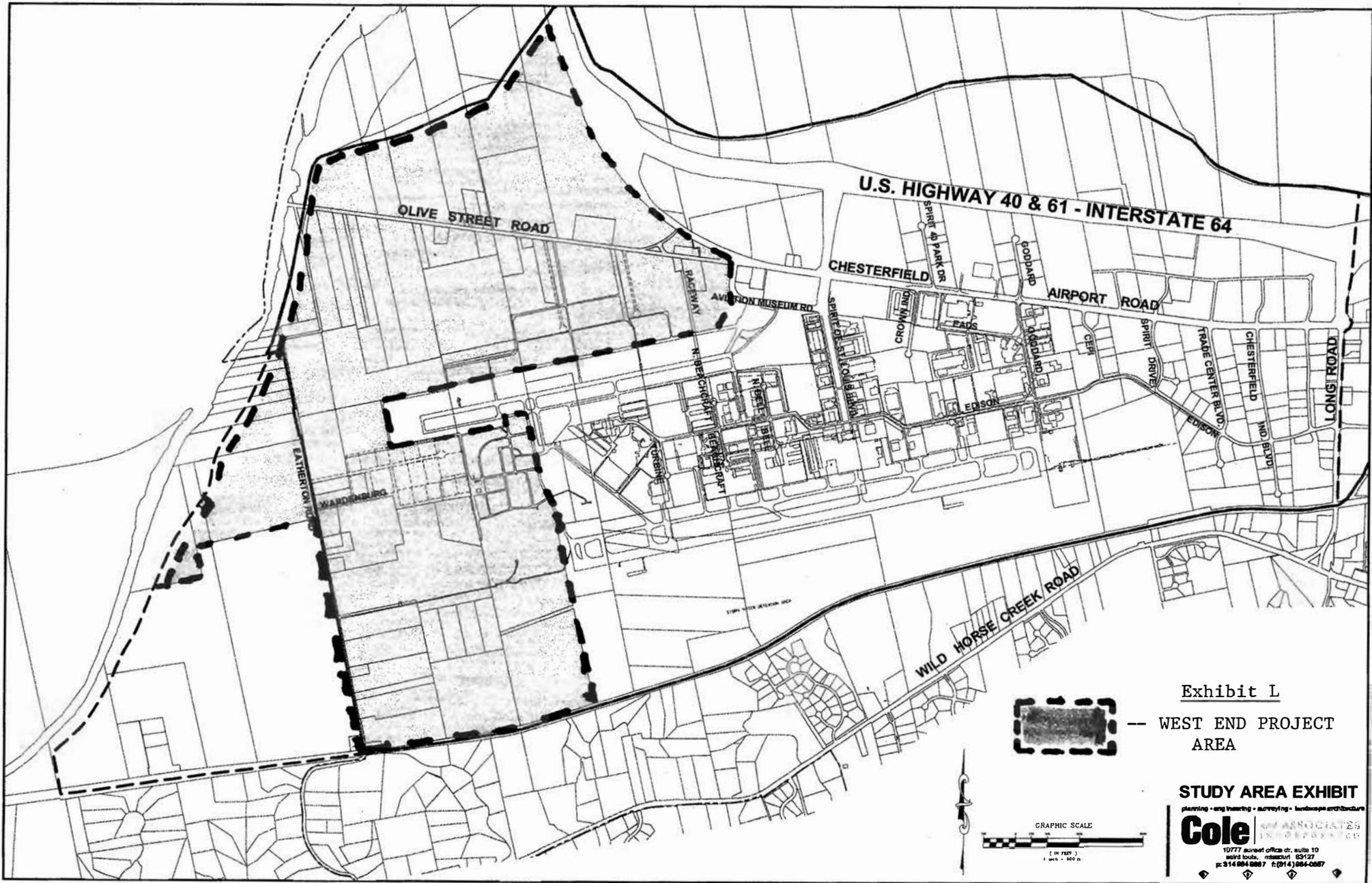
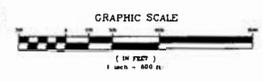


Exhibit L

-- WEST END PROJECT AREA



STUDY AREA EXHIBIT

planning • engineering • surveying • landscape architecture

Cole ASSOCIATES
INCORPORATED

10777 sunset office dr. suite 10
west lake, missouri 63127
p: 314 984 8887 f: 314 984 0887

RECREATION LICENSE AGREEMENT

THIS RECREATION LICENSE AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 2001, by and between MONARCH-CHESTERFIELD LEVEE DISTRICT, a _____ organized pursuant to Chapter ____ of the Revised Statutes of Missouri 1994, as amended, located at _____, Chesterfield, Missouri 63005 ("*Levee District*") and the CITY OF CHESTERFIELD, MISSOURI, a city of the third class located at 16052 Swingley Ridge Road, Chesterfield, Missouri 63005 ("*City*").

Recitals

A. The Levee District has acquired and will continue to acquire property interests pursuant to Section 246.283 of the Revised Statutes of Missouri 1994, as amended, or by condemnation or other means within the Missouri River flood plain generally bounded to the east and south by a five-mile length of Interstate 64/U.S. 40, on the north and west by the Missouri River, on the west by Eatherton Road and the Missouri River and on the south by St. Louis Southwestern Railroad tracts ("*Chesterfield Valley Area*").

B. The Levee District and the City entered into an Amended and Restated Intergovernmental Cooperation Agreement, dated _____, 2001 (the "*Intergovernmental Cooperation Agreement*"), whereby the Levee District agreed to construct and maintain certain stormwater and levee related improvements in the Chesterfield Valley Area in return for reimbursement by the City of eligible costs and expenses set forth in the Intergovernmental Cooperation Agreement.

C. As part of the Intergovernmental Cooperation Agreement, the Levee District agreed to grant to the City a recreation license to use a portion of the property (the "*License Area*") more particularly described in **Exhibit A** hereto for recreational purposes not inconsistent with the Levee District's interest in or use of the License Area (the "*License*").

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein the parties hereto agree as follows:

1. The Levee District hereby conveys and confirms to the City a perpetual non-exclusive right, privilege, and License, in, over, through, upon and across the License Area set forth in **Exhibit A** hereto.

2. The Levee District shall permit the City to use the License Area which has been paved by the District as a roadway for pedestrian and non-motorized vehicular ingress and egress (the "*Bike Path*") provided that any such use by the City shall not be inconsistent with the Levee District's interest in or use of the License Area.

3. The Levee District further grants to the City the right to construct, at the City's sole cost and expense, a Bike Path along those sections of the License Area where the Levee District has not constructed a roadway; provided that, where feasible, the Levee District shall have vehicular access to the Bike Path constructed by the City. The City shall construct, at its sole cost and expense, gates or barriers on the License Area or on property owned by the City to prevent vehicular ingress and egress to the Bike Path. The Levee District shall have copies of keys or any other device necessary to obtain access through the gates.

4. The City has submitted and the Levee District has approved concept site plans for the Bike Path entitled _____, by _____, dated _____, _____ (the "Plans"), attached hereto as **Exhibit B**. Prior to any material changes to the Plans, the City shall submit to the Levee District for its review a copy of any modifications to the Plans. The Levee District shall have thirty (30) days from receipt of the modified Plans to provide written notice to the City that it has approved or rejected the modifications, provided that any rejection shall state with specificity the reasons therefore. The Levee District agrees that it will not unnecessarily withhold approval of any modifications.

5. Prior to commencement of construction by the City, the City shall deliver to the Levee District evidence reasonably satisfactory to the Levee District, that the City has a policy of general liability insurance insuring the City against liability of bodily injury, property damage and personal injury arising out of the construction, use or operation of a Bike Path by the City in customary amounts sufficient to insure the City against claims arising therefrom. All such policies of insurance shall name the Levee District as an additional insured.

6. The Levee District agrees to repair or reimburse the City for any damage to the Bike Path as a result of the use of the Bike Path by the Levee District, except to the extent that such damage occurs in connection with the emergency use of the Bike Path. In the event of damage which is not emergency related, the Levee District shall notify the City immediately and shall either (i) agree to repair, or to commence to repair in the event that such repairs cannot be completed within the time period set forth herein, any damage to the Bike Path in accordance with the Plans and any modifications thereto within five (5) days of the occurrence of the damage or (ii) reimburse the City for all reasonable expenses incurred in restoring the Bike Path to its condition immediately prior to the occurrence of the damage. If the Levee District fails to repair the damage within said 5 day period, the City shall have the right to undertake the repairs and the Levee District shall be responsible for reimbursing the City for the reasonable costs thereof.

7. The City and the Levee District shall pay when due all valid claims for labor and material furnished to the License Area. Neither the Levee District nor the City shall create, permit or suffer, and shall promptly discharge and satisfy of record or bond against, any lien, encumbrance, charge or other right or interest which shall be or become a lien, encumbrance or charge against the License Area, or any portion thereof, save and except for those liens, encumbrances, charges or security interests or other rights or interests consented to in writing by the other, or those mortgages, assignments of rents, assignments of leases or other mortgage

documentation placed thereof by the Levee District in financing the acquisition or construction of the License Area.

8. To the extent not otherwise prohibited by law and to the extent of the City and Levee District's liability under Section 537.610 of the Revised Statutes of Missouri 1994, as amended, the City covenants and agrees to indemnify and hold the Levee District and the Levee District's officials, agents and employees and representatives harmless from any and all claims arising from or relating to this License or the use of the Bike Path by third parties; provided however, the City shall not indemnify the Levee District from claims arising from the gross negligence or willful misconduct of the Levee District.

9. In the event that either party materially defaults in the performance of the covenants contained in this Agreement, the non-defaulting party shall deliver notice to the defaulting party at the address first provided above or such other address as shall be requested by the parties and which notice shall state the nature of the default. The defaulting party shall have thirty (30) days in which to cure the default, or commence to cure the default if said default cannot be cured within the thirty (30) day period. If the defaulting party fails to cure or commence to cure the default within the time period herein provided, then the non-defaulting party may terminate this Agreement in addition to all other remedies at law or in equity, including specific performance.

9. The "Effective Date" of this Agreement shall be the date upon which it is accepted by the last party to execute same.

10. This instrument and the attached **Exhibits A and B**, collectively constitute the entire Agreement between the Levee District and the City, and no other promises or representations shall be binding unless made in writing and signed by the parties. The exhibits attached to this Agreement are made a part hereof by this reference.

11. This Agreement shall run with the land and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

CITY OF CHESTERFIELD, MISSOURI

By: _____
Name: _____
Title: _____

STATE OF MISSOURI)
)SS.
COUNTY OF ST. LOUIS)

On this ____ day of _____, 2001, before me, a Notary Public in and fore said State, personally appeared _____, to me personally known, who, being by me duly sworn, did say that he is the City Administrator of Chesterfield, Missouri, a city of the fourth class and that said instrument was signed on behalf of said City by authority of its City Council, and he acknowledged said instrument to be the free act and deed of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year first above written, in the County and State aforesaid.

Notary Public

SEAL

My Commission expires:

EXHIBIT A
LICENSE AREA

EXHIBIT B
PLANS AND SPECIFICATIONS

EXHIBIT H-1
Legal Description of the Moore Parcel

EXHIBIT H-1

Parcel 1

A tract of land being part of U. S. Survey 102, Township 45 North, Range 3 East, St. Louis County, Missouri and being more particularly described as: Beginning at a point on the North line of U. S. Highway 40; said beginning point being distant North 84 degrees 08 minutes 11 seconds West 572.17 feet from the intersection of said North line of U. S. Highway 40 with the West line of property now or formerly of Bertha E. Flok as described in the deed recorded in Book 5721 page 253 of the St. Louis County records; thence Westwardly along the North line of U. S. Highway 05W North 84 degrees 08 minutes 11 seconds West 430.42 feet and North 77 degrees 57 minutes 12 seconds West 76.30 feet to a point; thence North 11 degrees 56 minutes 00 seconds West 1235.04 feet to a point; thence North 68 degrees 00 minutes 00 seconds East 487.02 feet to a point; thence South 11 degrees 56 minutes 00 seconds East 1482.74 feet to the point of beginning according to a survey by Volz Engineering & Surveying, Inc. December 2, 1981.

Subject to easements and restrictions of record, if any.

Parcel 2

A tract of land being part of U. S. Surveys 102 and 371 in Township 45 North Range 3 East, St. Louis County, Missouri and being more particularly described as: Beginning at a point on the North right-of-way line of Missouri State Highway 40TR; said beginning point being the intersection of the line dividing Lots 2 and 3 of the Subdivision of Lots 1 and 2 of the Nicholas Mueller Estate with said right-of-way line; thence Northwardly along said dividing line North 12 degrees 16 minutes 30 seconds West 544.54 feet to a point; said point being at the toe of a levee; thence Eastwardly along said toe of the levee the following courses and distances: North 76 degrees 48 minutes East 895.50 feet, North 69 degrees 48 minutes East 497.05 feet and North 68 degrees 00 minutes East 108.57 feet to a point; thence South 11 degrees 56 minutes East 1235.04 feet to a point on the aforesaid North line of Missouri State Highway 40TR; thence Westwardly along said North line the following courses and distances: North 77 degrees 57 minutes 12 seconds West 1130.72 feet, North 64 degrees 08 minutes 11 seconds West 300.00 feet and South 87 degrees 38 minutes 40 seconds West 174.48 feet to the point of beginning according to a survey by Volz Engineering & Surveying, Inc. Subject to easements and restrictions of record, if any.

Parcel 3

A tract of land being part of Lot 3 of the Subdivision of Lots 1 and 2 of Partition of Nicholas Mueller Estate, in U.S. Survey 371, Township 45 North - Range 3 East, St. Louis County, Missouri, and being more particularly described as:

Beginning at the intersection of the East line of said Lot 3 with the North line of Missouri State Highway 40 TR as established by parcel taken in Cause #290860 of the Circuit Court of St. Louis County; said point being also the Southwest corner of property conveyed to Dorothy Mahaffey Moore by deed recorded in Book 7509, Page 592 of the St. Louis County Records; thence Westwardly along said North line of Missouri State Highway 40 TR South 87 degrees 39 minutes 40 seconds West 448.93 feet to a point; thence North 12 degrees 16 minutes 30

BOOK 7601 PAGE 2337

EXHIBIT H-1

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Seconds West 448.28 feet to a point in the toe of a levee; thence Eastwardly along the toe of the levee North 76 degrees 35 minutes 07 seconds East 342.48 feet and North 7 degrees 52 minutes 29 seconds East 100.50 feet to the Northwest corner of aforesaid property conveyed to Moore; said point being also a point in the aforesaid East line of Lot 3; thence Southwardly along said East line of Lot 3, being also along the West line of said Moore property South 12 degrees 16 minutes 30 seconds East 544.54 feet to the point of beginning and containing 5.000 acres according to survey by Volz Engineering & Surveying, Inc. during October, 1983.

Parcel 4

A tract of land being part of Lot 3 of the Partition of Nicholas Mueller Estate and part of Lot 3 of Subdivision of Lots 1 and 2 of the Partition of Nicholas Mueller Estate, and accretions thereto, in U.S. Survey 371, Township 45 North - Range 3 East, St. Louis County, Missouri, and being more particularly described as:

Beginning at a point reached by the following course and distance:

Beginning at the intersection of the East line of said Lot 3 of Subdivision of Lots 1 and 2 of the Partition of Nicholas Mueller Estate with the North line of Missouri State Highway 40 T.R. as established by parcel taken in Cause #290860 of the Circuit Court of St. Louis County; said point being also the Southwest corner of property conveyed to Dorothy Mahaffey Moore by deed recorded in Book 7509 page 592 of the St. Louis County records; thence Westwardly along said North line of Missouri State Highway 40 T.R. South 87 degrees 39 minutes 40 seconds West 448.93 feet to the actual point of beginning; thence continuing Westwardly along said last mentioned line South 87 degrees 39 minutes 40 seconds West 285.12 feet and North 84 degrees 07 minutes 11 seconds West 12.35 feet to its intersection with the East line of property conveyed to Ruth J. Maffard by deed recorded in Book 6419 page 1508 of the St. Louis County records; thence Northwardly along said East line North 12 degrees 22 minutes 30 seconds West 4584.62 feet to the South bank of the Missouri River - minor channel on January 4, 1984; thence continuing Northwardly along said East line of the Maffard property North 12 degrees 22 minutes 30 seconds West 330.31 feet to the South waters edge of the Missouri River (Main channel) on February 17, 1944; thence Eastwardly along said South waters edge of the Missouri River North 68 degrees 52 minutes 47 seconds East 752.31 feet to its intersection with the Northwardly prolongation of aforesaid East line of Lot 3 of Subdivision of Lots 1 and 2 of the Partition of Nicholas Mueller Estate; thence Southwardly along said prolongation South 12 degrees 16 minutes 30 seconds East 453.38 feet to aforesaid South bank of the Missouri River - minor channel on January 4, 1984; thence continuing Southwardly along said prolongation of and the said East line of Lot 3 South 12 degrees 16 minutes 30 seconds East 4162.99 feet to a point in the toe of a levee; thence Westwardly along said levee South 70 degrees 52 minutes 29 seconds West 100.50 feet and South 76 degrees 35 minutes 07 seconds West 342.48 feet to a point; thence South 12 degrees 16 minutes 30 seconds East 448.28 feet to the actual point of beginning and containing 80.493 acres according to survey by Volz Engineering & Surveying, Inc., dated January 4, 1984.

LESS AND EXCEPT THAT PORTION CONVEYED to the City of Chesterfield
by Deed Dated September 26, 1996.

END OF DOCUMENT

EXHIBIT H-2
Legal Description of the Fitzgerald Parcel

EXHIBIT H-2

Legal Description of the Fitzgerald Parcel

A tract of land described in a deed of Michael and Majorie Jo Fitzgerald per Deed Book 4542 Page 170, and being a part of the East ½ of Lot 5 of a subdivision in U.S. Survey 126, Township 45 North, Range 4 East, St. Louis County Missouri.

EXHIBIT I
Levee Agreement

LEVEE AGREEMENT

THIS LEVEE AGREEMENT ("Agreement") is made and entered into as of this ____ day of _____, 1997 by and between **MONARCH-CHESTERFIELD LEVEE DISTRICT**, a Missouri statutory levee district ("Levee District") and **THF CHESTERFIELD DEVELOPMENT, L.L.C.**, a Missouri limited liability company ("THF").

WITNESSETH:

WHEREAS, THF proposes to develop a shopping center and related improvements ("Development") on the approximately 317 acres of real property shown on Exhibit A attached hereto ("Shopping Center Property"); and

WHEREAS, a new highway 40/64 interchange is in the process of being approved at Boone's Crossing ("Interchange"), which Interchange must be constructed prior to the development of the Shopping Center Property; and

WHEREAS, the Levee District has plans to improve approximately 6,000 feet of the existing levee as shown in blue on Exhibit B; attached hereto ("Existing Levee") and to relocate the Existing Levee to accommodate the construction of the Interchange, the location of the centerline of such new levee being approximately a straight line from Station 320+00 to Station 382+00 as shown in red on Exhibit B attached hereto ("Interchange Levee"); and

WHEREAS, the Levee District also has plans to improve that portion of the existing levee along Bonhomme Creek generally between Stations 500+00 to 600+00 from approximately the Mill (Stone) Pump station to Long Road as shown in red on Exhibit B attached hereto (the "Bonhomme Creek Levee") a portion of which levee runs along the southern border of the Shopping Center Property; and

WHEREAS, the construction of the Development of the Shopping Center Property by THF is not feasible without THF obtaining tax increment financing with respect to certain of the development costs; and

WHEREAS, the Levee District and THF are entering into this Agreement to provide for the Levee District to design and construct the Bonhomme Creek Levee and Interchange Levee and to provide for certain, agreements between the parties regarding the construction and financing of said levee improvements, all as hereinafter set forth.

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

1. Recitals. The foregoing recitals are hereby incorporated by this reference.
2. Levee Funds. THF is in the process of negotiating with the City of Chesterfield ("City") for certain tax increment financing ("TIF"), the terms of which will be set forth in a Redevelopment Agreement between the City and THF ("Redevelopment Agreement"). THF covenants to obtain an agreement from the City to commit at least Nine Million Dollars (\$9,000,000) of TIF funds ("Levee Funds") to pay, in accordance with the terms and conditions of the Redevelopment Agreement, for certain levee design, construction and related costs described in the

remaining sections of this Agreement. The Levee Funds shall be used to pay for certain costs identified in this Agreement.

3. Design Services. Levee District covenants to engage Sverdrup Civil, Inc., or such other engineer as Levee District shall designate, in Levee District's sole discretion, to undertake the design of the Interchange Levee and Bonhomme Creek Levee (collectively the "Design Work"). The agreement with the Levee District's engineer shall require that construction drawings and technical specifications shall be completed and made available in a format and state of completion appropriate for submittal to the Corps of Engineers on or before February 1, 1998. THF covenants and agrees to reimburse the Levee District for all of Levee District's actual and reasonable costs and expenses related to the Design Work ("Design Work Costs") with Levee Funds, pursuant to the procedures described in Section 14 hereof. Furthermore, THF covenants and agrees to deliver to Levee District on or before December 15, 1997, all topographic and/or subsurface data, which THF, its engineers and/or consultants have in their possession, which relates to the Shopping Center Property, the Interchange, the Interchange Levee or the Bonhomme Creek Levee.

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P3
Sand Beam
2 design
p. 2 of
Adden.

4. Interchange Levee. Subject to the receipt of the Levee Funds in accordance with the disbursement procedures described in Section 14, the Levee District covenants and agrees to construct the Interchange Levee in a good, workmanlike manner and pursuant to all requirements for similar levees and pursuant to plans and specifications therefor approved by all required governmental authorities. The Levee District covenants and agrees that it shall use its best efforts to provide that the design and construction of the Interchange Levee shall be completed by the following dates:

Design Plan Commencement: November 20, 1997

Design Plan Substantial Completion and Submission to Army Corps of Engineers for Credit Application: February 1, 1998

Approval and Permitting: June 1, 1998

Commencement of Construction: June 1, 1998

Substantial Completion of Construction of that portion of the Interchange Levee lying west of the west line of the property formerly owned by Chesterfield Valley Golf Center, Inc. 90 Calendar Days ("Calendar Days") after actual Commencement of Construction.

100% Completion of Construction: 200 Calendar Days after actual Commencement of Construction.

~~As part of the foregoing obligations, THF shall be solely responsible for all wetlands permitting necessary for the construction of the Interchange Levee. THF covenants and agrees to reimburse the Levee District for all of the Levee District's actual and reasonable costs and expenses related to the construction of the Interchange Levee ("Interchange Levee Construction Costs")~~

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p. 2 of
of Add.

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p. 3
of Add.

~~subject to the terms and conditions of the Redevelopment Agreement and provided that the Levee District is not otherwise in default hereunder. THF shall reimburse the Levee District for the Interchange Levee Construction Costs out of Levee Funds from time to time, pursuant to the procedures described in Section 14 hereof. In the construction of the Interchange Levee, Levee District shall abide by all rules, regulations and laws, which may govern the construction, and, furthermore, Levee District agrees to be subject to those provisions of §290.230 RSMo.(1996).~~

5. ~~Bonhomme Creek Levee. Subject to the receipt of the Levee Funds in accordance with the disbursements procedures described in Section 14, the Levee District further covenants and agrees to design and construct the Bonhomme Creek Levee in a good, workmanlike manner and pursuant to all requirements for similar levees and pursuant to plans and specifications therefor approved by all required governmental authorities. The Levee District covenants and agrees that it shall use its best efforts to provide that the design and construction of the Bonhomme Creek Levee shall be completed by the following dates:~~

*See PS,
p. 3 of
Addendum*

Design Plan Commencement:	November 20, 1997
Design Plan Substantial Completion and Submission to Army Corps of Engineers for Credit Application:	February 1, 1998
Approval and Permitting Completed:	June 1, 1998
Commencement of Construction:	June 1, 1998
50% Completion of Construction:	90 Calendar Days after actual Commencement of Construction.
100% Completion of Construction:	180 Calendar Days after actual Commencement of Construction.

~~As part of the foregoing obligations, Levee District shall be solely responsible for all wetlands permitting necessary for the construction of the Bonhomme Creek Levee. THF covenants and agrees to reimburse the Levee District for all of the Levee District's actual and reasonable costs and expenses related to the construction of the Bonhomme Creek Levee subject to the terms and conditions of the Redevelopment Agreement and provided that the Levee District is not otherwise in default hereunder, including any costs for wetlands permitting ("Bonhomme Creek Levee Construction Costs"). THF shall reimburse the Levee District for the Bonhomme Creek Levee Construction Costs out of Levee Funds from time to time, pursuant to the procedures described in Section 14 hereof. In the construction of the Bonhomme Creek Levee, Levee District shall abide by all rules, regulations and laws, which may govern the construction, and, furthermore, Levee District agrees to be subject to those provisions of §290.230 RSMo.(1996).~~

6. ~~Borrow Easement. THF hereby covenants and agrees to grant to the Levee District an easement and right to borrow ("Borrow Easement") up to 230,000 cubic yards of levee fill material (hereinafter "Clay") from certain portions of the Shopping Center Property including those areas delineated as the retention and detention areas on Exhibit A and other areas as mutually agreed.~~

*See New 6.
p. 4 of
Addendum*

~~upon by THF and Levee District (collectively "Borrow Area") which Clay shall be used in the construction of the Bonhomme Creek Levee. The Levee District covenants and agrees to remove the Clay within ninety (90) Calendar Days after actual Commencement of Construction of the Bonhomme Creek Levee, provided that THF provides sufficient access to the Borrow Area to the Levee District as requested by Levee District. The excavation of the clay shall be undertaken in accordance with an excavation plan to be agreed upon by THF and the Levee District in their reasonable discretion but, in no event, shall Levee District be requested to excavate Clay in a depth not less than three feet in depth, nor shall said excavation constitute a portion of the final grading plan for the Shopping Center Property. Levee District shall be solely responsible for the excavation of the Clay, and the placement of the Clay on the Bonhomme Creek Levee. The Levee District covenants to replace the Clay so taken with up to 230,000 cubic yards of sand. Levee District shall only be responsible for hauling (not the placement of) the sand to an area or areas as designated by THF on the Shopping Center Property. The Levee District covenants and agrees to commence removal of the sand within ninety (90) Calendar Days after the Commencement of Construction of the Interchange Levee. The Levee District's cost to haul the replacement sand shall be reimbursed by THF as follows: (a) with Levee Funds at the Levee District's actual cost, less fifty cents (\$0.50) per cubic yard of replacement sand hauled to the Shopping Center Property ("Sand Haul Costs"); and (b) at fifty cents (\$0.50) per cubic yard ("THF Sand Cost") with funds other than Levee Funds ("Non-Levee Funds"). THF shall reimburse the Levee District for the Sand Haul Costs with Levee Funds pursuant to the procedures described in Section 14 hereof. THF shall reimburse the Levee District for the THF Sand Cost with Non-Levee Funds pursuant to the procedures described in Section 14 hereof.~~

within 90 days of 6/11/ LD must take clay

within 90 days of Commencement of Construction on 12/1 LD must begin hauling sand

See New A 7. b. p. 6 of Addend.

~~(7) Additional Sand. The Levee District shall make the borrow area identified on Exhibit C attached hereto ("Borrow Site") available to THF for removal of sand within one hundred twenty (120) Calendar Days after Commencement of Construction of the Interchange Levee. THF may remove or cause to have removed up to 600,000 cubic yards of sand from the Borrow Site for use in construction of the Interchange. The Levee District's engineer shall advise THF from which part of the Borrow Site THF may remove sand. Levee District shall provide THF access to the Borrow Site for removal of the sand. Any sand removal shall be at no cost to the Levee District. The Levee District shall not charge THF for the cost of the sand.~~

THF will further require its contractors to maintain records, logs, and documentation regarding all sand materials removed from the Borrow Site by THF. THF will further require its contractor to maintain records, logs and documentation regarding all sand materials removed from the Borrow Site. Records, logs, and documentation shall include dates, times, material quantities, material types, equipment used, number/quantity of loads hauled, and any other information and data necessary to record, log and document the sand material removed/used. Material quantities shall be in-place measure (as measured in-place at the Borrow Site). Alternatively, THF may, in its reasonable discretion, undertake a "cross-section" analysis prior to and immediately after the work is completed in order to measure the sand removed from the Borrow Site. Upon completion of all borrow activities on the Borrow Site, THF shall cause its contractor to correlate and verify the total sand material removed/used, in-place measure using appropriate means as approved by the Levee District's engineer, Sverdrup Civil, Inc., or such other engineer as Levee District shall designate. Copies of all records, logs, and documentation including sand material quantities, certified by THF (and/or its contractor) shall be provided to the Levee District within five (5) days following the completion of said borrow activities. Furthermore, copies of records, logs and documentation of sand removal shall be provided to Levee District prior to completion of the sand removal upon

5/22

~~forty eight (48) hours' prior notice. The records, logs and documentation provided to Levee District shall be current as of the date of the Levee District's request.~~

8. (a) Acquisition of Haynes Property.

The Levee District covenants and agrees to use its good faith and diligent efforts to acquire the necessary easement(s) to the property identified on Exhibit D attached hereto ("Haynes Property"), including without limitation, the affirmative obligation on the part of the Levee District to initiate condemnation proceedings for the acquisition of said easements. ~~THF shall reimburse in an amount not to exceed ten thousand dollars (\$10,000.00) the Levee District for any and all acquisition costs ("Acquisitions Costs") whatsoever associated with the acquisition of the Haynes Property with Non-Levee Funds ("Haynes Acquisition Costs"), pursuant to the procedures described in Section 14 hereof.~~ Acquisition Costs means all costs of acquisition, including, but not limited to: cost of land, improvements and easements; brokerage commissions; costs of title commitments, reports or policies; surveys; engineering fees, environmental remediation, soil and hazardous waste and other site and property related reports and expenses; appraisals; and professional fees of any kind or nature, including attorneys' fees, filing fees, recording fees, experts' fees, and all litigation costs, including commissioners' awards, judgments, payments in settlement of litigation, and all associated court costs, fees and expenses.

(b) Acquisition of Novel Property.

~~The Levee District covenants and agrees to use its good faith and diligent efforts to acquire the fee interest to the property identified on Exhibit D attached hereto ("Novel Property"), including without limitation, the affirmative obligation on the part of the Levee District to initiate condemnation proceedings for the acquisition of said fee interest. THF shall reimburse the Levee District for all Acquisition Costs incurred by the Levee District in acquiring the Novel Property with Non-Levee Funds ("Novel Acquisition Costs"), pursuant to the procedures described in Section 14 hereof.~~

See New
P 8. b. 1, p. 8
of Adden.

9. Acquisition of Other Parcels. THF shall endeavor to acquire easements, in a form and substance satisfactory to Levee District, for the benefit of the Levee District which are required for the Interchange Levee across (a) a parcel of real property located to the west of the Interchange currently owned by Chesterfield Industrial Investors which is shown on Exhibit E attached hereto ("CII Parcel"), and (b) a parcel of real property located generally to the north of the Interchange owned by St. Louis Water Company which is shown on Exhibit E attached hereto ("Water Company Parcel"). In the event THF is unable to contract for the purchase of the easements required for the Interchange Levee, in a form and substance satisfactory to Levee District, across the CII Parcel or Water Company Parcel under terms and additions satisfactory to THF in its reasonable discretion, Levee District covenants and agrees to use its powers of eminent domain to acquire the required levee easements across the CII Parcel or Water Company Parcel, as applicable, as provided for herein. THF shall reimburse the Levee District for all Acquisition Costs incurred by the Levee District in acquiring the easements across the CII Parcel and/or Water Company Parcel (collectively "CII Acquisition Costs") with Non-Levee Funds, pursuant to the procedures described in Section 14 hereof. Further, THF will give Levee District 30 days prior written notice before Levee District is required to proceed hereunder. In the event Levee District is not given written notice to proceed

hereunder on or prior to February 1, 1998, THF acknowledges that the Commencement of Construction of the applicable levee improvements will be delayed.

10. Bonhomme Creek Levee Easements.

(a) THF shall endeavor to acquire easements (or fee interest), in a form and substance satisfactory to Levee District, for the benefit of the Levee District which are required for the construction of the Bonhomme Creek Levee immediately adjacent to the Shopping Center Property from approximately Stations 515+00 to 555+00 ("Creek Levee Easements"). ~~The boundaries of said easement (or fee interest) areas shall not~~ be greater than two hundred six (206) feet north of the northern line of the existing easement of the Levee District along the Bonhomme Creek Levee. If THF is unable to obtain said easements, under terms and conditions satisfactory to THF in its reasonable discretion, the Levee District covenants and agrees to use its eminent domain power to acquire the easements. Subject to certain engineering conditions, roads and parking lots may be constructed on any areas designated as underseepage berms. THF shall reimburse the Levee District for all the Levee District's Acquisition Costs related to the acquisition of the Creek Levee Easements ("Creek Acquisition Costs") with Non- Levee Funds, pursuant to the procedures described in Section 14 hereof. Further, THF will give Levee District 30 days prior written notice before Levee District is required to proceed hereunder. In the event Levee District is not given written notice to proceed hereunder on or prior to February 1, 1998, THF acknowledges that the Commencement of Construction of the applicable levee improvements will be delayed.

(b) The Levee District covenants and agrees to use its good faith and diligent efforts to acquire the necessary easements (or fee interest) which are required for that portion of the construction of the Bonhomme Creek Levee, which is not immediately adjacent to the Shopping Center Property from approximately Stations 500+00 to 515+00 and 555+00 to 600+00 (Bonhomme Levee Easements), including without limitation the affirmation obligation on the part of the Levee District to initiate condemnation proceedings for the acquisition of said easements (or fee interest). THF shall reimburse the Levee District for all the Levee District's Acquisition Costs in related to the acquisition of the Bonhomme Levee-Easements, ("Bonhomme Acquisition Costs") with Levee Funds, pursuant to the procedure described in Section 14 hereof.

11. Environmental Assessment. Levee District shall cause to be undertaken an environmental assessment, if deemed necessary by Levee District, with respect to the land to be acquired for the Interchange Levee, including the Haynes Property; provided, however, Levee District shall not be required to undertake any environmental assessment of property with respect to any land which THF and/or Levee District cannot obtain any entry rights. THF shall reimburse the Levee District for costs and expenses associated with the environmental assessment ("EA Costs") with Levee Funds, pursuant to the procedures described in Section 14 hereof.

12. Drainage Easement. THF shall provide to Levee District a three (3) month notice of a two (2) week period during which THF intends to close on the Shopping Center Property. If directed by THF, Levee District covenants to use its eminent domain power to acquire the easement(s) necessary for the off-site drainage ditch running from the east boundary of the Shopping

Center Property to the existing pump station located approximately one thousand four hundred (1,400) feet to the east of the east property line of the Shopping Center Property, which easement area is shown on Exhibit F attached hereto ("Drainage Easement") within six (6) months of the closing date of the Shopping Center Property. THF shall reimburse Levee District for all Acquisition Costs incurred by the Levee District in obtaining said Drainage Easement ("Drainage Cost") with Levee Funds, pursuant to the procedures described in Section 14 hereof, if not otherwise reimbursed by the City from the Special Allocation Fund. Levee District shall have the right to substitute a reasonably comparable easement(s) for purposes of acquiring a satisfactory drainage easement, in Levee District's and THF's reasonable discretion.

13. THF's Right to Wetlands Mitigation Areas. The Levee District, in conjunction with the City of Chesterfield and pursuant to a 404 permit issued by the Corps of Engineers, which 404 permit is attached hereto as Exhibit G, intends to design, construct and maintain certain wetland mitigation areas which are shown on Exhibit C attached hereto ("Wetlands Mitigation Areas"). Subject to applicable law, Levee District agrees to convey to THF certain mitigation credits from said Wetlands Mitigation Areas in a manner so that said credits shall satisfy any wetlands mitigation required with respect to the Shopping Center Property and/or the Interchange. The Levee District and THF covenant to execute any and all documents reasonably requested by either party to effectuate said conveyance. THF shall reimburse the Levee District, in an amount not to exceed one hundred fifty thousand dollars (\$150,000.00), for all documented costs, including all land acquisition costs, incurred by, or reasonably estimated to be incurred by the Levee District in designing, constructing and maintaining the Wetlands Mitigation Areas so that they qualify for wetlands mitigation ("Mitigation Cost"). The Mitigation Cost shall be a prorata share of the aforementioned costs for the mitigation credits required to be purchased by THF. The Mitigation Cost shall be reimbursed by THF with Non-Levee Funds pursuant to the procedures described in Section 14 hereof.

14. Reimbursement Procedure.

(a) Reimbursement for Levee TIF Costs. "Levee TIF Costs" means all costs to be reimbursed to Levee District from Levee Funds, including, but not limited to:

9 projects ¹Design Work Costs, ²Interchange Levee Construction Costs, ³Bonhomme Creek Levee Construction Costs, ⁴Sand Haul Costs, ⁵Bonhomme Acquisition Costs, ⁶EA Costs, ⁷Drainage Cost, ⁸Phase III Design Costs, ⁹Letter of Credit Costs and any costs associated therewith, including administrative, legal, engineering, surveying, mapping and soil tests.

(b) Reimbursement for THF Costs. "THF Costs" means all costs to be reimbursed to Levee District with Non-Levee Funds, including but not limited to:

6 # projects ¹THF Sand Cost, ²Haynes Acquisition Costs, ³Novel Acquisition Costs, ⁴CII Acquisition Cost, ⁵Creek Acquisition Costs, and ⁶Mitigation Cost.

(c) Reimbursement Procedure. The Levee District acknowledges that THF intends to secure an interim loan from a commercial third party lender to finance the Levee Costs ("THF's Lender"). The Levee District shall submit draw requests for Levee TIF Costs and THF Costs in a manner consistent with the draw request provisions of the commercial loan. Such draw requests will be processed by THF with the commercial lender (but in no event more than monthly) for the benefit of the Levee District. If a draw request of Levee District is denied, in whole or on part, for any

reason, THF or THF's Lender shall provide in writing to Levee District the reasons or reasons for said denial within thirty (30) days of the submittal of the draw request. Levee District shall be reimbursed within thirty (30) days of the submittal of each draw request. The obligation of THF to reimburse the Levee District for Levee Costs is expressly subject to (i) the Levee District not being in default under this Agreement and (ii) the terms and conditions of the Redevelopment Agreement, and all applicable laws, including, but not limited to, the obligation of the City to issue TIF Notes pursuant to the Redevelopment Agreement.

~~Notwithstanding any other provisions of this Agreement and provided Levee District is not in default hereunder, in the event THF terminates the Redevelopment Agreement pursuant to Section 7.1 thereof, THF covenants and agrees to reimburse Levee District for all costs and expenses incurred under this Agreement, up to an including the date of receipt by Levee District of said notice of termination, and not otherwise previously paid to Levee District.~~

New PCd)
p. 10 Addendum

(d) ~~Default in Reimbursement. If THF fails to reimburse Levee District for a properly submitted draw request within twenty (20) days after request therefore pursuant to Paragraph 14(c), Levee District may suspend at its sole discretion, any of its obligations under this Agreement.~~

15. Condemnation Actions by Levee District. The following provisions shall apply in the event the Levee District is requested by the terms of this Agreement to institute condemnation proceedings. The Levee District will proceed diligently without delay to take any and all such actions, including but not limited to the filing of such actions, claims and related documents, petitions and motions necessary to acquire the applicable portion of said property identified in the notice by condemnation in accordance with all applicable Missouri statutes, laws, regulations and judicial or administrative decisions. THF will cooperate with Levee District and assist Levee District by and through THF's counsel, agents, employees, advisors and independent contractors in the preparation of all documentation necessary to complete the acquisition of the applicable portion of said property by condemnation. Notwithstanding the foregoing, THF, in its sole discretion, may elect at any time prior to the Levee District securing an order vesting title in the name of Levee District by a written notice to the Levee District to waive Levee District's obligations imposed by this Section with respect to the acquisition and/or condemnation of any portion of said property, which is not necessary for the construction of the Interchange Levee and/or the Bonhomme Creek Levee, and the Levee District shall thereafter be relieved of its obligation to acquire such portion of said property. In instituting said eminent domain proceedings, Levee District will consult with and take direction from THF, but Levee District shall have the right to designate the attorney or attorneys who shall be primarily responsible for instituting said proceedings. Upon the Levee District's request, THF shall pay the amount of any Commissioners' Award issued in conjunction with any such condemnation to the Levee District for payment at such Commissioners' Award by THF. Such request shall be made in writing by Levee District and shall be reimbursed with Non-Levee Funds pursuant to the procedures described Section 14 hereof.

16. Additional Levee Improvements.

- (a) The Levee District covenants to use good faith and diligent efforts to cause construction of the remainder of the levee along the Bonhomme Creek and the improvement of the levee along the Missouri River ("Additional Levee

Improvements"). Levee District covenants to engage Sverdrup Civil, Inc. (or other engineering firm acceptable to Levee District, in Levee District's sole discretion), to undertake the design of the Monarch-Chesterfield Levee north of Interstate 64/Highway 40 excluding the Interchange Levee Area on or before January 1, 1999 (Phase III Design).

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~~(b) THF covenants and agrees to reimburse the Levee District for all of Levee District's actual and reasonable costs, and expenses related to the Phase III Design, including any administrative or legal expenses related thereto ("Phase III Design Costs"). The Phase III Design Costs shall be reimbursed to Levee District by THF from Levee Funds pursuant to the procedures described in Section 14 hereof. THF's obligation to reimburse Levee District for Phase III Design Costs shall not exceed Three Hundred Thousand Dollars (\$300,000.00) and Levee District shall not make a request for reimbursement for any Phase III Design Costs until January 1, 1999.~~

(c) Provided Levee District is not in material default of its obligations under this Agreement, and subject to the terms and conditions of the Redevelopment Agreement, and all applicable laws, including, but not limited to the obligation of the City to issue TIF Notes pursuant to the Redevelopment Agreement, THF covenants and agrees to pay to Levee District any Levee Funds remaining after reimbursing Levee District for all Levee TIF Costs pursuant to the procedures described in Section 14 hereof ("Balance Funds"). The Balance Funds shall be paid to Levee District within sixty (60) days of a request by Levee District for the Balance Funds, or any portion thereof, but in no event prior to (i) June 1, 2000 and (ii) the completion of construction of the Interchange Levee and Bonhomme Creek Levee in accordance with the terms and conditions of this Agreement. By way of example, the Balance Funds shall be equal to Nine Million Dollars (\$9,000,000.00) less the sum of all Levee TIF Costs reimbursed to Levee District by THF from Levee Funds pursuant to the procedures described in Section 14 hereof.

17. Successors and Assigns. The provisions of this Agreement are for the exclusive benefit of the parties hereto and their successors and assigns and not for the benefit of any third party.

18. No Joint Venture; Third Parties. Neither anything in this Agreement nor any acts of parties hereto shall be deemed by the parties, or by any third person to create the relationship of principal and agent, or partnership, or of joint venture or of any association between the parties hereto, and no provisions of this Agreement are intended to create or constitute any person a third party beneficiary hereof.

19. Costs and Expenses. In the event that any party hereto institutes legal action to enforce the provisions of this Agreement, the prevailing party therein shall be entitled to be awarded by the court reasonable attorneys' fees and expenses (including the reasonable cost of in-house and/or staff counsel) incurred in such action.

20. Assignment. This Agreement shall not be capable of being assigned by either the Levee District or THF, without the prior written consent of the other.

21. Contingencies.

- (a) The obligations of THF under this Agreement are expressly contingent upon THF obtaining approval of the Redevelopment Agreement by the City on or before November 18, 1997. If Levee District is not notified on or before November 19, 1997 of the satisfaction of this contingency, this contingency shall be deemed satisfied if Levee District receives timely notification that this contingency has not been satisfied, Levee District's obligations under this Agreement, shall be suspended until such time as Levee District receives ~~written notice of satisfaction of this contingency from THF.~~
- (b) The obligations of Levee District under this Agreement are expressly contingent upon Levee District obtaining the Levee Funds, in an amount reasonably satisfactory to Levee District.

22. Levee District's Representations and Warranties. Levee District is a duly formed and validly existing statutory levee district in good standing under the laws of the State of Missouri; Levee District has been duly authorized to execute this Agreement and to consummate the transaction contemplated hereby; the persons executing this Agreement and all of the documents required to consummate the transaction contemplated hereby have been duly authorized to execute such documents and to bind Levee District. To evidence the Levee District's authority to enter into this Agreement, Levee District shall deliver to THF, contemporaneously with the execution of this Agreement, evidence reasonably satisfactory to THF of said authority, which evidence can be in the form of an opinion by counsel for Levee District confirming the foregoing.

23. THF's Representations and Warranties. THF is a duly formed and validly existing limited liability company in good standing under the laws of the State of Missouri; THF has been duly authorized to execute this Agreement and to consummate the transaction contemplated hereby; the persons executing this Agreement and all of the documents required to consummate the transaction contemplated hereby have been duly authorized to execute such documents and to bind THF. To evidence THF's authority to enter into this Agreement, THF shall deliver to Levee District, contemporaneously with the execution of this Agreement, evidence reasonably satisfactory to Levee District of said authority, which evidence can be in the form of an opinion by counsel for THF confirming the foregoing.

24. Letter of Credit to Secure Obligations of THF Hereunder.

- (a) Within twenty (20) days of the receipt by THF from Levee District of written notice of intent to commence Design Work pursuant to Section 3 hereof, THF shall provide the Levee District with a standby letter or letters of credit naming the Levee District as sole beneficiary, or such other bond or collateral as the Levee District may accept in its sole discretion, in the amount of Two Hundred Thousand Dollars (\$200,000.00). The standby letter or letters of credit shall secure THF's obligations under this Agreement with respect to the payment of design services under Section 3. The standby letter or letters of credit or other bond or security instrument shall be in a form and substance reasonably acceptable to the Levee District and THF and once issued shall remain outstanding and in full force and effect until the completion of the

design work provided for in Section 3, but in no event more than one (1) year.

- (b) Within thirty (30) days of the receipt by THF of the Levee District's written notice of intent to commence the construction of the Bonhomme Creek Levee or the Interchange Levee, THF shall provide the Levee District with a standby letter or letters of credit, naming the Levee District as the sole beneficiary, or such other bond or collateral as the Levee District may accept in its sole discretion, in the amount of Four Million Dollars (\$4,000,000.00). ~~The standby letter or letters of credit shall secure THF's obligations under this Agreement.~~ The standby letter or letters of credit or other bond or security instruments shall be in a form and substance reasonably acceptable to THF and Levee District and once issued shall remain outstanding and, in full force and effect, for one (1) year.
- (c) The Levee District shall pay THF for its cost in obtaining the standby letter or letters of credit referred to in this Section 24 in a total amount not to exceed \$42,000.00 ("Letter of Credit Cost"). The Levee District shall be reimbursed by THF for the Letter of Credit Cost with Levee Funds, pursuant to the procedures described in Section 14 hereof.
25. (a) ~~Force Majeure.~~ Neither the Levee District nor THF shall be considered in breach or default of their respective obligations under this Agreement, and times for performance of obligations hereunder shall be extended, 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; issuance of any permits and/or legal authorization by the governmental entity necessary for the Levee District to proceed with construction or any obligation herein; litigation; shortage or delay in shipment of material or fuel; acts of God; abnormal weather or wet soil conditions; or other causes beyond the parties' reasonable control, including, but not limited to, any court order or judgment resulting from any litigation affecting the validity of the TIF obligations.
- (b)(1) A request for a change in the number of Calendar Days in this Contract may only be made by a Change Order. Any claim for an adjustment of the number of Calendar Days shall be based on written notice delivered by Levee District to THF and to Levee District's Engineer ("Engineer") promptly (but in no event later than thirty (30) days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within sixty days after such occurrence (unless Engineer allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by Levee District's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment in the number of Calendar Days shall be determined by Engineer, if THF and Levee District cannot otherwise agree.

(b)(2) All time limits stated in the Contract Documents are of the essence of the Agreement.

(b)(3) Where Levee District or THF is prevented from completing any part of its responsibilities under this Agreement within the number of Calendar Days due to delay beyond the control of Levee District or THF, the number of Calendar Days will be extended in an amount equal to the time lost due to such delay if a claim is made therefore as provided in Section 25(b)(1). Delays beyond the control of Levee District shall include, but not be limited to, ~~acts or neglect by THF, fires, floods, epidemics, abnormal weather and/or~~ site conditions or acts of God.

26. Notices. Any notice, demand, or other communication required by this Agreement to be given by either party hereunder to the other shall be in writing and shall be sufficiently given or delivered if dispatched by certified United States first class mail, postage prepaid, or delivered personally,

(a) In the case of the Levee District, to:

Monarch-Chesterfield Levee District
17627 Wild Horse Creek Road
Chesterfield, Missouri 63005
Attn: William S. Kirchoff

With a copy to:

Ziercher & Hocker, P.C.
231 S. Bemiston, 8th Floor
Clayton, Missouri 63015
Attn: David R. Human, Esq.

(b) In the case of THF, to:

THF Chesterfield Development, L.L.C.
955 Executive Parkway, Suite 210
St. Louis, Missouri 63141
Attn: Michael H. Staenberg

With a copy to:

Sonnenschein, Nath & Rosenthal
One Metropolitan Square, Suite 3000
St. Louis, Missouri 63102
Attn: Alan Bornstein, Esq.

Or to such other address with respect to either party as that party may, from time to time, designate in writing and forward to the other as provided herein.

27. ~~Representatives Not Personally Liable.~~ No official, agent, employee or representative of the Levee District or THF shall be personally liable 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.

28. Insurance.

(a) ~~Prior to the Commencement of Construction of the Interchange Levee and/or the Bonhomme Creek Levee, Levee District agrees to provide to THF a~~ Certificate of Insurance naming THF as an additional insured. The limits of liability for the insurance required hereunder shall provide the following coverages for not less than the following amounts:

1. Worker's Compensation Statutory
2. General Aggregate
(Except Products - Completed Operation \$2,000,000.00
3. Products - Completed
Operations Aggregate \$1,000,000.00
4. Each Occurrence
(Bodily Injury and Property Damage) \$2,000,000.00
5. Automobile Liability,
Combined Single Limit \$2,000,000.00

Said Insurance shall be maintained throughout the construction of the Interchange Levee and the Bonhomme Creek Levee. The obligation to provide such insurance may be fulfilled by third party at the request of the Levee District.

(b) Prior to the initiation of the construction of Shopping Center Property and/or the Interchange, THF agrees to provide to Levee District, a Certificate of Insurance naming Levee District as an "additional insured". The limits of liability for the insurance required hereunder shall provide the following coverages for not less than the following amounts:

- (1) Worker's Compensation Statutory
- (2) General Aggregate
(Except Products - Completed Operation \$2,000,000.00
- (3) Products - Completed
Operations Aggregate \$1,000,000.00
- (4) Each Occurrence
(Bodily Injury and Property Damage) \$2,000,000.00

**SECOND AMENDED AND RESTATED
INTERGOVERNMENTAL COOPERATION AGREEMENT**

THIS SECOND AMENDED AND RESTATED INTERGOVERNMENTAL COOPERATION AGREEMENT (“*Agreement*”) is made and entered into as of the ____ day of _____, 2005, by and between the City of Chesterfield, Missouri (the “*City*”) and Monarch-Chesterfield Levee District (the “*Levee District*”).

RECITALS

A. The Missouri River flood plain includes an area along a five-mile length of Interstate 64/U.S. 40 bounded by Bonhomme Creek on the east and south, the Missouri River on the north and west, Eatherton Road and the Missouri River on the west and St. Louis Southwestern Railroad tracks on the south (as described, the “*Chesterfield Valley Area*”).

B. The City Council of the City, by ordinance, (i) established a Tax Increment Financing Commission (the “*TIF Commission*”) pursuant to the Real Property Tax Increment Allocation Redevelopment Act, § 99.800, *et seq.*, RSMo (1994) (the “*TIF Act*”), (ii) upon recommendation of the TIF Commission, designated the Chesterfield Valley Area within the City as a “redevelopment area” and approved a “redevelopment plan” (the “*Redevelopment Plan*”) pursuant to the TIF Act, and (iii) established the Chesterfield Valley Special Allocation Fund (the “*Special Allocation Fund*”) for the payment of redevelopment project costs and obligations incurred in the payment thereof.

C. The Redevelopment Plan approves certain redevelopment project costs including reconstruction of and improvements to the existing Monarch-Chesterfield Levee (the “*Levee*”) as needed to provide 500-year flood protection from the Missouri River and Bonhomme Creek.

D. The Levee District has jurisdiction over the construction, maintenance, oversight and improvement of the Levee and drainage system which protects the Chesterfield Valley Area.

E. The City has responsibility to provide for the general health, safety and welfare of that portion of the Chesterfield Valley Area within the City. Further, the City has been designated by the Federal Emergency Management Agency (“*FEMA*”) as flood plain manager and, to that end, has certain responsibilities to the entire flood plain within the Chesterfield Valley Area. Recognizing that a breach of a portion of the Monarch-Chesterfield Levee (as occurred in 1993) imperils the property and persons of the City, the City desires to protect existing property and persons and enhance the economic viability of the Chesterfield Valley Area for the overall betterment of the City by undertaking certain obligations with the Levee District consistent with its obligations as defined under state and federal law.

F. The City and the Levee District entered into an Intergovernmental Cooperation Agreement on September 12, 1996, which was amended November 18, 1997 (collectively, the “*1996 Agreement*”). The 1996 Agreement provides for the issuance of three series of TIF Notes (the “*Prior Notes*”) by the City to the Levee District to pay a portion of the costs of (i) bringing

a portion of the Monarch-Chesterfield Levee up to the 500-year flood elevation (the “*Phase II Levee Improvements*”), (ii) installing internal storm water pumping stations, and (iii) providing wetland mitigation. The 1996 Agreement is still being performed by both parties.

G. On November 1, 1999, the City and the Levee District entered into a second Intergovernmental Cooperation Agreement (the “*1999 Agreement*”) in which the Levee District, in coordination with the United States Army Corps of Engineers (the “*Corps*”), proposed certain additional improvements to Chesterfield Valley Area, which have been expanded to now include (i) the improvement of the Monarch-Chesterfield Levee north of Interstate 64 to the 500-year flood protection level generally including (a) the improvement of the existing Levee from Station 170+00 to 320+00 and from 380+00 to 467+00 to increase the Levee height by four to five feet, (b) the installation of seepage berms up to 300 feet in width, placement of a four-foot clay blanket on the riverside of the Levee and installation of stability berms on the river side and the protected side of the Levee, (c) the construction and realignment of the Levee to provide protection to Interstate 64 amounting to 3,400 feet of new levee including the construction of a new levee with a height of 20 to 25 feet and the installation of stability berms on the riverside and the protected side of the Levee, (d) acquisition of materials, borrow areas and easements, (e) the improvement of pump stations to accommodate Levee construction, (f) the relocation of Equilon Pipeline, electric lines at the sand plant and utilities (g) the construction of access roads, including toe roads for maintenance and monitoring, all in accordance with the preliminary plans and specifications prepared by Sverdrup Civil, Inc., titled Phase 3B Levee Improvements, Monarch-Chesterfield Levee District, dated August, 2001, attached hereto as **Exhibit A** and incorporated herein; (ii) the construction of additional improvements in connection with the Phase II Levee Improvements at a cost in excess of the \$3.4 million allotted for the Phase II Levee Improvements under the 1996 Agreement; and (iii) construction of additional seepage berms from Station 555+00 to Station 574+00 in accordance with the plans and specifications for the Phase 1C Drainage Channel – Detention Pond and Seepage Berm Supplement prepared by Sverdrup Civil, Inc. dated August 2001, (G.(i), (ii) and (iii) are referred to herein as the “*1999 Levee Improvements*”).

H. On August 21, 2001 the City and the Levee District entered into an Amended and Restated Intergovernmental Cooperation Agreement (the “*Amended Agreement*”) which expanded the original scope of work to include additional redevelopment project costs such as (i) the excavation of a drainage channel and detention basin along the land-side toe of the Monarch-Chesterfield Levee from Station 600+60 eastward to Station 578+50 (Drainage Channel Station 0+00 eastward to 23+99.2); (ii) the installation of fabric and rock lining in the drainage channel and detention basin from Channel Station 0+00 eastward to Station 23+99.2; (iii) construction of a retaining wall and culverts; (iv) the relocation of the MSD force main from approximately Channel Station 18+50 eastward to Station 22+20; (v) the extension of six (6) six inch (6”) wye lines from their current location adjacent to the Kirchoff property to a location shown on **Exhibit B**; and (vi) installation of road ramps, all in accordance with the plans and specifications prepared by Sverdrup Civil, Inc. titled Sanitary Sewage Force Main Relocation Phase IC Levee Improvements, dated June 20, 2001, attached hereto as **Exhibit B** and incorporated herein and in accordance with the plans and specifications for the Phase IC Drainage Channel – Detention Pond and Seepage Berm Supplement prepared by Sverdrup Civil, Inc. dated August, 2001 (the “*Additional Work*”) (collectively the 1999 Levee Improvements and the Additional Work are referred to herein as the “*Phase III Levee Improvements*” or the “*Project*”).

I. The Amended Agreement also (i) provided for the grant of recreation easements by the Levee District; (ii) modified the calculation for interest rate reimbursement under the Agreement; and (iii) expanded the definition of land acquisition costs to include in kind payments made by the Levee District in lieu of cash payments.

J. The City and the Levee District desire to amend and restate the Amended Agreement to: (i) modify Exhibit E to include \$225,000 for additional mitigation costs and increase the line item for professional fees; (ii) provide that any Section 211 reimbursement shall be paid to the City except under certain specified conditions; (iii) set a date when the transfer of certain properties to the City shall be completed; (iv) provide for the acceptance of the Chesterfield Athletic Complex pump by the Levee District; (v) provide for cooperation between the City and the Levee District in the City's undertaking of the US Turf Drainage Project and Ice Sports Complex Pump Station Project (collectively, the "*City Projects*") and provide for the acceptance of the City Projects by the Levee District; (vi) provide for the extension of water and sewer infrastructure to the western portion of Chesterfield Valley (the "*West End Project*"); and (vii) provide for the funding of the West End Project.

K. The City and the Levee District desire to share certain of the costs and other obligations to be incurred in connection with the Phase III Levee Improvements on the terms and conditions as set forth in this Agreement and in accordance with and pursuant to the provisions of Article VI, § 16 of the Missouri Constitution, the TIF Act and Sections 70.210 through 70.325 of the Revised Statutes of Missouri, as amended.

L. The parties hereto have endorsed the principles and concepts represented herein.

NOW, THEREFORE, in consideration of the premises and promises set forth herein, the adequacy and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I.
Phase III Levee Improvements

The City and the Levee District hereby covenant and agree to contribute and expend such sums and take such actions toward the completion of the Phase III Levee Improvements as are described below, subject to the limitations otherwise set forth in this Agreement. The Phase III Levee Improvements shall be made as follows:

Section 1.1 Construction of Phase III Levee Improvements. The Levee District shall be responsible for acquiring all approvals and permits necessary to construct the Phase III Levee Improvements, and shall construct the Phase III Levee Improvements in accordance with the final Levee Improvement Plans.

Section 1.2 The Levee District's Contribution. Levee District acknowledges that the City's contribution in the 1999 Agreement was limited to \$13,344,651. Pursuant to this Agreement, the Levee District shall perform the Additional Work set forth in Recital H for which the Levee District has agreed to contribute an additional \$120,000 toward the design and construction costs of the Additional Work (the "*Levee District Payment*") bringing the total Phase III Levee Contribution to \$13,464,651.

Section 1.3 The City's Phase III Contribution. The City shall reimburse the Levee District for certain Reimbursable Project Costs, as defined in **Section 3(A)**, incurred by the Levee District in completing the Phase III Levee Improvements, said reimbursement to be made only upon the satisfaction of the conditions and in the manner hereinafter set forth (the "*Phase III Levee Contribution*").

Section 1.4 The City's Payment. In addition to the reimbursement of Reimbursable Project Costs pursuant to **Section 1.3** above, the City hereby agrees to make additional cash contributions for the Additional Work as follows: The City hereby agrees to pay all remaining Approved Costs, as hereinafter defined, associated with the construction of the Additional Work (the "*City's Payment*"). For purposes herein, "Approved Costs" shall mean any cost or expense incurred in connection with the Additional Work in excess of the Levee District Payment and exclusive of any professional fees incurred by the Levee District including engineering; provided that the City shall have approved all costs in accordance with **Section 9.12** in advance. The City agrees to pay or reimburse the Levee District for all Approved Costs within thirty (30) days of receipt by the City of itemized invoices, receipts or such other information, if any, as may be requested by the City in its reasonable discretion to confirm that any such cost is so incurred and does qualify as an Approved Cost.

ARTICLE II. Limitations on City Obligations

Subject to the satisfaction of the conditions and terms hereinafter set forth, the City shall cause the Phase III Levee Contribution to be made as follows:

Section 2.1 City's Obligation to Issue TIF Note. The Levee District has issued approximately \$17,000,000 principal amount Levee District Improvement Bonds, Series 1999 (the "*Series 1999 Bonds*"), the proceeds of which shall be used primarily to fund the Phase III Levee Improvements as described herein. On March 1, 2001, the City issued \$13,344,651 principal amount Levee District Improvement Note, Series 1999 (the "*Series 1999 Note*"). The City held the Series 1999 Note in escrow and paid interest to the Levee District on the Series 1999 Note in accordance with the 1999 Agreement. On March 15, 2002, the City canceled the Series 1999 Note and concurrently therewith, the City issued a \$13,464,651 principal amount Levee District Improvement Note, Series 2002 (the "*TIF Note*") for the purpose of evidencing the City's obligations hereunder to reimburse the Levee District for certain Reimbursable Project Costs, as defined in **Section 3.1** of this Agreement. A copy of the TIF Note is attached hereto as **Exhibit C**.

Section 2.2 TIF Note Terms. Payment of principal and interest shall be made by the City from the Special Allocation Fund semi-annually on February 15 and August 15, or if any such day is not a Business Day, the first Business Day thereafter (each, a "*Payment Date*") in accordance with **Sections 2.3** and **2.4** below and the terms of the TIF Note and the City Ordinance authorizing this Agreement (the "*Note Ordinance*"), but in no event shall the City be obligated, by the terms of the Note Ordinance, the TIF Note or otherwise, to make such payments of principal and interest in an amount in excess of the funds available for such payments from the Special Allocation Fund. The TIF Note shall be for a term to expire upon the earlier of (i) payment in full of the TIF Note (as adjusted by any abatement hereunder), (ii)

payment in full of the Series 1999 Bonds (including any subsequent Levee District obligations refunding the Series 1999 Bonds excluding, however, any refinancing of the Series 1999 Bonds), or (iii) December 31, 2017. The TIF Note shall be subordinate to (i) the Prior Notes, (ii) all other tax increment financing obligations of the City secured by the Special Allocation Fund (“*TIF Obligations*”) outstanding as of the date of this Agreement (including any future TIF Obligations refunding such currently outstanding TIF Obligations), and (iii) any TIF Obligations issued after the date of this Agreement up to an aggregate principal amount of Eighteen Million Dollars (\$18,000,000) (“*Future Parity TIF Obligations*”).

Section 2.3 Computation of Interest on the TIF Note. Interest shall accrue on unpaid principal of the TIF Note at a rate equal to 6.0407%.

Section 2.4 Computation of Principal Payments on the TIF Note. Except as otherwise provided in this Agreement, on each Payment Date after the issuance of the TIF Note until and including the date upon which the City accepts (in the reasonable exercise of its discretion) a Certificate of Substantial Completion from the Levee District in substantially the form of **Exhibit D** hereto certifying that the Phase III Levee Improvements are substantially complete and constructed in accordance with this Agreement, the City shall pay a portion of the principal of the TIF Note (plus accrued interest as provided in **Section 2.3** above) in an amount equal to $1/x$ of the outstanding principal amount of the TIF Note calculated as of the date that is 30 days prior to such Payment Date, where x is the number of Payment Dates between the date of issuance of the TIF Note and December 31, 2017. Beginning with the Payment Date that falls immediately after the date upon which the City accepts such Certificate of Substantial Completion and on each Payment Date thereafter, the City shall pay a portion of the principal (plus accrued interest as provided in **Section 2.3** above) of the TIF Note according to a schedule prepared by the City that amortizes the outstanding principal amount of the TIF Note as of the date of such Certificate of Substantial Completion in equal semi-annual installments through and including August 15, 2017.

Section 2.5 Limitation on Principal Amount of TIF Note and Source of Payment. Notwithstanding any provision herein to the contrary, (i) the aggregate principal amount of the TIF Note shall not exceed Thirteen Million Four Hundred Sixty-Four Thousand Six Hundred Fifty-One Dollars (\$13,464,651) as reduced by any abatement hereunder, and (ii) the TIF Note shall be payable solely from funds on deposit in the Special Allocation Fund and from no other source.

ARTICLE III. Reimbursable Project Costs

Section 3.1 Reimbursable Project Costs Defined. As used herein, the term “Reimbursable Project Costs” means, subject to the limitations set forth in **Section 3.2** hereof, only those costs set forth in **Exhibit E** actually incurred by the Levee District in the implementation and construction of the Project as evidenced by documentation reasonably satisfactory to the City, in a maximum aggregate amount not to exceed Thirteen Million Four Hundred Sixty-Four Thousand Six Hundred Fifty-One Dollars (\$13,464,651), except as provided in **Section 3.6**.

Section 3.2 Professional Fees. Subject to verification by the City of professional fees expended to date delineated by activity and vendor with respect to Reimbursable Project Costs, the line item for professional fees shall be increased from \$830,000 to \$1,020,000; *provided, however,* that (i) this increase in professional fees is subject to the existing \$13,464,651 limit on the Phase III Levee Contribution and other applicable provisions of the Amended Agreement. The City acknowledges receipt from the Levee District, and the City hereby approves documentation of \$190,000 in professional fees in relation to Section 211 activities.

Section 3.3 Additional Limitations on Reimbursable Project Costs. Notwithstanding anything herein to the contrary, Reimbursable Project Costs shall not include any funds paid by the Levee District for professional fees in excess of the \$830,000 limitation set forth in Category G of **Exhibit E** or any funds paid by the Levee District for professional fees related to Section 211 reimbursement in excess of the \$190,000 limitation set forth in Category G(ii) of **Exhibit E**.

Section 3.4 Reimbursements Limited to Reimbursable Projects Costs. Nothing in this Agreement shall obligate the City to reimburse the Levee District for any cost that is not incurred in accordance with this Agreement and pursuant to Section 99.820.1 of the TIF Act, and that does not qualify as a “redevelopment project cost” under Section 99.805(11) of the TIF Act. The Levee District shall, in addition to its obligations under **Section 4.1** hereof, provide itemized invoices, receipts or other information, if any, requested by the City to confirm that any such cost is so incurred and does qualify.

Section 3.5 Levee District’s Right to Substitute. In the event that (i) any Reimbursable Project Cost is determined not to be a “redevelopment project cost” under Section 99.805(11) of the TIF Act, or (ii) a Reimbursable Project Cost incurred by the Levee District in any category of costs set forth in **Exhibit E** is less than the amount for that category of costs set forth in **Exhibit E**, then the Levee District shall have the right to substitute other Reimbursable Project Costs such that the aggregate of all Reimbursable Project Costs for the Project may equal but shall not exceed the maximum aggregate amount for Reimbursable Project Costs set forth in **Exhibit E**; *provided, however,* that no such substitution with respect to transferring any Reimbursable Project Costs to Category G from any other category in **Exhibit E** shall be permitted, and Reimbursable Project Costs with respect to said Category G are expressly limited to the corresponding amounts set forth for said Category G.

Section 3.6 Acquisition Costs. The City may, in its sole discretion and upon request by the Levee District, allocate not more than \$385,000 in additional funds from the Special Allocation Fund in the event that Reimbursable Project Costs in Category E of **Exhibit E** exceed \$4,900,000. For purposes of this Agreement, “Acquisition Costs” shall include all verifiable costs incurred by the Levee District to acquire easements or fee simple title to property reasonably necessary to complete the Phase III Levee Improvements, including in-kind payments. The City shall have the right to request such documentation as is reasonably necessary to verify that the expenditure qualifies as an Acquisition Cost hereunder.

Section 3.7 Additions to the TIF Note. Additions to the TIF Note shall be made periodically by the City’s Director of Finance and Administration, but no more frequently than every calendar quarter, upon the City’s acceptance of Certificates of Reimbursable Project Costs

substantially in the form of **Exhibit F**, up to the maximum aggregate principal amount set forth herein.

Section 3.8 Additional Wetlands Mitigation Costs. The City has re-allocated \$225,000 of Reimbursable Project Costs to Category F, Regulatory/Permitting/Mitigation for the Levee District's additional costs for the Wetlands Mitigation Plan, as defined in the 1996 Agreement by and between the City and the Levee District ("Additional Mitigation Costs"). The City hereby acknowledges verification of Additional Mitigation Costs as of the date of this Agreement in the amount of \$150,000 which shall be paid as a principal payment on the TIF Note on the first to occur of (i) receipt of ten (10) days notice that the Levee District will close the acquisition of a seepage berm easement at levee stations 382+00 to 388+00, known as the Ice Rink tract, or (ii) the first regularly scheduled payment date of the TIF Notes after execution of this Agreement, which is February 15, 2006.

ARTICLE IV.

West End Infrastructure Improvements

Subject to (i) approval of holders of the Series 1999 Bonds and/or the insurer of the Series 1999 Bonds within six months from the date of this Agreement, and (ii) subject to approval by the Levee District of final plans and contractors' bids on or before fifteen (15) months from the date of this Agreement, for water and sewer infrastructure to approximately eight hundred fifty (850) acres in the western portion of the Chesterfield Valley ("*West End Project*"), the Levee District shall construct the West End Project; provided, however, that the Levee District shall approve the final plans and contractors' bids if the lowest responsive bids received, when combined with the West End Project costs other than construction, do not exceed \$5,375,000. The West End Project Area is depicted on **Exhibit L**, attached hereto and incorporated herein by reference. In the event that the Levee District fails to procure the approval required by Section 4(i) or fails to approve the plans and bid as required by Section 4(ii) all within the time periods set forth therein, then this **Article IV** and the West End Project described herein and related obligations of the parties hereunder shall be terminated, except as provide in Section 4.1(ii) of this Agreement. Upon satisfaction or failure to satisfy the conditions set forth in this Section 4(i) and 4(ii) in the time period set forth herein, as the case may be, the Levee District shall provide the City with written notice of its intent either (a) to terminate the West End Project in accordance herewith or (b) to proceed with the West End Project as provided for in this Agreement.

Section 4.1 West End Project Funding. The West End Project is anticipated to cost approximately \$4,925,000.

(i) **The City West End Project Payment Obligation.**

(a) The City shall contribute to the West End Project an amount equal to \$2,775,000 plus 50% of any cost overruns (the "*City West End Project Payment*"); *provided, however*, that in no event shall the City West End Project Payment exceed a total of \$3,000,000; and *provided further* that except as provided for in Section 4.1(i)(b) below, the Levee District shall make the entire Levee District West End Project Payment prior to requesting any contribution by

the City of the City West End Project Payment. Any and all cost savings on total costs of the West End Project below \$4,925,000 shall reduce the City West End Project Payment.

(b) To the extent that engineering costs are incurred for the West End Project prior to the issuance of obligations by the Levee District to fund the Levee District West End Project Payment, the City shall advance engineering costs from available TIF funds, which costs shall be included in, and shall not be in addition to, the City West End Project Payment. The engineering costs advanced by the City pursuant to this Section 4.1(i)(b) shall be deemed an advance by the City of the City West End Project Payment and shall (along with the \$125,000 cost of the feasibility study previously advanced by the City) accrue towards the total amount of the City West End Project Payment.

(c) The City and Levee District hereby acknowledge and agree that (i) the City previously advanced to the Levee District the amount of \$125,000 for the purposes of performing a feasibility study for the West End Project; (ii) the \$125,000 cost of the feasibility study shall be deemed an advance by the City of the City West End Project Payment and shall accrue towards the total amount of the City West End Project Payment; and (iii) notwithstanding the foregoing, in the event the Levee District elects to terminate the West End Project, the \$125,000 cost of the feasibility study shall not be considered an engineering cost subject to reimbursement by the Levee District in accordance with Section 4.1(iii).

(d) The TIF Note is subject to abatement as set forth in **Section 5.5** of this Agreement to refund a portion or all of the City West End Project Payment plus interest thereon to the City under the conditions set forth in this Agreement.

(ii) **The Levee District West End Project Payment Obligation.** The Levee District shall contribute to the West End Project an amount equal to \$2,150,000 plus 50% of any cost overruns (the "*Levee District West End Project Payment*"). In no event shall the Levee District West End Project Payment be less than \$2,150,000.

(iii) **Reimbursement of City's Engineering Cost.**

(a) In the event that the Levee District does not construct the West End Project due to lack of the approvals required in Section 4(i) above, then within thirty (30) days of the Levee District's receipt of invoices for such costs, the Levee District shall reimburse the City for all engineering costs incurred by the City on the West End Project pursuant to engineering contracts approved in writing by the City and entered into by the Levee District. All such costs shall be part of the City West End Project Payment as defined in Section 4.1(i)(a) of this Agreement.

(b) On or before June 30, 2006, the Levee District, at its option, shall either (i) reimburse the City for all engineering costs incurred by the

City on the West End Project in accordance with the procedures set forth in Section 4.1(iii)(a) above, or (ii) approve a resolution that identifies and appropriates for repayment to the City, funds in an amount equal to the engineering costs incurred by the City on the West End Project to be reimbursed to the City in fiscal year 2007 in the event that the Levee District terminates the West End Project in accordance with Section 4 above. In the event that the Levee District chooses to proceed under option (ii) above, the Levee District shall provide the City with a certified copy of the resolution approving the reimbursement for fiscal year 2007.

(c) Any modification to the engineering contracts entered into by the Levee District shall be approved in advance in writing by the City and the Levee District. This Section 4.1(iii) shall survive termination of this Agreement.

(iv) **West End Project Reimbursement Procedure.** Upon satisfaction of the conditions in this Article IV, sections (i) and (ii) ("Project Commencement"), and provided that the Levee District has disbursed the entire Levee District West End Project Payment, the Levee District shall submit a request for the City to make a City West End Project Payment for costs to be reimbursed to the Levee District or for costs currently due and payable on the West End Project. The City shall have thirty (30) days to review and approve such costs and, upon approval thereof, shall submit such City West End Project Payment to the Levee District subject to the \$3,000,000 limitation; provided that the Levee District may request engineering costs to be advanced by the City under Section 4.1(i)(b) prior to Project Commencement and the City shall have thirty (30) days to review and approve such costs and, upon approval thereof, shall submit such engineering costs to the Levee District.

ARTICLE V. Abatement of TIF Note

Notwithstanding anything herein to the contrary, the outstanding principal amount of the TIF Note shall be subject to abatement as follows:

Section 5.1 Definitions. As used in this section, the following terms shall have the following meanings:

"Aggregate Tax Rate" means the sum of the rates of the Maintenance Tax and the Installment Tax.

"Installment Tax" means the tax referred to in Section 245.185 of the Missouri Revised Statutes as the "installment tax" or any other tax or taxes levied by the Levee District for similar purposes.

"Maintenance Tax" means the tax authorized by Section 245.195 of the Missouri Revised Statutes or any other tax or taxes levied by the Levee District for similar purposes.

"Total Assessed Benefits" means the aggregate assessed benefits on all tracts and parcels of land within the Levee District as determined from time to time in accordance with Chapter 245 of the Revised Statutes of Missouri.

"Levee District Bonds" means any and all bonds issued by the Levee District to fund the Phase III Levee Improvements that are outstanding as of the date of the Agreement and for which revenues from the TIF Note are pledged for repayment, including any and all bonds or other instrument issued to refund such bonds.

Section 5.2 Maintenance of Tax Rate.

(i) If the Levee District reduces its Aggregate Tax Rate, as hereinafter defined, below 1.2% of Total Assessed Benefits within the Levee District, the outstanding principal amount of the TIF Note shall be permanently abated by an amount equal to the Levee District's aggregate loss of revenue resulting from the lower tax rate during the period in which said Aggregate Tax Rate is below 1.2% of Total Assessed Benefits.

(ii) If the Levee District reduces the Installment Tax rate below .75% of Total Assessed Benefits, the outstanding principal amount of the TIF Note shall be permanently abated by an amount equal to the Levee District's aggregate loss of revenue from the Installment Tax resulting from the lower Installment Tax rate during the period in which said Installment Tax rate is below .75% of Total Assessed Benefits.

Section 5.3 Levee District's Receipt of Grant. To the extent that the Levee District receives a cash grant or grants or is reimbursed by any federal, state or local government, other than the City, or from any other agencies, departments and bureaus as reimbursement for costs to construct levee improvements authorized and funded by the City under this Agreement or any prior agreements between the City and the Levee District, including but not limited to Section 211 Reimbursement (*"Reimbursements"*), said Reimbursements shall be paid over to the City in its entirety, except as provided below, within thirty (30) days of receipt by the Levee District. This covenant shall survive for a period of forty (40) years from the date of this Agreement, notwithstanding the earlier termination hereof.

Notwithstanding the foregoing, if the Levee District undertakes and completes with its own funds certain levee improvements now anticipated to be performed by the U.S. Corps of Engineers in order to functionally achieve five hundred (500) year flood protection and internal stormwater protection (*"Levee Enhancements"*), the Levee District may retain a portion of the Reimbursements determined by the following formula: Levee Enhancement Costs (estimated to be \$15,000,000) divided by the sum of Levee Enhancement Costs plus Total Valley Improvements expended by the City pursuant to all prior agreements with the Levee District and all prior agreements with other entities pursuant to and under the Chesterfield Valley Tax Increment Financing District Redevelopment Plan, dated August 17, 1994, times a factor that recognizes the present value of the City's expenditures compared to the expenditures by Levee District for Levee Enhancements. The percentage derived shall be applied to the Reimbursements received and that amount retained by the Levee District with the remainder being paid over to the City. This sharing provision for Reimbursements is conditioned on (1) the Levee District completing the Levee Enhancements no later than January 1, 2015 with funds

derived by assessment on property owners, and (2) that no City funding is involved except the payment of generally applicable assessments on its properties within the Levee District.

When used in this **Section 5.3** only, the term "Total Valley Improvements" means all Chesterfield Valley Area Levee improvements including, but not limited to, internal stormwater, drainage and flood control, financed by the City through the date of this Agreement pursuant to the Chesterfield Valley Tax Increment Financing District Redevelopment Plan, dated August 17, 1994.

Section 5.4 Failure to Timely Construct Project. If the Project is not completed within two years of the date of this Agreement, the outstanding principal amount of the TIF Note shall be permanently abated by the amount of One Million Five Hundred Thousand Dollars (\$1,500,000), unless otherwise agreed to by the City.

Section 5.5 Abatement of TIF Note for West End Project. Until the later of March 1, 2019 or the last maturity date of Levee District Bonds ("*Abatement Period*"), the City shall be entitled to an annual abatement of the TIF Note payments equal to fifty percent (50%) of the Levee District's putative taxes on improvements in the West End Project Area, said taxes determined according to the following formula: the difference between (i) the St. Louis County Assessor's fair market valuation on improvements (excluding land) within the West End Project Area determined as of January 1st of the calendar year immediately preceding the annual principal payment; less (ii) \$4,385,100 (the stipulated valuation on improvements existing as of the date of this Agreement), multiplied by a factor of 20% to arrive at assessed benefits, then multiplied by tax rate of 1.5% ("*Abatement Formula*"). The Abatement Formula is illustrated by the following example:

St. Louis County Assessor FMV of improvements in West End Project Area as of the date of this Agreement: \$10,000,000

St. Louis County Assessor FMV of improvements in West End Project Area as of January 1, 2009: \$30,000,000

Increase in FMV of improvements in Project Area in 2009: \$20,000,000

Putative Levee District Taxes on increase in FMV improvements in West End Project Area in 2009: \$20,000,000 X .20 X .015 = \$60,000

Abatement Amount for City: .5 X \$60,000 = \$30,000

If the City prepays the TIF Note, the prepayment amount shall be placed and maintained in an escrow account established with a third party escrow agent for the benefit of the City and the Levee District and invested in the highest yielding accounts as permitted by law and restrictions applicable to the Levee District (including arbitrage restrictions), pursuant to a mutually satisfactory escrow agreement ("*Escrow Fund*") and dispensed as provided in this **Section 5.5**. During the Abatement Period, the escrow agent shall disburse principal to both the City and to the Levee District in an amount equal to the annual total principal payment due that year according to the Escrow Fund Amortization Schedule, defined below, said principal to be allocated between the City and the Levee District according to the following Escrow Payment

Allocation: the amount determined by the Abatement Formula shall be paid to the City and the remainder shall be paid to the Levee District. The City and the Levee District shall receive interest generated by the Escrow Fund according to the following formula:

<p>City/Levee District portion of Escrow Payment Allocation divided by the principal amount in the Escrow Fund immediately preceding the annual principal payment</p>	<p>X</p>	<p>Dollar amount of Interest generated by Escrow Fund during the year immediately preceding the annual principal payment</p>
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The balance of interest generated by the Escrow Fund annually shall be paid to the Levee District.

The “*Escrow Fund Amortization Schedule*” shall mean an amortization schedule of the principal amount deposited in the Escrow Fund, assuming annual principal and interest payments on February 15th and continuing for the term of the Abatement Period remaining when the Escrow Fund is established and assuming a final principal payment of \$1,500,000 at maturity.

Upon the earlier of March 1, 2019 or disbursement to the City of the total City West End Project Payment plus any accrued interest from the escrow, the escrow shall be terminated and the Levee District shall have no further abatement obligations to the City for the City West End Project Payment. Any funds remaining in the escrow after the Abatement Period shall be released to the Levee District.

Section 5.6 Limitations on Abatement.

(i) Notwithstanding anything herein to the contrary, the TIF Note shall not be abated by operation of **Section 5.3** above: (a) to the extent of any Additional Revenues that are used to fund costs incurred in obtaining associated grant(s) or reimbursement(s), including fees and professional consulting fees, in an amount not to exceed one percent (1%) of the aggregate amount of the grant(s) and/or reimbursement(s); (b) to the extent of any Additional Revenues that are used to fund improvements outside the scope of the 1999 Levee Improvements which have been approved in advance in writing by the City; and (c) with respect to the first \$3,000,000 in cash grants or reimbursements received by the Levee District applicable to the required five percent (5%) local sponsor share, regardless of the type, manner or timing of receipt of said grants or reimbursements.

(ii) The sole source of funds for return of the City West End Project Payment to the City shall be abatement of the existing TIF Note or payments of principal from the escrow account established in **Section 5.5** in the event the City prepays the TIF Note. The amount abated or paid to the City from the escrow account shall be based on the Abatement Formula.

Section 5.7 Books and Records. To facilitate verification and enforcement of the abatement provisions herein, the Levee District shall provide to the City for inspection such

books and records as the City deems necessary, in the City's sole discretion, to perform such verification and enforcement.

ARTICLE VI.
Issuance of Parity TIF Obligations

The City may issue, in addition to Future *Parity* TIF Obligations, TIF Obligations on a parity with the TIF Note ("*Additional TIF Obligations*") if:

(i) At the time of issuance of such Additional TIF Obligations, the ratio of (x) all sums deposited to the Special Allocation Fund over the twelve-month period ending on the date of issuance of such Additional TIF Obligations to (y) the aggregate amount of principal and interest the City is obligated to pay on all then-outstanding TIF Obligations (including the TIF Note) during the twelve-month period commencing on the date of issuance of such Additional TIF Obligations is equal to or greater than 1.2:1 ($x:y \geq 1.2:1$); OR

(ii) The Additional TIF Obligations are issued in connection with a redevelopment project consisting of construction of at least 100,000 square feet of taxable improvements.

ARTICLE VII.
Representations and Warranties

In order to induce the City to enter into this Agreement, the Levee District makes the following representations and warranties, each of which shall survive closing:

Section 7.1 Acquisition of Property. The Levee District has acquired marketable fee title to (i) the property formerly owned by Dorothy Mahaffey Moore, Trustee of the Dorothy M. Moore Revocable Trust, and containing approximately 54.33 acres, a legal description of which is attached hereto as **Exhibit H-1**, and (ii) the property formerly owned by Marjorie Jo Fitzgerald, containing approximately 34.40 acres, a legal description of which is attached hereto as **Exhibit H-2** (the Moore parcel and the Fitzgerald parcel are collectively referred to as the "*Parcels*"). The Levee District shall extract sufficient borrow material from the non-Levee protected side of the Parcels for the construction of the Phase III Levee Improvements, and, on or before October 1, 2005, shall convey the Parcels to the City by Special Warranty Deed subject to levee underseepage berm and/or borrow easements, as determined by the Levee District.

Section 7.2 Execution of documents. The following documents have been executed and recorded:

(i) Final Subdivision Plat of the Chesterfield Commons Shopping Center, prepared by Volz Engineering and dated August 14, 2001, recorded in Plat Book 348, Page 564 of the Office of St. Louis County Recorder of Deeds.

(ii) Permanent Underseepage Berm Protective Restrictions, recorded in Book 12880, Page 0888 of the Office of St. Louis County Recorder of Deeds, attached hereto as **Exhibit J** and incorporated herein by reference (the "*Protective Restrictions*").

(iii) An easement for the Pond and stormwater drainage system recorded in Book 12494, Pages 0494 of the Office of St. Louis County Recorder of Deeds (“Drainage Facilities Easement”) attached hereto as **Exhibit K** and incorporated herein by reference.

ARTICLE VIII.
Covenant to Cooperate

The City and the Levee District each hereby covenant and agree to cooperate and take all reasonable steps necessary to facilitate the design, installation and construction of the Phase III Levee Improvements and the West End Project in accordance with the terms hereof.

ARTICLE IX.
Other Levee District Covenants

In order to induce the City to enter into this Agreement, the Levee District covenants and agrees as follows:

Section 9.1 Prior Levee Agreement. The Levee District acknowledges that the City is a third party beneficiary to a certain agreement dated November 21, 1997, by and between THF Chesterfield Development, L.L.C. (“*THF*”) and the Levee District, as amended by a First Addendum dated September 1, 1998, and a Second Addendum dated October 1999 (collectively, the “*Levee Agreement*”) attached hereto and incorporated herein as **Exhibit I**. Accordingly as of the date hereof, the Levee District has not nor shall it enter into any subsequent amendments to the Levee Agreement without obtaining the prior written consent of the City, which consent shall not be unreasonably withheld.

Section 9.2 Chesterfield Athletic Complex Pump. Upon tender by the City, the Levee District shall accept dedication of the Chesterfield Athletic Complex Pump for maintenance and operation. As a condition to the Levee District’s acceptance of the Chesterfield Athletic Complex Pump, the City shall provide the Levee District with a complete operation and maintenance manual and as-built drawings signed and sealed by a registered professional engineer. The City shall provide and assign to the Levee District a levee easement in such locations as necessary for the Levee District to access, operate and maintain the Chesterfield Athletic Complex Pump.

Section 9.3 Improvements to Edison Road. The Levee District acknowledges that the City has entered into a certain Redevelopment Agreement wherein THF agreed to construct that portion of Edison Road that extends from Long Road to Baxter Road in accordance with the plans and specifications prepared by Wolverton & Associates, Inc., titled Improvement Plans for Edison Avenue, as modified by a letter from Michael Geisel, City Engineer to James Mello, dated September 28, 1999, and thereafter dedicate and convey same to the City. In addition, the Levee District acknowledges that a portion of Edison Road shall be constructed over the seepage berm as shown on the aforementioned plans and specifications. Accordingly, the Levee District hereby represents and warrants to the City that the seepage berm was built in accordance with the Phase IC Levee Improvements and further covenants and agrees that it will grant to the City all temporary and permanent transferable easements deemed reasonably necessary by the City for

the construction, maintenance and usage of the Edison Road right-of-way. Any easements granted pursuant to this **Section 9.3** shall be subject to all Levee District and/or underseepage berm restrictions. The Levee District hereby agrees and covenants to cooperate with the City and with THF regarding the construction and maintenance of Edison Road.

Section 9.4 Cooperation on City Projects.

(i) As used in this section, the following terms shall have the following meanings:

“City Projects” means, collectively, the US Turf Drainage Project and the Ice Sports Complex Pump Station Project.

“US Turf Drainage Project” means construction of a drainage channel from the east line of the US Turf site through the US Turf site west to the Chesterfield Motorsports site.

“Ice Sports Complex Pump Station Project” means construction of a stormwater pump station constructed for the purpose of pumping water into the east wetlands mitigation area.

(ii) The Levee District will cooperate and assist the City in the City’s construction and completion of the City Projects. Prior to commencing construction of the City Projects, the City will submit the plans and specifications for such City Projects to the Levee District for approval, which approval shall not be unreasonably withheld. The City, with its own funds, will construct or cause construction of the City Projects and the Levee District, upon substantial completion of the City Projects, shall accept dedication of the City Projects for maintenance and operation. As a condition to the Levee District’s acceptance of the City Projects, the City shall provide the Levee District with complete operation and maintenance manuals and as-built drawings. The City shall provide and assign to the Levee District a levee easement in such locations as necessary for the Levee District to access, operate and maintain the City Projects.

Section 9.5 Easement. The Levee District shall identify any easements to be located on any City park or other City-owned property in the Chesterfield Valley Area that the Levee District reasonably determines are necessary for it to acquire in furtherance of the construction and implementation of the Project. Within sixty (60) days of the identification of the easements, the City shall convey such easements to the Levee District and the Levee District shall pay the City the fair market value of such easements. Fair market value shall be determined by comparison to sales of similar interests in comparable property in the immediate area of said easements as mutually agreed upon by the City and the Levee District.

Section 9.6 The Levee District shall accept an easement and dedication for maintenance of the storm water detention pond and ancillary improvements located in Chesterfield Commons in the Chesterfield Valley Area built in accordance with the plans and specifications prepared by Wolverton & Associates, Inc., titled Improvement Plans for Chesterfield Commons Chesterfield Airport Road at Chesterfield Commons Crossing, dated June 17, 1999, and revised August 25, 1999, and beginning at the western edge of the access road at approximately station 360, as depicted on **Exhibit L** of the Redevelopment Agreement

between the City and THF, dated November 24, 1997, as amended by a First Amendment to the Redevelopment Agreement (the "*Redevelopment Agreement*") then Westerly to RHL Boulevard as depicted on Exhibit L of the Redevelopment Agreement and referenced in **Section 9.3** herein (the "*Pond*"). The Levee District covenants and agrees, that upon acceptance of the Pond, it shall commence to install an inverted filter blanket and related rock as referenced in Exhibit M of said Redevelopment Agreement. The City acknowledges and agrees that as of the date of this Agreement, THF has not constructed the stormwater improvements and Pond to the City's or the Levee District's satisfaction, and consequently the City has not requested that the Levee District accept an easement and dedication of the stormwater improvements and Pond.

Section 9.7 In addition to other stormwater drainage improvements that the Levee District is required to accept and thereafter repair and maintain pursuant to this Agreement, the Levee District shall accept the primary stormwater conveyance ditch and ancillary improvements beginning at the West edge of an access drive at approximately Station 360, as depicted in Exhibit L of the Redevelopment Agreement then Easterly to approximately Station 386 as depicted on Exhibit L of the Redevelopment Agreement upon completion of the ditch which includes an inverted filter blanket and related rock in accordance with the specifications set forth in Exhibit M of the Redevelopment Agreement.

Section 9.8 Upon request by the City, the Levee District shall execute such instruments in recordable form, evidencing the Levee District's acceptance of the dedication of the improvements and corresponding obligations to repair and maintain the stormwater detention ponds, channels, drainage facilities, stormwater lines and related drainage improvements referenced in **Sections 9.4, 9.5, 9.6 and 9.7** as depicted in the shaded area set forth in **Exhibit K** attached hereto and incorporated herein by reference.

Section 9.9 The Levee District has accepted title to and shall continue to repair and maintain the storm water pumps and drainage system constructed pursuant to the plans and specification prepared by Booker Associates, titled Chesterfield Valley, Chesterfield, Missouri, Storm Water Pump Stations, Project Number T-3872, dated August 30, 1996, and more specifically described in the associated specifications of the same date. The City covenants and agrees that it will cooperate with the Levee District in pursuing any and all claims and warranties against contractors, subcontractors, and/or manufacturers in connection with any defects in any Phase I Levee Improvements.

Section 9.10 The Levee District covenants and agrees that upon completion it shall accept easements and dedication for maintenance all other storm water systems and facilities and primary conveyance ditches constructed pursuant to that certain plan prepared by Development Strategies titled "Phase III of the Chesterfield Valley Master Development Plan and Implementation Strategy" dated August 1998; *provided that* said stormwater maintenance systems are constructed in accordance with the Corps' standards.

Section 9.11 The Levee District shall notify William Kirchoff at least thirty (30) days prior to the excavation of the Pond and permit Mr. Kirchoff to remove 25,000 cubic yards of borrow.

Section 9.12 The Levee District agrees that the City shall have the right to review and approve all contracts related to the Additional Work (“*Contracts*”) and any material changes to the plans set forth in **Exhibit B** or the *Contracts*. The City shall, within five (5) days of receipt of any contract or material change described in this paragraph, provide written notice that it has approved or disapproved such *Contracts* or material changes; provided that any such notice of disapproval shall state specifically the reasons for disapproval. In the event that the City fails to notify the Levee District within the five (5) day period, the *Contract(s)* or material changes shall be deemed approved. For purposes of this paragraph, the term “material change” shall mean any change increasing the City’s Payment by ten percent (10%) or more of the total cost of the Additional Work.

Section 9.13 Recreation Easements. Prior to the execution by the City of this Agreement, the Levee District submitted to the City an up-to-date map of all easements and other property interests (the “*Property*”) held by the Levee District in Chesterfield Valley and the means by which the Levee District acquired said easements or other property interests. The City shall deliver to the Levee District a set of preliminary concept plans (the “*Bike Path Plans*”) for a pedestrian and non-motorized vehicular ingress and egress along the *Property* at specific locations to be determined by the Levee District and the City (the “*License Area*”), and the Levee District shall, within ninety (90) days of receipt of the *Bike Path Plans*, provide written notice to the City that it has reviewed and either approved or rejected the *Plans*. The Levee District reserves the right to reject the *Bike Path Plans* (i) if the *Bike Path Plans* negatively affect the integrity of the levee or maintenance and operation of the levee system; or (ii) if any of the following are undeterminable or unacceptable to the Levee District in its reasonable discretion: placement of the *License Area*; construction materials to be used in the *License Area*; or the intended use of the *License Area*; provided, however that the Levee District acknowledges that the City intends to use the *License Area* as a bike path and pedestrian walking/jogging path. In the event that the Levee District rejects the *Plans*, such notice of rejection shall state with specificity the reasons therefore. Failure of the Levee District to respond within the time period set forth herein shall constitute approval of the *Bike Path Plans*. The Levee District shall not unreasonably withhold, condition or delay its approval of the *Bike Path Plans*. The City hereby acknowledges and agrees that the Levee District makes no warranties as to the use of the *Property* or any *License* thereon for any particular purpose. The City shall not make any modifications to the *Bike Path Plans* without obtaining the approval of the Levee District as provided in this paragraph.

To the extent permitted by law and subject to the statutory limitations on liability established in Section 537.610 of the Revised Statutes of Missouri 1994, as amended, the City agrees to hold the Levee District harmless and indemnify the Levee District for any objections, claims, or other action by property owners as a result of the City’s or its licensees’, invitees’ and assigns’ use of the *Property* or the *License Area*.

Within thirty (30) days of approval of the *Bike Path Plans*, to the extent permitted by law and the agreements with individual property owners, the Levee District shall execute recreation licenses for the *License Area* (the “*License*”) which *License* shall be in form and substance substantially similar to **Exhibit G**. The Levee District covenants and agrees that upon acquisition of additional easements or property interests, whether by authority under Section 246.283 of the Revised Statutes of Missouri 1994, as amended, condemnation or otherwise, the

Levee District shall promptly notify the City. The City shall then have the right to obtain a License to the property so acquired in accordance with the terms of this Section, provided that such use by the City does not materially interfere with the Levee District's interest in or use of the property.

ARTICLE X. Indemnification

To the extent not otherwise prohibited by law, the Levee District covenants and agrees to indemnify and hold the City and the City's officials, agents, employees and representatives harmless from any and all claims arising from or relating to the Phase III Levee Improvements, other than claims arising from the willful misconduct or negligence of the City or the City's officials, agents, employees or representatives.

ARTICLE XI. Default

Except as otherwise provided in this Agreement, in the event of any default in or breach of any material term or condition of this Agreement by either party or any permitted successor or assign, the defaulting or breaching party shall, upon written notice from the other party, proceed immediately to cure or remedy such default or breach, and shall, in any event, within thirty (30) days after receipt of such notice, commence to cure or remedy such default. In case such cure or remedy is not taken or not diligently pursued, or the default or breach is not cured or remedied within a reasonable time, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including but not limited to proceedings to compel specific performance by the defaulting or breaching party.

ARTICLE XII. Miscellaneous

Section 12.1 Recitals. The Recitals hereto are a material part of this Agreement and the representations, warranties, covenants and conditions set forth therein shall be deemed binding upon the parties hereto.

Section 12.2 Assignment. This Agreement shall not be assignable by any party without the prior written consent of the other party hereto. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective representatives, successors and assigns.

Section 12.3 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 the State of Missouri for all purposes and intents.

Section 12.4 Entire Agreement; Amendment. The parties agree that this Agreement constitutes the entire agreement between the parties and that no other agreements or representations other than those contained in this Agreement have been made by the parties. This Agreement shall be amended only in writing, which shall be effective when signed by the authorized agents of the parties.

Section 12.5 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute one and the same instrument.

Section 12.6 Severability. In the event any term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction or is terminated by the parties, the remainder shall continue in full force and effect, to the extent the remainder can be given effect without the invalidated provision.

Section 12.7 Headings. Section headings are used herein for convenience of reference only and shall not affect the meaning of any provision of this Agreement.

Section 12.8 Representatives Not Personally Liable. No elected or appointed official, agent, employee or representative of the City or the Levee District shall be personally liable to any party or any third party 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.

Section 12.9 Force Majeure. Neither the City nor the Levee District 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, 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; issuance of any permits and/or legal authorization by a governmental entity necessary for the Levee District to proceed with construction of the Project or any portion thereof; shortage or delay in shipment of material or fuel; acts of God; unusually adverse weather or wet soil conditions; or other causes beyond the parties' reasonable control, including but not limited to, any litigation, court order or judgment resulting from any litigation affecting the validity of the Project or the TIF Obligations; *provided that* such event of force majeure shall not be deemed to exist as to any matter initiated or unreasonably sustained by any party hereto, and further *provided that* the party claiming an event of force majeure notifies the other party in writing within ten (10) days of the commencement of such claimed event of force majeure.

Section 12.10 Acknowledgement of Completion. Notwithstanding anything to the contrary herein, the City acknowledges the Levee District's completion of the following:

(i) Recital G.(i)(a), G.(i)(c), G.(i)(d), G.(i)(e) G.(i)(f), G.(i)(g) and G.(i)(b), except for the seepage berms on the properties referred to as the Holtzman tract and the Ice Rink tract at approximately Station 234+00 to 241+00 and Station 382+00 to 388+00, respectively, and that, with respect to the Ice Rink tract, the City acknowledges that the seepage berm may be temporarily modified from the 1999 Levee Improvements plans to accommodate future development on the tract, provided, however, that the modified seepage berm, once constructed, shall be complete for purposes **Section 5.4**, abatement as a result of failure to timely construct the Project;;

(ii) Recital G.(ii) regarding additional Phase II Levee Improvements;

(iii) Recital G.(iii) regarding construction of additional seepage berms;

- (iv) Recital H. regarding Additional Work;
- (v) Section 9.6 and 9.7 regarding acceptance of storm water detention pond dedication, Chesterfield Commons and acceptance of storm water conveyance ditch and ancillary improvements, all as identified as Exhibit L of the Redevelopment Agreement;
- (vi) Section 9.8 execution of instruments evidencing acceptance of the dedication referenced in Section 9.6 and 9.7;
- (vii) Section 9.9 acceptance of storm water pumps and drainage system constructed pursuant to the plans and specifications and specifications prepared by Booker & Associates;
- (viii) Section 9.11 notification to William Kirchoff for removal of borrow material prior to excavation of the Pond;
- (ix) Section 9.12 providing the City with the right to review and approve all Contracts relating to the Additional Work; and
- (x) Section 1.2 Levee District Payment relative to the Additional Work as described in Section 1.2.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the parties hereto have made and entered into this Agreement as of the day and date above first written.

CITY OF CHESTERFIELD MISSOURI

By Michael J. [Signature]
City Administrator

(Seal)

Attest: Marta H. [Signature]
City Clerk

**MONARCH-CHESTERFIELD LEVEE
DISTRICT**

By: Earl R. Hoffmann
President of the Board of Supervisors

(Seal)

Attest: W.S. Kivshoff
Secretary of the Board of Supervisors

ACKNOWLEDGMENT

STATE OF MISSOURI)
) SS.
COUNTY OF ST. LOUIS)

On this 18th day of JANUARY, 2008⁶, before me, the undersigned, a Notary Public, appeared Michael G. Herring and Marty DeMay, to me personally known, who, being by me duly sworn, did say that they are the City Administrator and the City Clerk, respectively, of THE CITY OF CHESTERFIELD, MISSOURI, a body politic and corporate duly authorized, incorporated and existing under and by virtue of the laws of the State of Missouri, and that the seal affixed to the foregoing instrument is the corporate seal of said City, and that said instrument was signed and sealed in behalf of said City by authority of its City Council, and said officials acknowledged said instrument to be executed for the purposes therein stated and as the free act and deed of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.



Judith A. Naggian
Printed Name: Judith A. Naggian
Notary Public in and for said State
Commissioned in St. Louis County

My commission expires: 01-03-08

ACKNOWLEDGMENT

STATE OF MISSOURI)
) SS.
COUNTY OF ST. LOUIS)

On this 30TH day of DECEMBER, 2005, before me, the undersigned, a Notary Public, appeared Earl R. Hoffmann and William S. Kirchoff, to me personally known, who, being by me duly sworn, did say that they are the President and the Secretary/Treasurer, respectively, of the Board of Supervisors of THE MONARCH-CHESTERFIELD LEVEE DISTRICT, a body politic and corporate duly authorized, incorporated and existing under and by virtue of the laws of the State of Missouri, and that the seal affixed to the foregoing instrument is the corporate seal of said Levee District, and that said instrument was signed and sealed in behalf of said Levee District by authority of its Board of Supervisors, and said officials acknowledged said instrument to be executed for the purposes therein stated and as the free act and deed of said Levee District.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.

(SEAL)

DIANNE L. FIELDS Notary Public - Notary Seal STATE OF MISSOURI St. Louis County My Commission Expires: Feb. 2, 2008
--

Dianne L. Fields
Printed Name: DIANNE L. FIELDS
Notary Public in and for said State
Commissioned in ST. LOUIS County

My commission expires: 2-2-08

EXHIBIT A
Description of Phase III Levee Improvements

The planned work will include improvements made to the existing Monarch-Chesterfield Levee in Phase III(B) Levee Improvement Plans on file with the City Engineer.

EXHIBIT B
Plans for Additional Work

The Plans for Additional Work are on file with the City Engineer.

EXHIBIT C
Phase III TIF Note

(Attached hereto)

EXHIBIT C

Form of TIF Note

THE RIGHT TO TRANSFER, ASSIGN OR NEGOTIATE THIS NOTE SHALL BE LIMITED TO TRANSFER, ASSIGNMENT OR NEGOTIATION TO ANY ACCREDITED INVESTOR OR QUALIFIED INSTITUTIONAL INVESTOR, AS SUCH TERMS ARE COMMONLY DEFINED FROM TIME TO TIME BY APPLICABLE STATE AND FEDERAL SECURITIES LAWS AND REGULATIONS AND ONLY UPON WRITTEN CONSENT OF THE CITY.

Registered
No. ___

Up to \$13,464,651

CITY OF CHESTERFIELD, MISSOURI

TAX INCREMENT REVENUE NOTE
(CHESTERFIELD VALLEY REDEVELOPMENT PROJECT)
SERIES 200__-__

Interest Rate

6.0407%

Maturity Date

As set forth below

Dated Date

_____, 200__

REGISTERED OWNER: MONARCH-CHESTERFIELD LEVEE DISTRICT

PRINCIPAL AMOUNT: AS SHOWN ON SCHEDULE 1 HERETO, NOT TO EXCEED THIRTEEN MILLION THREE HUNDRED FORTY-FOUR THOUSAND SIX HUNDRED FIFTY-ONE DOLLARS

THE CITY OF CHESTERFIELD, MISSOURI (the "City") for value received promises to pay to the **Monarch-Chesterfield Levee District**, its successors and assigns (the "*Levee District*") the Outstanding Principal Amount shown from time to time on **Schedule 1** attached hereto but not to exceed Thirteen Million Three Hundred Forty-four Thousand Six Hundred Fifty-one Dollars (\$13,464,651), together with simple interest at the Interest Rate per annum set forth above on the outstanding balance hereof, calculated on the basis of a 365-day year and actual days elapsed from the date hereof to the earlier of: (i) the date of repayment of this Note, (ii) the date of payment in full of the Levee District's Series 1999 Bonds or any bonds refunding the same, or (iii) December 31, 2017 (the earliest of which is referred to herein as the "*Maturity Date*"). This Note evidences sums advanced by the Levee District on behalf of the City pursuant to the Amended and Restated Intergovernmental Cooperation Agreement between them dated as of _____, 2001 (the "*Agreement*").

Reference is made to the Agreement and Ordinance No. ___ passed and adopted by the City Council on _____, 2001 (the "*Note Ordinance*"), for a description of the covenants and agreements made by the City and Levee District with respect to payment of Net Proceeds to pay this Note, the nature and extent of the security for this Note, the rights, duties and obligations of the City and Levee District with respect hereto, and the rights of the holder hereof. Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement or the Note Ordinance.

All payments of principal and interest by the City shall be from the Net Proceeds on deposit in the Special Allocation Fund created by Ordinance No. 954, passed and adopted by the City Council on October 17, 1994 (the "*Fund Ordinance*").

This Note shall be payable solely from the aforesaid moneys and from no other revenue or property of the City, it being understood that this instrument is a special limited obligation of the City and is payable solely from the aforementioned sources, including from incremental tax revenues which the City is entitled to receive under sections 99.800 through 99.865 of Missouri Revised Statutes deposited from time to time in the Special Allocation Fund of the City as set forth below, and is not a general obligation of the City, St. Louis County, the State of Missouri or any political subdivision thereof, nor of any officer or employee thereof, and it being further understood that this Note is issued in connection with a certain redevelopment plan entitled "*Chesterfield Valley Tax Increment Financing Redevelopment Plan*," dated June 28, 1994, as from time to time amended (the "*Plan*"), and certain redevelopment projects, including those specified in the Agreement (the "*Project*"), as approved in Ordinance No. 953, passed and adopted by the City Council on October 17, 1994 (the "*Approving Ordinance*").

The "*Net Proceeds*" on deposit in the Special Allocation Fund are those payments in lieu of taxes (as that term is defined in section 99.805(10) of Missouri Revised Statutes) attributable to the increase in the current equalized assessed valuation of each taxable lot, block, tract, or parcel of real property in the area of the Project and any applicable penalty and interest over and above the certified total initial equalized assessed value (as that term is used and described in sections 99.845.1 and 99.855 of Missouri Revised Statutes) of each such unit of property in the area of the Project and as paid to the City's Finance Director by the St. Louis County Collector of Revenue during the term of the Plan and the Project; and, subject to annual appropriation, fifty percent (50%) of the total additional revenues from taxes, penalties and interest which are imposed by the City or other taxing districts (as that term is defined in section 99.805(16) of Missouri Revised Statutes) and which are generated by economic activities within the area of the Project over the amount of such taxes generated by economic activities within the area of the Project in the calendar year 1993 and paid into the Special Allocation Fund, but excluding personal property taxes, taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, taxes levied pursuant to section 70.500 Missouri Revised Statutes, or for the purpose of public transportation taxes levied pursuant to section 94.660, Missouri Revised Statutes, licenses, fees or special assessments, other than payments in lieu of taxes and penalties and interest thereon, and less the costs of collection; and fifty percent (50%) of the net

new revenues from the utility tax imposed by the City and generated by utility use within the area of the Project over the amount of such revenues generated within the area of the Project in the calendar year 1993; and to the extent available under the Act, up to fifty percent (50%) of the new state revenues (as that term is defined in section 99.845.8 Missouri Revised Statutes), estimated for the businesses within the area of the Project and identified by the City in the application required by section 99.845.10 Missouri Revised Statutes, if any, over and above the amount of such taxes reported by businesses within the area of the Project in the calendar year 1993. Net Proceeds do not include any such amount paid under protest until the protest is withdrawn or resolved against the taxpayer, nor do Net Proceeds include any sum received by the City which is the subject of a suit or other claim communicated to the City, which suit or claim challenges the collection of such sums or their payment to the Levee District or its successors in interest.

Interest shall accrue on unpaid principal of this Note at the rate set forth above.

Principal payments on this Note shall be calculated as follows: On each Payment Date (as hereinafter defined) after the Dated Date of this Note until and including the date upon which the City accepts (in the reasonable exercise of its discretion) a Certificate of Substantial Completion from the Levee District in substantially the form of **Exhibit G** to the Agreement, the City shall pay a portion of the principal of this Note in an amount equal to $1/x$ of the outstanding principal amount of this Note calculated as of the date that is 30 days prior to such Payment Date, where x is the number of Payment Dates between the Dated Date and December 31, 2017. Beginning with the Payment Date that falls immediately after the date upon which the City accepts such Certificate of Substantial Completion and on each Payment Date thereafter, the City shall pay a portion of the principal of the TIF Note according to a schedule prepared by the City that amortizes the outstanding principal amount of the TIF Note as of the date of such Certificate of Substantial Completion in equal semi-annual installments through and including August 15, 2017.

Subject to the terms of the immediately following paragraph, the principal and interest hereof shall be payable on each February 15 and August 15 commencing, _____ 15, 2001, or if any such day is not a Business Day, the first Business Day thereafter (the "Payment Dates") to the earlier of repayment of this Note, payment in full of the Levee District's Series 1999 Bonds or any bonds refunding the same, or December 31, 2017, followed by a final payment, to the extent there are funds then available in the Special Allocation Fund, on December 31, 2017 in the amount of the then unpaid principal balance hereof and all accrued and unpaid interest hereon.

Payment of principal and interest hereunder shall be subject to the following further terms and conditions:

- (i) Subject to annual appropriation, Net Proceeds of the Special Allocation Fund shall first be disbursed to pay administrative, planning, legal and other

related operational costs of the City associated with implementation of the Plan and Agreement but not to exceed \$100,000 in any calendar year;

(ii) If on any Payment Date the Net Proceeds in the Special Allocation Fund are insufficient to pay scheduled principal and accrued interest then due and owing, the amount of the deficiency (the "Deficiency") shall be carried forward as an amount due and owing hereunder. So long as the amount of any Deficiency is carried as a liability on the City's Special Allocation Fund's financial records, the existence of such Deficiency shall not be deemed an event of default hereunder and shall not be cause for acceleration of this Note;

(iii) If on any Payment Date the Net Proceeds in the Special Allocation Fund are in excess of the amount required to pay the scheduled annual installment of principal plus accrued interest then due and owing, all excess Net Proceeds shall be applied by the City to the satisfaction of all outstanding Deficiencies under this Note and all other Notes executed and delivered pursuant to the Agreement, allocated in accordance with the then outstanding principal balances thereof;

(iv) On the Maturity Date, the City shall pay to the Levee District out of Net Proceeds then on deposit in the Special Allocation Fund all sums due to the Levee District; *provided, however*, that whether or not paid in full, this Note shall expire on the Maturity Date and the City shall have no further responsibility, liability, or obligation hereunder.

Subject to the foregoing, payments shall be applied first to accrued interest on the Note, and then, if there are additional funds available in the Special Allocation Fund on any Payment Date or on the Maturity Date, to the unpaid principal of this Note. Any unpaid interest carried forward as part of any Deficiency shall not be added to principal.

The City shall pay all amounts due and owing hereunder to the Levee District upon receipt by the City from the Levee District of an appropriate receipt, at such place within the City as may be specified by the Levee District from time to time.

This Note shall be subordinate to (i) the Prior Notes, (ii) all other tax increment financing obligations of the City secured by the Special Allocation Fund ("*TIF Obligations*") outstanding as of the date of the Agreement (including any future TIF Obligations refunding such currently outstanding TIF Obligations), and (iii) any TIF Obligations issued after the date of the Agreement up to an aggregate principal amount of Eighteen Million Dollars (\$18,000,000).

The City may issue additional TIF Obligations on a parity with this Note upon satisfaction of certain conditions set forth in the Agreement and the Note Ordinance.

This Note may be prepaid at any time in whole or in part without penalty. This Note shall be assignable by the Levee District only upon expressed written consent of the City. The

right to transfer, assign, or negotiate this Note shall be limited to transfer, assignment, or negotiation to any accredited investor or qualified institutional investor, as such terms are commonly defined from time to time by applicable state and federal securities laws and regulations.

Outstanding principal owed on this Note may be canceled or reduced by the City as provided in the Agreement.

IT IS HEREBY CERTIFIED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of the Note have existed, happened and been performed in due time, form and manner as required by law, and that before the issuance of the Note, provision has been duly made for the collection and segregation of Available Revenues and for the application of the same as hereinbefore provided.

CITY OF CHESTERFIELD, MISSOURI

By: _____

Title: _____

ATTEST:

City Clerk

(SEAL)

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

Print or Type Name, Address and Social Security Number
or other Taxpayer Identification Number of Transferee

the within Note and all rights thereunder, and hereby irrevocably constitutes and appoints _____ as agent to transfer the within Note on the books kept by the Paying Agent for the registration thereof, with full power of substitution in the premises.

Dated: _____

NOTICE: The signature to this assignment must correspond with the name of the Registered Owner as it appears upon the face of the within Note in every particular.

Signature Guaranteed By:

(Name of Eligible Guarantor Institution)

By _____

Title: _____

NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution as defined by SEC Rule 17Ad-15 (17 CFR 240.17Ad-15).

Schedule 1

CITY OF CHESTERFIELD, MISSOURI
 Tax Increment Revenue Note (Chesterfield Valley
 Redevelopment Project) Series 200_ - _

 Certificate of Authentication

<u>Date</u> ¹	<u>Additions to Principal Amount</u> ²	<u>Principal Amount Paid</u>	<u>Outstanding Principal Amount</u>	<u>Authorized Signatory of City</u>
,20__	\$ _____	\$ _____	\$ _____	_____
,20__	\$ _____	\$ _____	\$ _____	_____
,20__	\$ _____	\$ _____	\$ _____	_____
,20__	\$ _____	\$ _____	\$ _____	_____
,20__	\$ _____	\$ _____	\$ _____	_____
,20__	\$ _____	\$ _____	\$ _____	_____
,20__	\$ _____	\$ _____	\$ _____	_____
,20__	\$ _____	\$ _____	\$ _____	_____
,20__	\$ _____	\$ _____	\$ _____	_____

¹ Date of advance or interest payment date.

² Limited to advances authenticated by a fully-executed Certification of Reimbursable Project Costs in accordance with the Agreement.

.20 \$ _____ \$ _____ \$ _____ _____

.20 \$ _____ \$ _____ \$ _____ _____

.20 \$ _____ \$ _____ \$ _____ _____

EXHIBIT D
Certificate of Substantial Completion

The undersigned is the _____ of _____, the Architect/Engineer for the Phase III Levee Improvements carried out by the Monarch-Chesterfield Levee District (the "Levee District") in accordance with the terms of that certain Intergovernmental Cooperation Agreement dated _____, 1999 by and between the City of Chesterfield, Missouri, and the Levee District, as amended on August 21, 2001 and as further amended on _____, 2005 (the "Agreement"). Capitalized terms not otherwise defined herein shall have the meaning given them in the Agreement

The undersigned hereby certifies to the City that: (a) the construction of the Phase III Levee Improvements has been reviewed and found to be substantially complete; (b) the work on the Phase III Levee Improvements has been performed in a workmanlike manner and in accordance with the Agreement; (c) lien waivers for applicable portions of the work have been obtained; (d) the date of substantial completion of the Phase III Levee Improvements is the date of this Certificate; and (e) the costs incurred in the substantial completion of the Phase III Levee Improvements are as set forth on Schedule I, attached hereto, are in accordance with the Agreement, and such costs total \$ _____ or more.

IN WITNESS WHEREOF, the undersigned has duly executed this Certificate on the _____ day of _____, 200__.

[NAME OF ARCHITECT/ENGINEER]

By: _____
Title: _____

Accepted and Approved:

THE CITY OF CHESTERFIELD, MISSOURI

By: _____
Title: _____
Date: _____

EXHIBIT E
Reimbursable Project Costs

	Reimbursable Project Cost Category	Amount
A.	Levee Construction Costs	\$6,224,651
B.	Utility Relocation	\$100,000
C	Toe Access Road	\$195,000
D.	Pump Station Upgrade	\$150,000
E.	Acquisition of Easements/Rights-of-Way	4,900,000
F.	Regulatory/Permitting/Mitigation	300,000
	Verified Additional Mitigation Costs	150,000
	Outfall Structure	50,000
	Greenville Contract (wetlands maintenance)	25,000
G.	Professional Fees (including \$190,000 in Section 211 Professional Fees)	1,020,000
H.	Detention Ponds	\$350,000
	Maximum Aggregate Reimbursable Project Costs	\$13,464,651

EXHIBIT F
Certificate of Reimbursable Project Costs

The undersigned hereby represents in connection with Ordinance No. _____ passed by the City of Chesterfield on _____, 2001 (the "Ordinance"), as follows:

1. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Ordinance.
2. Each item listed on the attached list constitutes a Reimbursable Project Cost and was incurred in connection with the Phase III Levee Improvements. Supporting documentation of the nature and amount of each Reimbursable Project Cost submitted herein has been filed with the City.
3. These Reimbursable Project Costs have been incurred by the Levee District and are presently due and payable or have been paid by the Levee District and are payable or reimbursable under the Agreement.
4. Each item so listed has not previously been paid or reimbursed from moneys in the Special Allocation Fund and no part thereof has been included in any other certificate previously filed with the City.
5. There has not been filed with or served upon the Levee District any notice of any lien, right of lien or attachment upon or claim affecting the right of any person, firm or corporation to receive payment of the amounts stated in this request, except to the extent any such lien is being contested in good faith.
6. In the event that any cost item to be reimbursed under this certificate is deemed to not constitute a "Redevelopment Project Cost" within the meaning of the Act and the Agreement, the Levee District shall have the right to substitute other eligible Reimbursable Project Costs for payment hereunder, except as otherwise provided in the Agreement.
7. The Levee District is not in default or breach of any term or condition of the Agreement.

Dated this ___ day of _____, 200__.

MONARCH-CHESTERFIELD LEVEE DISTRICT

By: _____
President

The Reimbursable Project Costs set forth in the foregoing Certificate of Reimbursable Project Costs are approved for payment this _____ day of _____, 20__.

CITY OF CHESTERFIELD, MISSOURI

By: _____
Director of Finance and Administration

EXHIBIT G
License