

AN ORDINANCE AUTHORIZING THE EXECUTION OF AN AMENDED AND RESTATED AGREEMENT WITH THE MONARCH-CHESTERFIELD LEVEE DISTRICT TO PROVIDE FOR IMPROVEMENTS TO THE MONARCH-CHESTERFIELD LEVEE; CONDITIONALLY AUTHORIZING THE ISSUANCE OF A TAX INCREMENT REVENUE NOTE IN A MAXIMUM PRINCIPAL AMOUNT NOT TO EXCEED \$13,464,651 FOR THE PURPOSE OF PAYING A PORTION OF THE REDEVELOPMENT PROJECT COSTS IN CONNECTION WITH SAID LEVEE IMPROVEMENTS; PRESCRIBING THE FORM AND DETAILS OF SAID NOTES AND THE COVENANTS AND AGREEMENTS MADE BY THE CITY TO FACILITATE AND PROTECT THE PAYMENT THEREOF; 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 desire to amend and restate the 1999 Agreement to expand 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 (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 City and the Levee District further desire to (i) provide for the grant of recreation easements by the Levee District to the City; (ii) modify the calculation for interest rate reimbursement under the herein approved Amended and Restated Intergovernmental Cooperation Agreement (the "Agreement"); and (iii) expand the definition of land acquisition costs to include in kind payments made by the Levee District in lieu of cash payments. 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 the 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 Improvements; and

WHEREAS, in connection with the 1999 Agreement, the City and the Levee District jointly financed the costs incurred in connection with the Phase III Levee Improvements by the issuance by the Levee District of approximately \$17,000,000 principal amount Levee District Improvement Bonds, Series 1999 (the "Series 1999 Bonds") and by the issuance by the City of \$13,344,651 principal amount Series 2001 TIF Note, Series 2000 (the "Series 2000 Note"), which Series 2000 Note has remained in escrow with the City; and

WHEREAS, the City and the Levee District desire to refund the Series 2000 Note and to provide for the issuance by the City of a Series 2001 TIF Note under the terms and conditions of the Agreement; and

WHEREAS, the City Council hereby determines that the fulfillment generally of the 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. Definitions of Words and Terms. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agreement. In addition to the foregoing and other words and terms defined elsewhere in this Ordinance, the following capitalized words and terms, as used in this Ordinance, shall have the following meanings:

“Act” means Sections 99.800 to 99.865, inclusive, of the Revised Statutes of Missouri, as amended.

“Additional TIF Obligations” means any additional parity TIF Obligations described in and issued pursuant to **Section 10** of this Ordinance.

“Agreement” means the Amended and Restated Intergovernmental Cooperation Agreement between the City and Levee District authorized by this Ordinance in substantially the form of **Exhibit A**.

“Approving Ordinance” means Ordinance numbered 953 of the City dated October 17, 1994, pertaining to the approval of the Redevelopment Plan and creation of the Redevelopment Project Area for Chesterfield Valley Tax Increment Financing District.

“Business Day” means a day on which (i) the New York Stock Exchange is not closed and (ii) none of the following are required or authorized to close: banks or savings and loan associations located in the City.

“City” means the City of Chesterfield, Missouri, and its successors or assigns.

“City Engineer” means the City Engineer of the City of Chesterfield, Missouri, or any other officer as may be assigned, from time to time, to the duties of that office.

“Deficiency” means the difference between the interest and principal payment scheduled to be paid on a Payment Date and the amount then available in the Special Allocation Fund to satisfy the amount owed by the City.

“Finance Director” means the City’s Director of Finance and Administration or such other officer of the City authorized, from time to time, to act as the chief financial officer and treasurer by the City.

“Fund Ordinance” means Ordinance numbered 954 of the City dated October 17, 1994, adopting tax increment financing.

“Future Priority TIF Obligations” shall have the meaning given that term in **Section 7** of this Ordinance.

“*Levee District*” means the Monarch-Chesterfield Levee District, a public corporation duly authorized and existing under the laws of the State of Missouri.

“*Maturity Date*” means the earlier of: (i) the date of repayment of the Series 2001 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.

“*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.

“*Original Purchaser*” means the Levee District.

“*Owner*”, when used with respect to the Series 2001 TIF Note, means the holder of the Series 2001 TIF Note.

“*Payment Dates*” means each February 15 and August 15, commencing on the first February 15 or August 15 following the date that is three years after the date of issuance of the Levee District’s Series 1999 Bonds, or if any such day is not a Business Day, the first Business Day thereafter.

“*Prior Notes*” shall have the meaning given that term in the Agreement.

“Project” means the acquisition, construction and installation of the Phase III Levee Improvements, as that term is defined in the Agreement and described in Exhibit A of the Agreement and the recitals hereto.

“Redevelopment Plan” means the Redevelopment Plan for Chesterfield Valley Tax Increment Financing District, City of Chesterfield, Missouri, dated August 17, 1994, as amended.

“Redevelopment Project Area” means that area legally described as a redevelopment project area in the Redevelopment Plan approved pursuant to the Approving Ordinance.

“Redevelopment Project Costs” means those redevelopment project costs, as defined in the Act, that may be paid financed through tax increment financing and which the City has provided for under the Redevelopment Plan.

“Series 1999 Bonds” means the Levee District’s approximately \$17,000,000 principal amount Levee District Improvement Bonds, Series 1999, the proceeds of which shall be used to fund the Phase III Levee Improvements as described in the Agreement.

“Series 2001 Note” or *“Series 2001 TIF Note”* means the Tax Increment Revenue Note (Chesterfield Valley Redevelopment Project), Series 2001 of the City, in an aggregate principal amount not to exceed \$13,464,651, authorized and issued pursuant to this Ordinance.

“Special Allocation Fund” means the fund by that name created by Section 4 of the Fund Ordinance.

“State” means the State of Missouri.

“TIF Obligations” shall have the meaning given that term in **Section 7** of this Ordinance.

Section 2. Ratification of Plan. The City Council hereby ratifies and confirms its approval of the Redevelopment Plan. The City Council further finds and determines that it is necessary and desirable to enter into the Intergovernmental Cooperation Agreement with the Levee District in order to continue implementation of the redevelopment of the Chesterfield Valley Area and in fulfillment generally of the Plan.

Section 3. Authorization of Agreement. The City Administrator is hereby authorized and directed to execute, on behalf of the City, the 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 4. Redemption of Series 2000 Note. The Finance Director is hereby authorized and directed to refund and cancel the Series 2000 Note, which Series 2000 Note shall be deemed defeased upon the issuance of the Series 2001 Note and the City shall have no further obligation under the Series 2000 Note.

Section 5. Authorization of Series 2001 TIF Note. There is hereby authorized and directed to be issued the Tax Increment Revenue Note (Chesterfield Valley Redevelopment Project), Series 2001 of the City (the “**Series 2001 TIF Note**”) in an aggregate original principal amount not to exceed Thirteen Million Four Hundred Sixty-Four Thousand Six Hundred Fifty-One and No/100 Dollars (\$13,464,651.00) for the purpose of paying a portion of those Project costs determined to be Redevelopment Project Costs in connection with the Redevelopment Plan, as provided in this Ordinance and the Agreement. Upon the fulfillment of the conditions precedent set forth in the Agreement, the Mayor is authorized and directed to execute and deliver on behalf of the City the Series 2001 TIF Note in substantially the form set forth in **Exhibit B** to the Agreement, and the City Clerk is hereby authorized and directed to attest to said Series 2001 Note and to affix the seal of the City thereto.

Section 6. Security for Series 2001 TIF Note. The Series 2001 TIF Note shall be a special obligation of the City payable solely from, and, subject to the terms of the Agreement, secured as to the payment of principal and interest by a pledge of the Net Proceeds deposited in the City’s Special Allocation Fund, and the taxing power of the City is not pledged to the payment of the Series 2001 TIF Note either as to principal or interest. The Series 2001 TIF Note shall not be or constitute a general obligation of the City, nor shall it constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter provision, limitation or restriction. EXCEPTED AS PROVIDED IN **SECTION 16** HEREOF, THE OBLIGATIONS OF THE CITY WITH RESPECT TO THE SERIES 2001 TIF NOTE SHALL TERMINATE ON DECEMBER 31, 2017, WHETHER OR NOT THE PRINCIPAL AMOUNT HAS BEEN PAID IN FULL.

Section 7. Description of Series 2001 TIF Note. Upon fulfillment of the conditions set forth in the Agreement, the Series 2001 TIF Note shall be issued in an aggregate principal amount not to exceed \$13,464,651, subject to abatement in accordance with the Agreement. The Series 2001 TIF Note shall be dated the date of its execution and delivery, and, subject to prepayment, shall mature and expire on the Maturity Date. Simple interest shall accrue on unpaid principal of the Series 2001 TIF Note at a rate equal to the net interest cost of the Series 1999 Bonds. Payments of the principal of and interest on the Series 2001 TIF Note shall be made by the City solely from funds on deposit in the City’s Special Allocation Fund and from no other source semi-annually on February 15 and August 15, but in no event shall the City be obligated, by the terms of the Series 2001 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 Series 2001 TIF Note shall be subordinate to (i) the Prior Notes, (ii) all other tax increment financing obligations of the City (“*TIF Obligations*”) outstanding as of the date of this Agreement (including any future TIF Obligations refunding the such currently outstanding TIF Obligations), and (iii) any future TIF Obligations in an aggregate principal amount of up to Eighteen Million Dollars (\$18,000,000) (“*Future Priority TIF Obligations*”).

Section 8. Method and Place of Payment of Series 2001 TIF Note. The principal of and interest on the Series 2001 TIF Note shall be payable in any coin or currency which, on the respective dates of payment thereof, in legal tender for the payment of debts due the United States of America. Payment shall be made by the Finance Director at the offices of the City on each Payment Date upon presentation of the Series 2001 TIF Note by a duly authorized representative of Owner. Upon payment of interest and principal and the notation upon the payment ledger of the Series 2001 TIF Note, the Finance Director shall enter the amount paid and outstanding balance on its books which shall be rebuttably presumptive evidence of the principal amount outstanding on the Series 2001 TIF Note.

Section 9. Transfer and Assignment. The Series 2001 TIF Note is being issued to the Original Purchaser pursuant to the Agreement. The Series 2001 TIF Note is not transferable or assignable except upon the express written permission of the City and only upon such terms and conditions the City, in its sole discretion, places upon any such transfer or assignment.

Section 10. Authorization of Additional TIF Obligations. Subject to the limitations set forth in the Agreement, the City may issue, in addition to Future Priority TIF Obligations, TIF Obligations on a parity with the Series 2001 TIF Note (“*Additional TIF Obligations*”) under the following circumstances:

(a) Before any Additional TIF Obligations shall be issued under the provisions of this Section, the City shall adopt an ordinance authorizing the issuance of such Additional TIF Obligations, fixing the amount and terms thereof pursuant to the Agreement; and

(b) Such Additional TIF Obligations shall be executed substantially in the form and manner set forth herein; and

(c) The City provides the Levee District with fifteen days’ written notice of its election to issue the Additional TIF Obligations; AND EITHER

(ii) 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 Series 2001 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

(iii) Additional TIF Obligations are issued in connection with a redevelopment project consisting of the construction of at least one hundred thousand square feet of building improvements on a parcel or parcels under common ownership or control; *provided that* interest on said Additional TIF Obligations shall not be payable from the Special Allocation Fund until such time that monies attributable to said redevelopment project are deposited in the Special Allocation Fund.

Section 11. Funds and Accounts. The creation and establishment in the treasury of the City of the following funds and accounts is hereby ratified: Chesterfield Valley Special Allocation Fund of the City of Chesterfield (the “*Special Allocation Fund*”), and within the Special Allocation Fund, a PILOTs Account and an Economic Activity Tax Account.

Section 12. Administration of Funds and Accounts. The funds and accounts established, or the establishment of which was ratified, pursuant to Section 4 of the Fund Ordinance and **Section 11** hereof shall be maintained and administered by the City solely for the purposes and in the manner as provided in this Ordinance so long as any portion of the Series 2001 TIF Note remains outstanding hereunder.

Section 13. Special Allocation Fund. Pursuant to the Act and this Ordinance, the Finance Director shall deposit all Net Proceeds into the Special Allocation Fund.

Section 14. Application of Moneys in the Special Allocation Fund. So long as any of the TIF Obligations remain outstanding, the Finance Director shall, on Payment Dates administer and allocate the moneys held in the PILOTs Account and, subject to annual appropriation by the City, the Economic Activity Tax Account as follows:

(a) *Fees and Expenses.* There shall first be paid to the City or its payees any fees and expenses incurred by the City incidental to the Redevelopment Plan or the TIF Obligations; *provided that* such amount shall not exceed the sum of \$100,000 during any calendar year.

(b) *Payment of Series 2001 TIF Notes.* There shall next be paid to the Owner an amount equal to the interest and principal then due pursuant to the Series 2001 TIF Note.

(c) *Payment of Deficiency.* There shall next be paid to the Owner of the Series 2001 TIF Note amounts owed on all outstanding Deficiencies.

(d) *Prepayment of Series 2001 TIF Notes.* At the City's sole discretion, the City may prepay any portion of or the entire principal amount owed on the Series 2001 TIF Note.

(e) *Payment on Maturity Date.* If not repaid in full sooner, the entire outstanding balance of the Series 2001 TIF Note together with all interest thereon, shall be paid on December 31, 2017, but only to the extent that Net Proceeds are available in or then due to the Special Allocation Fund as of December 31, 2017. Except as provided in **Section 16** hereof, the City shall have no further obligations under this Ordinance or the Series 2001 TIF Note after December 31, 2017.

Except as provided in **Section 16** hereof, all moneys remaining in the Special Allocation Fund after December 31, 2017, shall be treated as "surplus" as defined in the Act, and distributed in the manner provided by law.

Section 15. Levy and Collection of Net Proceeds. The City hereby ratifies and confirms its obligation to levy and collect Net Proceeds pursuant to the Act for deposit in the Special Allocation Fund for the purpose of paying the Series 2001 TIF Note.

Section 16. Payments Due on Saturdays, Sundays and Holidays. In any case where the date of maturity of principal of or interest on the Series 2001 TIF Note is a Saturday, a Sunday or a legal holiday or other day that is not a Business Day, then payment of principal or interest need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period after such date.

Section 17. Notices, Consents and Other Instruments. Any notice, consent, request, direction, approval, objection or other instrument required by this Ordinance to be signed and executed by the Owner of the Series 2001 TIF Note may be in any number of concurrent writings of similar tenor and may be signed or executed by such Owner in person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of the Series 2001 TIF Note, if made in the following manner, shall be sufficient for any of the purposes of this Ordinance, and shall be conclusive in favor of the City with regard to any action taken, suffered or omitted under any such instrument, namely:

(a) The fact and date of the execution by any person of any such instrument may be proved by a certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such instrument acknowledged before such officer the execution thereof, or by affidavit of any witness to such execution.

(b) The fact of ownership of the Series 2001 TIF Note, the amount or amounts and other identification of the Series 2001 TIF Note, and the date of holding the same shall be proved by the registration books of the City.

Section 18. Execution of Documents. The City is hereby authorized to enter into and the Mayor is hereby authorized and directed to execute and deliver, for and on behalf of and as the act and

deed of the City, the Series 2001 TIF Note and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

Section 19. 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 20. 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 21. Governing Law. This Ordinance shall be governed exclusively by and constructed in accordance with the applicable laws of the State of Missouri.

Section 22. 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 23. 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 September 20, 2001.

PASSED AND APPROVED THIS 20th DAY OF August, 2001.

(SEAL)

Attest:

Martha D. DeMay
City Clerk

Mayor

**AMENDED AND RESTATED INTERGOVERNMENTAL COOPERATION
AGREEMENT**

THIS AMENDED AND RESTATED INTERGOVERNMENTAL COOPERATION AGREEMENT ("*Agreement*") is made and entered into as of the ____ day of _____, 2001, by and between the City of Chesterfield, Missouri (the "*City*") and Monarch-Chesterfield Levee District (the "*Levee District*").

R E C I T A L S

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. The City and the Levee District desire to amend and restate the 1999 Agreement to expand 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** not less than ___ feet onto the Kirchoff property; 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 Recitals G(i), (ii) and (iii) and the Additional Work are referred to herein as the “*Phase III Levee Improvements*” or the “*Project*”).

I. The City and the Levee District further desire to (i) to provide for the grant of recreation easements by the Levee District; (ii) to modify the calculation for interest rate reimbursement under the Agreement; and (iii) to expand the definition of land acquisition costs to include in kind payments made by the Levee District in lieu of cash payments. 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.

J. 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:

I. **Valley 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 Valley Improvements as are described below, subject to the limitations otherwise set forth in this Agreement.

1. **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:

A. **Refunding Note Tax Increment Financing and Issuance of Levee District Improvement Bonds, Series.** 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 has held the Series 1999 Note in escrow and has paid interest to the Levee District on the Series 1999 Note in accordance with the 1999 Agreement. Within fifteen (15) days after the date of the City ordinance authorizing this Agreement, the City shall cancel the Series 1999 note and concurrently therewith, the City shall issue a \$13,464,651 principal amount Levee District Improvement Note, Series 2001 (the “*Series 2001 Note*”) for the purpose of evidencing the

City's obligations hereunder to reimburse the Levee District for certain Reimbursable Project Costs, as hereinafter defined.

B. 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.

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

D. The City's Payment. In addition to the contribution to Reimbursable Project Costs pursuant to Section 1.C. above, the City hereby agrees to make additional cash contributions for the Additional Work as follows: 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 (the "*Levee District Payment*") bringing the City's total Phase III Levee Contribution to \$13,464,651. 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.(J) 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.

2. 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:

A. City's Obligation to Make Contributions to be Evidenced by a TIF Note, Except as Set Forth Herein. The Phase III Levee Contribution shall be made by the City exclusively pursuant to a note in substantially the form of **Exhibit C** hereto (the "*TIF Note*") except as provided herein for reimbursement for the Additional Work.

B. 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.C.** and **2.D.** 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*").

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

D. 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.C.** 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.C.** 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.

E. 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.

3. Reimbursable Project Costs

A. Reimbursable Project Costs Defined. As used herein, the term “Reimbursable Project Costs” means, subject to the limitations set forth in **Section 3.B.** 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.E.

B. 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**.

C. 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.(A)** 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.

D. 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.

E. 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.

4. 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.

5. 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:

A. 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.

B. 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 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.

C. Receipt of Grant. To the extent that the Levee District receives a cash grant or grants or is reimbursed in immediately available cash funds for any expenses incurred in

connection with the 1999 Levee Improvements from any federal, state or local government, other than the City, or from any other agencies, departments and bureaus, the outstanding principal amount of the TIF Note shall be permanently abated in the dollar amount of such grant(s) or reimbursement(s). For purposes hereof, the incremental increase in revenues from and any proceeds from grants or other reimbursements are collectively referred to as "*Additional Revenues.*"

D. Failure to Timely Construct Project. If the Project is not completed within three (3) years of the date of this Agreement, the outstanding principal amount of the TIF Note shall be permanently abated by the amount of Five Million Dollars (\$5,000,000), unless otherwise agreed to by the City.

E. Limitations on Abatement. Notwithstanding anything herein to the contrary, the TIF Note shall not be abated by operation of **Section 5.C.** above (i) 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); (ii) 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 (iii) 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.

F. 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.

6. 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.

7. **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:

A. **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 within ninety (90) days of substantial completion, shall convey the *Parcels* to the City by Special Warranty Deed subject to levee and/or underseepage berm easements, as determined by the Levee District.

B. **Execution of documents.** The following documents have been executed and recorded:

(i) Final Subdivision Plat of the Chesterfield Commons Shopping Center, prepared by _____ and dated _____, recorded in Plat Book _____, Page _____ of the Office of St. Louis County Recorder of Deeds.

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

8. **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 in accordance with the terms hereof.

9. **Other Levee District Covenants.** In order to induce the City to enter into this Agreement, the Levee District covenants and agrees as follows:

A. **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.

B. 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 7(C)** 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.

C. 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.

D. 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 7(C)** 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.

E. 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.

F. 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 **Section 9(D)** and **(E)** as depicted in the shaded area set forth in **Exhibit K** attached hereto and incorporated herein by reference.

G. 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.

H. 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.

I. 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.

J. 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.

K. 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.

9. 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.

10. 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.

11. Miscellaneous.

A. 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.

B. 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.

C. 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.

D. 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.

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

F. Severability. In the event any term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full

force and effect, to the extent the remainder can be given effect without the invalidated provision.

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

H. 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.

I. 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.

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. Fleming*
City Administrator

(Seal)

Attest: *Melissa L. DeMay*
City Clerk

**MONARCH-CHESTERFIELD
DISTRICT**

LEVEE

By: _____
President of the Board of Supervisors

(Seal)

Attest: _____
Secretary of the Board of Supervisors

ACKNOWLEDGMENT

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

On this _____ day of _____, 2001, before me, the undersigned, a Notary Public, appeared _____ and Marty DeMay, to me personally known, who, being by me duly sworn, did say that they are the Mayor 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.

Printed Name: _____
Notary Public in and for said State
Commissioned in _____ County

(SEAL)

My commission expires: _____

ACKNOWLEDGMENT

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

On this ___ day of _____, 2001, 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.

Printed Name: _____
Notary Public in and for said State
Commissioned in _____ County

(SEAL)

My commission expires: _____

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

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: *Michael S. Fleming*
Title: CITY ADMINISTRATOR

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__	\$ _____	\$ _____	\$ _____	_____
,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 (the "Agreement") between the City of Chesterfield, Missouri, and the Levee District. 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	6,639,651
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
G.	Professional Fees	830,000
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

EXHIBIT H-1

Legal Description of the Moore Parcel

EXHIBIT H-2

Legal Description of the Fitzgerald Parcel

EXHIBIT I

Levee Agreement

EXHIBIT J

Permanent Underseepage Berm Protective Restrictions

EXHIBIT K

Drainage Facilities Easement

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 mortgages

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.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in multiple counterparts, each of which shall have the force and effect of an original.

MONARCH-CHESTERFIELD LEVEE DISTRICT

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 _____ of the Monarch-Chesterfield Levee District and that said instrument was signed on behalf of said Monarch-Chesterfield Levee District by authority of its Board of Directors, and he acknowledged said instrument to be the free act and deed of said Monarch-Chesterfield Levee District.

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

Notary Public

SEAL

My Commission expires:

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