

BILL NO. 2593

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE PRE-PAYMENT OF THE OUTSTANDING PRINCIPAL OF THE \$13,464,651 MONARCH-CHESTERFIELD LEVEE DISTRICT IMPROVEMENT NOTE, SERIES 2002; AUTHORIZING THE EXECUTION AND DELIVERY OF AN ESCROW DEPOSIT AGREEMENT BY AND BETWEEN THE CITY, THE MONARCH-CHESTERFIELD LEVEE DISTRICT AND WELLS FARGO BANK, AS ESCROW AGENT; AUTHORIZING THE MAYOR TO EXECUTE AND DELIVER SAME; AUTHORIZING WELLS FARGO BANK TO TRANSFER FUNDS FOR THE AFOREMENTIONED ESCROW DEPOSIT; AND AUTHORIZING CERTAIN FURTHER ACTIONS.

WHEREAS, the Chesterfield Valley Area within the City of Chesterfield has been previously designated a "Redevelopment Area" pursuant to an approved "redevelopment plan" (the "*Redevelopment Plan*") pursuant to Sections 99.800 to 99.865 of the Revised Statutes of Missouri, the Real Property Tax Increment Allocation Redevelopment Act (the "*TIF Act*"), and established the Chesterfield Valley Special Allocation Fund (the "*Special Allocation Fund*"); and

WHEREAS, the Redevelopment Plan approved certain redevelopment project costs including reconstruction of and improvements to the existing Monarch-Chesterfield Levee (the "*Levee*"), which is under the jurisdiction of the Monarch-Chesterfield Levee District (the "*Levee District*"); as needed to provide 500-year flood protection from the Missouri River and Bonhomme Creek; and

WHEREAS, the City issued a \$13,464,651 principal amount Monarch-Chesterfield Levee District Improvement Note, Series 2002 (the "*TIF Note*") for the purpose of evidencing the City's obligation under the Second Amended and Restated Intergovernmental Cooperation Agreement by and between the City and the Levee District to reimburse the Levee District for certain Reimbursable Project Costs; and

WHEREAS, the Second Amended and Restated Intergovernmental Cooperation Agreement provided for a certain abatement (as described therein) of the TIF Note issued for the West-End Project; and, further, that any prepayment of the TIF Note by the City during the Abatement Period (as defined therein) shall be by and through the Escrow Fund established with the Escrow Agent by and through a mutually agreeable Escrow Deposit Agreement; and

WHEREAS, the City Council finds it desirable and in the best interests of the City to pre-pay the TIF Note and authorize and approve the execution and delivery of an Escrow Deposit Agreement.

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

SECTION 1. The City Council hereby approves and authorizes and directs the pre-payment of the City's \$13,464,651 principal amount Levee District Improvement Note, Series

2002, pursuant to the terms of and in connection with the execution and delivery of an Escrow Deposit Agreement.

SECTION 2. The Mayor of the City is hereby authorized and directed to execute and deliver, and the City Clerk is authorized to attest, the Escrow Deposit Agreement substantially in the form as attached hereto as **Exhibit A**, incorporated herein by this reference, with such changes and modifications as authorized and approved by the Mayor as are deemed necessary and desirable to fulfill the spirit and intent of this ordinance, the signatures of the officers of the City thereupon being sufficient evidence of such authorization and approval.

SECTION 3. The City Council hereby authorizes and directs the City's Finance Officer to withdraw from Chesterfield Valley Area TIF monies held by Wells Fargo Bank, as Trustee, an amount not to exceed \$6,080,344.00 for the funding of the Escrow Deposit and the Finance Officer is further directed to pay over such funds to the Escrow Agent, provided for in the Escrow Deposit Agreement.

SECTION 4. All ordinances, parts of ordinances or provisions of the Municipal Code of the City in conflict with any provisions of this Ordinance are hereby repealed.

SECTION 5. The sections, paragraphs, phrases, clauses, and words of this Ordinance shall be severable. In the event that any portion of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining portions of this Ordinance are valid, unless the court finds the valid portions of this Ordinance are so essential and inseparably connected with and dependent upon the void portion that it cannot be presumed that the City Council would have enacted the valid portions without the invalid ones, or unless the court finds that the valid portions standing alone are incomplete and are incapable of being executed in accordance with the legislative intent.

PASSED AND APPROVED THIS ____ DAY OF _____, 2007.

CITY OF CHESTERFIELD, MISSOURI

By: _____
Mayor

ATTEST:

City Clerk

ESCROW DEPOSIT AGREEMENT

among

THE CITY OF CHESTERFIELD

and

MONARCH-CHESTERFIELD LEVEE DISTRICT

and

**WELLS FARGO BANK, NATIONAL ASSOCIATION,
AS ESCROW AGENT**

DATED AS OF DECEMBER __, 2007

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ESCROW DEPOSIT AGREEMENT

THIS ESCROW DEPOSIT AGREEMENT, dated as of December __, 2007, (the "*Agreement*"), by and among **THE CITY OF CHESTERFIELD, MISSOURI**, a third class city and a political subdivision of the State of Missouri (the "*City*"), **MONARCH-CHESTERFIELD LEVEE DISTRICT**, a levee district and political subdivision duly organized and existing under the laws of the State of Missouri (the "*Levee District*"), and **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association duly organized and existing under and by virtue of the laws of the United States of America, in its capacity as escrow agent (or any successor thereto, hereinafter the "*Escrow Agent*").

WITNESSETH:

WHEREAS, the City, by ordinance, designated the Chesterfield Valley Area within the City as a "redevelopment area" and approved a "redevelopment plan" (the "*Redevelopment Plan*") pursuant to the Real Property Tax Increment Allocation Redevelopment Act, § 99.800, *et seq.*, RSMo (the "*TIF Act*"), and 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 for needed public infrastructure, 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; and

WHEREAS, the City sought to maximize the effect of the limited Tax Increment Financing funds available for public infrastructure improvements under the Redevelopment Plan and, therefore, participated in multiple forward funding agreements which provided for reimbursed proceeds to be directed to the City Special Projects – Deferred Revenue Account; 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 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; and

WHEREAS, 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 within the Chesterfield Valley Area including the improvements referred to as the "*1999 Levee Improvements*"; and

WHEREAS, on August 21, 2001 the City and the Levee District entered into an Amended and Restated Intergovernmental Cooperation Agreement (the "*Amended Agreement*") which expanded the original scope of work to include additional redevelopment project costs including certain Additional Work, which collectively with the 1999 Levee Improvements and the Additional Work are referred to herein as the "*Phase III Levee Improvements*"; and

WHEREAS, on December 30, 2005, the City and the Levee District entered into a Second Amended and Restated Agreement (the "*Second Amended and Restated Agreement*") which included

additional Project Costs and expanded the original scope of work to the US Turf Drainage Project and Ice Sports Complex Pump Station Project (collectively, the "City Projects") and provided the extension of water and sewer infrastructure to the western portion of Chesterfield Valley (the "West End Project") and provided for the funding of the West End Project; and

WHEREAS, the Second Amended and Restated Agreement also provided for the funding of projects from the TIF City Special Projects Fund, which requires future reimbursements for same from the Levee District, and, further, which said reimbursements are intended by the City to be directed to the City Special Projects - Deferred Revenue Account thereby providing funding for other future infrastructure projects within Chesterfield Valley; and

WHEREAS, 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 have been used primarily to fund the Phase III Levee Improvements (the Series 1999 Bonds together with any and all bonds as may be issued by the Levee District to fund the Phase III Levee Improvements outstanding as of December 30, 2005 and for which revenues from the TIF Note (defined below) are pledged for repayment, including any and all bonds or other instruments issued to refund such bonds, are collectively referred to herein as the "Levee District Bonds"); and

WHEREAS, on March 1, 2001, the City issued \$13,344,651 principal amount Levee District Improvement Note, Series 1999 (the "Series 1999 Note"). The City held the Series 1999 Note in escrow and paid interest to the Levee District on the Series 1999 Note in accordance with the 1999 Agreement. On March 15, 2002, the City canceled the Series 1999 Note and concurrently therewith, the City issued a \$13,464,651 principal amount Levee District Improvement Note, Series 2002 (the "TIF Note") for the purpose of evidencing the City's obligations under the Amended Agreement to reimburse the Levee District for certain Reimbursable Project Costs; and

WHEREAS, the Second Amended and Restated Agreement provides at **Section 5.5** for abatement (as described therein) of portions of the principal and interest due under the TIF Note pursuant to the abatement formula tied to the increases in assessed valuation of the improvements constructed upon property as a result of the West-End Project; and, further, that any prepayment of the TIF Note by the City during the Abatement Period (as defined therein) shall be by and through the Escrow Fund established with the Escrow Agent; and

WHEREAS, the City and Levee District desire to establish the Escrow Fund with the Escrow Agent for the purposes provided in **Section 5.5** of the Second Amended and Restated Agreement for the prepayment by the City of the outstanding principal and the accrued interest, if any, of the TIF Note as of December ___, 2007; and

WHEREAS, the prepayment by the City of monies into the Escrow Fund shall include prepayment of the remaining unendorsed principal balance of the TIF Note of \$504,152, reduced as further Certificates of Reimbursement of the Levee District are submitted to and approved by the City through the same procedure set forth in the Second Amended and Restated Agreement (the "Unendorsed Note Balance").

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

1. **Creation and Ratification of the Escrow Fund.** There is hereby created a special Escrow Fund designated the "Monarch-Chesterfield Levee District TIF Note Escrow Fund, Series 2002" (the "Escrow Fund") to be held in the custody of the Escrow Agent and invested in the Investment

Securities as a segregated account separate and apart from all other funds held by the Escrow Agent, in trust for the benefit of the City and the Levee District, pursuant to the terms of this Escrow Agreement and the Second Amended and Restated Agreement.

2. Deposits into Escrow Fund.

(a) Concurrently with the execution of this Agreement, there is hereby deposited with the Escrow Agent, and the Escrow Agent hereby acknowledges the receipt of, immediately available funds in the amount of \$6,080,344.00 representing the prepayment by the City of the authorized principal amount, including the Unendorsed Note Balance, and accrued interest, of the TIF Note as of _____, 2007, which amount shall be deposited in the Escrow Fund. The prepayment amount deposited by the City represents the monies for the payment of principal and interest for the prepayment of the TIF Note. The City shall not be responsible for the payment of any arbitrage (as defined in Section 148 of the Internal Revenue Code of 1986, as amended, herein referred to as the "Code"), that may result from the prepayment of the TIF Note. The aforesaid funds so held shall be deposited in the Escrow Fund and applied and administered subject to and in accordance with the terms of this Agreement. The Unendorsed Note Balance, and any interest accruing thereon as from any Investment Securities, shall be maintained as a separate account within the Escrow Fund.

(b) The City and the Levee District hereby direct the Escrow Agent to purchase and invest the Escrow Fund in _____ simultaneously with the deposit of the Escrow Fund by the City with the Escrow Agent. The City and the Levee District may change the specified investment of the Escrow Fund in writing to the Escrow Agent. In the absence of other written investment directions, moneys on deposit in the Escrow Fund shall be and remain invested in _____.

"Abatement Certification Firm" means Development-Strategies, Inc. or such other qualified planning or certified public accounting firm mutually agreeable to the City and the Levee District and capable of annually calculating the Abatement Formula (as defined herein).

"Investment Securities" means any of the following securities purchased if and to the extent the same are at the time legal for investment of the funds being invested:

- (i) Government Obligations;
- (ii) bonds, notes or other obligations of the State, or any political subdivision of the State, that at the time of their purchase are rated in either of the two highest rating categories by a nationally recognized rating service;
- (iii) repurchase agreements with any bank, bank holding company, savings and loan association, trust company, or other financial institution organized under the laws of the United States or any state, that are continuously and fully secured by any one or more of the securities described in clause (i) or (ii) above and have a market value, exclusive of accrued interest, at all times at least equal to the principal amount of such repurchase agreement and are held in a custodial or trust account for the benefit of the City;
- (iv) obligations of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Financing Bank, the Federal Intermediate Credit Corporation, Federal Banks for Cooperatives, Federal Land Banks, Federal Home Loan Banks, Farmers Home Administration and Federal Home Loan Mortgage Corporation;

(v) certificates of deposit or time or demand deposits, whether negotiable or nonnegotiable, issued by any bank or trust company organized under the laws of the United States or any state, provided that such certificates of deposit or time or demand deposits shall be either (1) continuously and fully insured by the Federal Deposit Insurance Corporation, or (2) continuously and fully secured by such securities as are described above in clauses (a) through (c) above, inclusive, which shall have a market value, exclusive of accrued interest, at all times at least equal to the principal amount of such certificates of deposit or time or demand deposits;

(vi) money market mutual funds that are invested in Government Obligations or agreements to repurchase Government Obligations; and

(vii) any other securities or investments that are lawful for the investment of moneys held in such funds or accounts under the laws of the State.

"Government Obligations" means direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America.

3. Redemption of TIF Note; Creation of Lien upon Escrow Fund.

(a) The Levee District and the City hereby irrevocably elect and do hereby redeem the TIF Note with the funds of the Escrow Fund, excepting the Unendorsed Note Balance. The Unendorsed Note Balance, or any portion thereof, and any interest accruing thereon from any Investment Securities, shall not be utilized for payments hereunder by the Escrow Agent; provided, however, that, as the City accepts a Certificate of Reimbursable Project Costs, as filed by the Levee District for Wetland Mitigation Costs, the City shall notify the Escrow Agent and the Levee District of such acceptance and the amount of Unendorsed Note Balance monies as shall be transferred to the Escrow Fund to be available for the payments of principal and interest, including investment as a part of the Investment Securities, hereunder. The TIF Note shall hereafter be deemed satisfied, discharged and cancelled in accordance with the provisions of the Second Amended and Restated Agreement. Concurrently herewith, the Levee District has delivered the TIF Note to the City for cancellation. Any other provision of this Agreement or the Second Amended and Restated Agreement herein or therein contained notwithstanding, the City shall have no further obligation from and after the date hereof to reimburse the Levee District for Reimbursable Project Costs evidenced by the TIF Note or as obligated pursuant to the Second Amended and Restated Agreement.

(b) The City and the Levee District are hereby granted an express lien on, and security interest in, the cash and Investment Securities in the Escrow Fund and all earnings thereon until used and applied in accordance with this Agreement, except for the Unendorsed Note Balance. The City hereby holds the express lien on, and security interest in, the cash and Investment Securities representing the Unendorsed Note Balance.

(c) Except as otherwise expressly provided in **Section 4** hereof, such cash and the matured principal of and interest income from the Investment Securities in the Escrow Fund shall be applied solely for the payment of the principal and interest on the TIF Note and the payment of the expenses of the Abatement Certification Firm.

4. Application of Escrow Fund and Proceeds of Investment Securities. Except as otherwise expressly provided herein, the Escrow Agent shall have no power or duty to invest any monies held as the Escrow Fund hereunder or to sell, transfer or otherwise dispose of the Investment Securities except as follows:

(a) **Principal and Interest Payments from Escrow Fund.** Until the later of March 1, 2019 or the last maturity date of the Levee District Bonds (the "*Abatement Period*"), the Escrow Agent shall disburse from the Escrow Fund equal annual installments of the principal amount deposited in the Escrow Fund (the "*Principal Payment*"), assuming principal payments on February 15th and continuing for the term of the Abatement Period and assuming a final principal payment of \$1,500,000 at maturity, in accordance with the amortization schedule attached hereto as **Exhibit A** (the "*Escrow Fund Amortization Schedule*"), plus interest accrued thereon as of February 15th of each year. The Escrow Fund Amortization Schedule shall be based upon the actual Investment Securities obtained by the Escrow Agent as of the date the City deposits the monies for the Escrow Fund with the Escrow Agent.

(b) **Allocation of Principal Payment.** On February 15th of each year during the term hereof, the Escrow Agent shall allocate and disburse the Principal Payment between the City and the Levee District according to the following escrow payment allocation (the "*Escrow Payment Allocation*"): the amount determined by the Abatement Formula (defined below) shall be paid to the City Special Projects – Deferred Revenue Account and the remainder shall be paid to the Levee District. The Abatement Certification Firm, on behalf of the City and the Levee District, shall be obligated to provide a written calculation of the Escrow Payment Allocation, upon which calculation the Escrow Agent may conclusively rely unless instructed by the Levee District in writing that it disagrees with the Escrow Payment Allocation prepared by the Abatement Certification Firm for the applicable year, in which case the Escrow Agent shall withhold disbursement of the Principal Payment and associated interest determined under paragraph 4(c) of this Agreement until the earlier of: (A) June 15th of the applicable year; (B) written instruction by the Levee District to make payment in accordance with the Escrow Payment Allocation; or (C) written instruction by the Levee District and the City to make payment of principal to the parties in amounts other than provided in the Escrow Payment Allocation for the applicable year.

"*Abatement Formula*" means the annual calculation by the Abatement Certification Firm of the amount of annual abatement of the TIF Note payments payable to the City representing 50% of the Levee District's putative taxes on improvements in the West End Project Area, said taxes determined by the following formula: the difference resulting of (x) the St. Louis County Assessor's fair market valuation on improvements (excluding land) within the West End Project Area determined as of January 1st of the calendar year immediately preceding the annual principal payment; less (y) \$4,385,100 (the stipulated valuation on improvements existing as of the date of the Second Amended and Restated Agreement); multiplied by a factor of 20% to arrive at the assessed benefits; then, multiplied by the tax rate of 1.5%.

The Abatement Formula is illustrated as follows:

St. Louis County Assessor FMV of improvements in West End Project Area as of the date of the Second Amended and Restated Agreement:	\$10,000,000
St. Louis County Assessor FMV of improvements in West End Project Area as of January 1, 2009:	\$30,000,000
Increase in FMV of improvements in Project Area in 2009:	\$20,000,000
Putative Levee District Taxes on increase in FMV improvements in West End Project Area in 2009:	$\$20,000,000 \times 0.20 \times 0.015 = \$60,000$
Abatement Amount paid to City:	$0.50 \times \$60,000 = \$30,000$

(i) In no event shall the sum of every Abatement Amount paid to the City during the term hereof exceed the City West End Project Payment under the Second Amended and Restated Agreement. The City and the Levee District acknowledge and agree that the expected amount of the City West End Project Payment under the Second Amended and Restated Agreement is \$2,775,000, and the maximum amount is \$3,000,000.

(ii) In preparing the annual calculation of the Abatement Formula, the Abatement Certification Firm shall ensure that all parcels within the West End Project Area are included in the annual calculation. In the event any parcel within the West End Project Area shall be subject to a property tax appeal as of the date of the annual calculation of the Abatement Formula, then the Abatement Certification Firm shall utilize the most recent, un-appealed St. Louis County Assessor fair market valuation of the improvements for such parcel in the preparation of the Abatement Formula.

(c) Allocation of Interest Payment.

Subject to 4(b) herein, on February 15th of each year, the interest generated by the Escrow Fund, excluding the Unendorsed Note Balance and after the payment of the costs and fees set forth at Section 10, below, shall be paid to the City Special Projects – Deferred Revenue Account, in proportion to the following formula:

City portion of Escrow Payment Allocation divided by the principal amount in the Escrow Fund* immediately preceding the annual principal payment	X	Dollar amount of interest generated by the Escrow Fund* during the year immediately preceding the annual principal payment
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*Excluding the Unendorsed Note Balance

The balance of interest generated by the Escrow Fund, excluding the Unendorsed Note Balance shall be paid annually to the Levee District on February 15th of each year, subject to 4(b) herein.

(c) The liability of the Escrow Agent to make the payments required by this **Section 4** shall be limited to the cash and Investment Securities on deposit in the Escrow Fund. Notwithstanding any other provisions of this Agreement, the City and the Levee District hereby covenant and direct the Escrow Agent that no part of the monies or funds in the Escrow Fund shall be used, at any time, directly or indirectly, in a manner which, if such use had been reasonably anticipated on the date of issuance of the TIF Note, would have caused any part of the TIF Note to be an "arbitrage bond" under Section 148 of the Code, and the regulations of the Treasury Department thereunder.

(d) In the event of any shortfall of monies within the Escrow Fund, together with maturing Investment Securities, to provide for the Escrow Fund Amortization Schedule payments pursuant to **Exhibit A** hereto, then the City's portion of the Escrow Payment Allocation and related interest (excluding the Unendorsed Note Balance and any related interest) shall be reduced by the amount of the shortfall before reduction of the Levee District's portion of the Escrow Payment Allocation and related interest.

(e) In the event the Unendorsed Note Balance, or any portion thereof, is not endorsed by the City for payment by the Escrow Agent to the Levee District prior to June 30, 2008, then such Unendorsed Note Balance, or remaining portion thereof, and any interest accruing thereon as a part of any Investment

Securities, shall be returned by the Escrow Agent to the City Special Projects – Deferred Revenue Account.

(f) Additionally, in the event the Phase III Levee Improvements are not completed by the Levee District, as evidenced by the filing by the Levee District, and acceptance by the City, of a Certificate of Substantial Completion on or before December 30, 2007, as provided for in the Second Amended and Restated Agreement, then the outstanding Principal Payment shall be permanently abated by the sum of One Million Five Hundred Thousand Dollars (\$1,500,000).

5. Amendment to the Escrow Fund Amortization Schedule.

(a) In the event the City endorses the Unendorsed Note Balance, or any portion thereof, for payment by the Escrow Agent, then the Escrow Fund Amortization Schedule shall be amended by the City and the Levee District and tendered to the Escrow Agent.

(b) The City shall have no liability for the mathematical computations in determining the amount of the Escrow Fund nor any shortfall hereafter of monies in the Escrow Fund to provide for the Escrow Fund Amortization Schedule payments and the Levee District hereby releases, discharges and forever waives any claim, demand or cause of action against the City relating to the TIF Note, obligations to reimburse the Levee District for Reimbursable Project Costs pursuant to the Second Amended and Restated Agreement, or the sufficiency of any payments to be made pursuant to the Escrow Fund Amortization Schedule.

6. Escrow Agent Covenants. The Escrow Agent covenants and agrees with the City and the Levee District as follows:

The Escrow Agent will hold the Escrow Fund and any Investment Securities and all interest income or profit derived therefrom and all uninvested deposits in a segregated and separate trust fund account for the sole and exclusive benefit of the City and the Levee District for the purposes for which escrowed.

The Escrow Agent will submit to the City and the Levee District a statement within forty-five (45) days after each January 1st itemizing all moneys received by it and all payments made by it under the provisions of this Agreement during the preceding twelve (12) month period, and also listing the Investment Securities on deposit therewith on the date of said report.

7. Levee District and City Covenants. The Levee District and the City covenant and agree with the Escrow Agent as follows:

The Escrow Agent in its capacity hereunder shall have no responsibility or liability whatsoever for (a) any of the recitals of the City or the Levee District herein, (b) the performance of or compliance by the City or the Levee District with any covenant, condition, term or provisions hereunder or under the Indenture, (c) any undertaking or statement of the City or the Levee District hereunder or of the Levee District under the Indenture (d) the mathematical calculations and sufficiency of the Escrow Fund as described in **Section 4** above.

All payments to be made by, and all acts and things required to be done by, the Escrow Agent under the terms and provisions of this Agreement, shall be made and done by the Escrow Agent without any further direction or authority of the City or the Levee District.

8. **Remaining Funds.** All cash funds and Investment Securities, together with any income and interest thereon, remaining in the Escrow Fund after the termination of this Agreement, shall be transferred to the Levee District.

9. **Liability of Escrow Agent.**

(a) The Escrow Agent shall not be liable for any loss resulting from any investment, sale, transfer or other disposition made pursuant to this Agreement in compliance with the provisions hereof. Neither the Escrow Agent nor its creditors shall have an ownership interest in or lien whatsoever on, or right of set-off with respect to, any of the moneys or Investment Securities on deposit in the Escrow Fund for the payment of fees and expenses for services rendered by the Escrow Agent under this Agreement or otherwise.

(b) The Escrow Agent shall not be liable for the accuracy of the calculations as to the sufficiency of the Escrow Fund, Investment Securities and moneys hereunder to redeem the TIF Note. So long as the Escrow Agent applies the Investment Securities and moneys as provided herein, the Escrow Agent shall not be liable for any deficiencies in the amounts necessary to provide for payments pursuant to the Escrow Fund Amortization Schedule caused by such calculations. Notwithstanding the foregoing, the Escrow Agent shall not be relieved of liability arising from, and primarily caused by its failure to comply fully with the terms of this Agreement.

(c) In the event of the Escrow Agent's failure to account for the Escrow Fund or any Investment Securities or moneys received by it, said Escrow Fund and Investment Securities or moneys shall be and remain the property of the City and the Levee District as herein provided, and if for any reason, such Investment Securities or moneys are not applied as herein provided, the assets of the Escrow Agent shall be impressed with a trust for the amount thereof until the required application shall be made.

(d) The Escrow Agent may rely on, and shall be protected in acting upon or refraining from acting upon, in good faith, any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, verification, order, bond, debenture or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

(e) The Escrow Agent undertakes to perform such duties and only such duties as are specifically set forth in this Agreement, and no implied duties shall be interpreted to be apart of this Agreement as against the Escrow Agent.

(f) No provision of this Agreement shall be construed to relieve the Escrow Agent from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that the Escrow Agent shall not be liable for any error of judgment made in good faith by an authorized officer or employee of the Escrow Agent, unless it shall be provided that the Escrow Agent was negligent in ascertaining the pertinent facts, or for the misconduct or negligence of any agent appointed with due care.

(g) Whether or not therein expressly so provided, every provision of this Agreement relating to the conduct or affecting the liability of or affording protection to the Escrow Agent shall be subject to the provisions of this Section.

10. **Fees and Costs of the Escrow Agent; Abatement Certification Firm.** The Levee District shall be responsible under separate agreement for the fees and costs of the Escrow Agent. The City and the Levee District shall share equally in the fees and costs of the Abatement Certification Firm related to the carrying out the duties, terms or provisions of this Agreement. The fees of the Abatement

Certification Firm shall be divided equally between the Levee District and the City and paid annually from the amount principal or interest due to the City and the Levee District hereunder based upon an invoice of the Abatement Certification Firm submitted to and approved by the Levee District and the City at least thirty (30) days before the due date of a payment of principal or interest hereunder. The Escrow Agent shall make payment to the Abatement Certification Firm as provided herein, unless both the City and the Levee District instruct the Escrow Agent in writing to withhold payment.

11. Resignation or Removal of Escrow Agent; Successor Escrow Agent. The Escrow Agent at the time acting hereunder may, at any time, resign and be discharged from its duties and responsibilities hereby created by giving written notice to the City and the Levee District not less than sixty (60) days prior to the date when the resignation is to take effect. Such resignation shall take effect immediately upon the occurrence of the following: (i) the acceptance by the City and the Levee District of the resignation, (ii) the appointment of a successor Escrow Agent, which may be a temporary successor Escrow Agent, (iii) the acceptance by such successor Escrow Agent of the terms, covenants and conditions of this Agreement, (iv) the transfer of the Escrow Fund, including the moneys and Investment Securities held therein, to such successor Escrow Agent, and (v) the completion of any other actions required for the principal of, and interest on, the Investment Securities to be made payable to such successor Escrow Agent rather than to the resigning Escrow Agent.

The Escrow Agent may be removed at any time by an instrument or counter-part instruments in writing, delivered to such Escrow Agent by the Levee District and the City. The Escrow Agent may also be removed by the City or the Levee District if the Escrow Agent fails to make timely payment on any payment date of the amounts required to be paid by it on such payment date pursuant to **Section 4** of this Agreement to the persons specified therein. In the event the Levee District reasonably believes the Escrow Agent is not diligently fulfilling its obligations hereunder or that the Escrow Fund is not being administered and/or invested in Investment Securities of maximum benefit to the Levee District and the City, then the Levee District shall notify the City of same and the City and the Levee District shall confer; provided, that, should the City, exercising reasonable judgment, concur with the Levee District's reasonable belief as to the administration and/or investment of the Escrow Fund in Investment Securities, then the City and the Levee District shall remove the Escrow Agent as provided in this **Section 11**. Any removal pursuant to this paragraph shall become effective upon the occurrence of the following events: (i) the appointment of a successor Escrow Agent, which may be a temporary Escrow Agent, the City and the Levee District, (ii) the acceptance by such successor Escrow Agent of the terms, covenants and conditions of this Agreement, (iii) the transfer of the Escrow Fund, including the moneys and Investment Securities held therein, to such successor Escrow Agent, and (iv) the completion of any other actions required for the principal of, and interest on, the Investment Securities to be made payable to such successor Escrow Agent rather than to the Escrow Agent being removed.

In the event that the Escrow Agent shall resign or be removed, or be dissolved, or shall be in the course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case the Escrow Agent shall be taken under the control of any public officer(s), or of a receiver appointed by a court, the City and the Levee District shall appoint a temporary successor Escrow Agent to fill such vacancy until a permanent successor Escrow Agent shall be appointed by the City in the manner above provided, and any such temporary successor Escrow Agent so appointed by the City and the Levee District shall immediately and without further act be superseded by the permanent successor Escrow Agent so appointed.

In the event that no appointment of a successor Escrow Agent or a temporary successor Escrow Agent shall have been made by the City and the Levee District pursuant to the foregoing provisions of this Section within sixty (60) days after written notice of resignation or removal of the Escrow Agent has been given to the City and the Levee District, the resigning Escrow Agent may apply to any court of

competent jurisdiction for the appointment of a successor Escrow Agent, and thereupon, such court may, after such notice, if any, as it shall deem proper, appoint a successor Escrow Agent or provide other appropriate action.

No successor Escrow Agent shall be appointed unless such successor Escrow Agent shall be a banking association with full trust powers, authorized to do business in the State of Missouri and organized under the banking laws of the United States of America or the State of Missouri, and shall have, at the time of appointment, capital, surplus and undivided profits of not less than Seventy Five Million Dollars (\$75,000,000).

Any successor Escrow Agent appointed hereunder shall execute, acknowledge and deliver to its predecessor and to the City and the Levee District an instrument in writing accepting such appointment hereunder and, thereupon, such successor Escrow Agent, without any further act, deed or conveyance, shall become fully vested with all of the rights, immunities, powers, trusts, duties and obligations of its predecessor, but such predecessor shall, nevertheless, on the written request of such successor Escrow Agent, the City or the Levee District, execute and deliver an instrument transferring to such successor Escrow Agent all the estates, properties, rights, powers and trusts of such predecessor hereunder, and every predecessor Escrow Agent shall deliver, to its successor Escrow Agent, all securities and moneys held by such predecessor Escrow Agent and the duties and obligations of such predecessor Escrow Agent hereunder shall thereafter cease and terminate. In the event that any transfer, assignment or instrument in writing from the City or the Levee District be required by any predecessor Escrow Agent or successor Escrow Agent for more fully and certainly vesting in such successor Escrow Agent the estates, rights, powers and duties hereby vested or intended to be vested in the predecessor Escrow Agent, any such transfer, assignment and instrument in writing shall, on request, be executed, acknowledged and delivered by the City or the Levee District.

Any entity (i) into which the Escrow Agent may be merged, (ii) to which the Escrow Agent duties and responsibilities created hereby may be converted, (iii) with which the Escrow Agent may be consolidated, (iv) resulting from any merger, conversion, consolidation or tax free reorganization to which the Escrow Agent shall be a party, or (v) to which the Escrow Agent may sell or transfer all or substantially all of its corporate trust assets, must satisfy the requirements of a successor Escrow Agent described above and, if satisfactory to the City and the Levee District, shall be deemed the successor Escrow Agent under this Agreement without the execution or filing of any paper or any other act on the part of the parties hereto, anything herein to the contrary notwithstanding.

The Escrow Agent shall transfer immediately at the direction of the City and the Levee District the Escrow Fund and the monies and Investment Securities held therein, to a successor Escrow Agent.

12. Termination. This Agreement shall terminate upon the earlier of March 1, 2019 or the last maturity date or any refunding of the Levee District Bonds.

13. Severability. If any one or more of the covenants or agreements provided in this Agreement on the part of the City, the Levee District or the Escrow Agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained, and shall in no way affect the validity of the remaining provisions of this Agreement.

14. Successors and Assigns. All of the covenants, promises and agreements of the Levee District, the City or the Escrow Agent contained in this Agreement contained shall be binding upon, and inure to the benefit of, their respective successors and assigns, whether or not so expressed. No assignment of the interests of the City or the Levee District hereunder shall be binding upon the Escrow

Agent unless and until written notice of such assignment shall be delivered to and acknowledged by the Escrow Agent.

15. **Reliance.** The Escrow Agent hereunder is entitled to rely conclusively on this Agreement and on the opinions of any special tax counsel as to the validity and legal sufficiency thereof, and shall incur no liability for application of funds in accordance with the provisions of this Agreement. The City and the Levee District agree to indemnify and save harmless, to the extent permitted by law, the Escrow Agent from and against any claims arising out of or on account of this Agreement, except as caused by the Escrow Agent's willful misconduct or gross negligence and except for claims finally determined to have been primarily caused by the Escrow Agent's failure to faithfully perform the terms and provisions of this Agreement.

16. **Governing Law.** This Agreement shall be governed by, and be construed in accordance with, the laws of the State of Missouri.

17. **Counterparts.** This Agreement may be executed in several counterparts, all of which shall be regarded, for all purposes, as one original, and shall constitute and be but one and the same instrument.

18. **Amendments to this Agreement.** This Agreement is made for the benefit of the City, the Levee District and Escrow Agent and it shall not be repealed, revoked, altered or amended without the written consent of the City, the Levee District and the Escrow Agent.

19. **Notices.** Except as otherwise provided herein, it shall be sufficient service of any notice, request, complaint, demand or other paper required by this Agreement to be given or filed with the following parties if the same is duly mailed and received by first-class, certified or registered mail, addressed as follows:

(a) If to the Levee District:

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

with a copy to:

Husch & Eppenberger, LLC
190 Carondelet Plaza, Suite 600
St. Louis, Missouri 63105
Attn: David Human

(b) If to the City:

The City of Chesterfield
690 Chesterfield Parkway West
Chesterfield, Missouri 63107
Attn: Director of Finance and Administration

with a copy to:

Stewart, Mittleman, Heggie & Henry, LLC
222 S. Central, Suite 501
Clayton Missouri 63105-3509
Attn: Robert Heggie

and to:

Armstrong Teasdale, LLP
One Metropolitan Square, Suite 2600
St. Louis, Missouri 63102
Attn: James E. Mello

(c) If to the Escrow Agent:

Wells Fargo Bank, National Association
1 Ward Parkway, 3rd Floor
Kansas City, Missouri 64112-2106
Attention: Kenneth Dotson, Corporate Trust and Escrow Services

20. **Definitions.** Terms not otherwise defined herein shall have the meanings given to them in the Second Amended and Restated Agreement.

21. **Receipt of Documents.** The Escrow Agent hereby acknowledges receipt of a copy of the Second Amended and Restated Agreement, certified to be true and correct by the Clerk of the City, and the TIF Note, as cancelled by the City, and reference herein to or citation herein of any provisions of said document shall be deemed to incorporate the same as a part hereof in the same manner and with the same effect as if it was fully set forth herein.

22. **Transaction by Electronic Means.** The transactions described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterpart of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

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

IN WITNESS WHEREOF, the City has caused this Escrow Deposit Agreement to be signed in its name and behalf by its elected officials and its corporate seal to be hereunto affixed and attested by the City Clerk, all as of the day first above written.

(SEAL)

THE CITY OF CHESTERFIELD,
MISSOURI

ATTEST:

By: _____
Mayor

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

IN WITNESS WHEREOF, the Monarch-Chesterfield Levee District has caused this Escrow Deposit Agreement to be signed in its name and behalf by its President and its corporate seal to be hereunto affixed and attested by its Secretary, all as of the day first above written.

MONARCH-CHESTERFIELD LEVEE DISTRICT

By: _____
Earl R. Hoffmann, President

(SEAL)

ATTEST:

William S. Kirchoff, Secretary

IN WITNESS WHEREOF, Wells Fargo Bank, National Association, has caused this Escrow Deposit Agreement to be signed in its name and on its behalf by one of its duly authorized officers and its corporate seal to be hereunto affixed and attested by one of its duly authorized officers, all as of the day first above written.

WELLS FARGO BANK, NATIONAL
ASSOCIATION,
as Escrow Agent

By: _____

(SEAL)

ATTEST:

