

AN ORDINANCE AUTHORIZING THE CITY OF CHESTERFIELD, MISSOURI TO ENTER INTO AND EXECUTE A COOPERATION AGREEMENT AMONG THE MONARCH-CHESTERFIELD LEVEE DISTRICT, THE CHESTERFIELD VALLEY TRANSPORTATION DEVELOPMENT DISTRICT, THE CITY AND DON WIEGAND IN CONNECTION WITH THE ACQUISITION OF PROPERTY FOR AND CONSTRUCTION AND MAINTENANCE OF A PORTION OF THE LEVEE TRAIL BIKEWAY SYSTEM, AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH

WHEREAS, the City of Chesterfield, Missouri (the "**City**") has entered into an Intergovernmental Cooperation Agreement (the "**Transportation Agreement**") among the City, St. Louis County, Missouri (the "**County**") and the Chesterfield Valley Transportation Development District (the "**Transportation District**"), pursuant to which the various parties have provided for the responsibility for preliminary and final design, right-of-way acquisition, construction, administration and maintenance of each particular portion of the transportation projects identified in the Transportation Agreement (collectively, the "**Transportation Projects**"), and the Transportation District is responsible for providing funding for the Transportation Projects as provided for in the Transportation Agreement; and

WHEREAS, a functional portion of the Transportation Projects consists of construction of a levee trail/bikeway system (the "**Levee Trail Project**") along the Monarch Levee (the "**Levee**"); 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 and the Levee District entered into a Second Amended and Restated Intergovernmental Cooperation Agreement dated as of December 30, 2005 (the "**Levee Agreement**"), which provides for certain improvements to the Levee and the grant of a recreation easement by the Levee District to the City; and

WHEREAS, the City, the Levee District and the Transportation District entered into an Intergovernmental Cooperation Agreement dated as of October 1, 2006 (the "**Intergovernmental Cooperation Agreement**"), which provides, among other things, for the City to construct the Levee Trail Project in accordance with the Intergovernmental Cooperation Agreement and the Levee Agreement and for the Transportation District to finance a portion of the Levee Trail Project in accordance with the terms of the Transportation Agreement; and

WHEREAS, the Levee District has proposed the construction of certain improvements to the Levee on property owned by Don Wiegand ("**Wiegand**") and located at 1695 Baxter Road and 1 Wiegand Drive (the "**Wiegand Property**"), including certain improvements to facilitate the construction of the Levee Trail along such portion of the Levee, and the Transportation District has agreed to provide \$268,000 in funding for costs incurred by the Levee District in connection with such construction; and

WHEREAS, the City desires to acquire from Wiegand certain interests in and to the Wiegand Property to facilitate the City's construction and on-going maintenance of the Levee Trail along that portion of the Levee to be located on the Wiegand Property; and

WHEREAS, the City Council of the City hereby finds and declares that it is desirable and in the best interests of the City that the City enter into a Cooperation Agreement (the "**Agreement**") among the Levee District, the Transportation District, the City and Wiegand in substantially the form of **Exhibit A**, attached hereto and incorporated herein by reference.

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

Section 1. The City Council hereby approves of the Agreement in substantially the form set forth as **Exhibit A**, attached hereto and incorporated by reference.

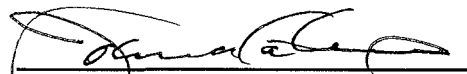
Section 2. The City is hereby authorized to enter into, and the City Administrator of the City of Chesterfield and the City Clerk are hereby authorized and directed to execute, seal, attest and deliver, for and on behalf of the City, the Agreement, such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance and with the provisions of the Agreement.

Section 3. The sections, paragraphs, sentences, clauses and phrases of this Ordinance shall be severable. In the event that any such section, paragraph, sentence, clause or phrase 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 the Ordinance are so essential to and inseparably connected with and dependent upon the void portion that it cannot be presumed that the City has enacted the valid portions without the void 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.

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

Section 5. This ordinance shall be in full force and effect from and after its passage and approval.

Passed and approved this 2nd day of December, 2009.



Mayor

ATTEST:



City Clerk

EXHIBIT A

Form of Agreement

(Attached hereto.)

COOPERATION AGREEMENT

This COOPERATION AGREEMENT (this "*Agreement*") is entered into as of December _____, 2009, among the MONARCH-CHESTERFIELD LEVEE DISTRICT (the "*Levee District*"), the CHESTERFIELD VALLEY TRANSPORTATION DEVELOPMENT DISTRICT (the "*TDD*"), the CITY OF CHESTERFIELD, MISSOURI (the "*City*") and DON WIEGAND ("*Wiegand*").

RECITALS

1. On November 28, 2005, the Circuit Court of St. Louis County, Missouri, 21st Judicial District (the "*Court*"), entered a Declaratory Judgment, Decree and Order Organizing a Transportation Development District and Approving a Funding Method (the "*Order*"), which established the TDD as a political subdivision pursuant to and in accordance with the Missouri Transportation Development District Act, Sections 238.200 to 238.275 of the Revised Statutes of Missouri, as amended (the "*TDD Act*").
2. The Order provided that the TDD be established for the sole purpose of funding the Transportation Project (as defined in the Order) through the imposition of the transportation development district sales tax (the "*TDD Sales Tax*").
3. On February 24, 2006, pursuant to Section 238.235 of the TDD Act, the TDD adopted Resolution No. 06-001 to impose the TDD Sales Tax at a rate of three-eighths of one percent (3/8%) for a period of up to 25 years from the date on which such tax is first imposed for the purpose of funding the costs of the Transportation Project.
4. The TDD Sales Tax was approved by the qualified voters of the TDD at an election held in accordance with Section 238.216 of the TDD Act and the TDD Sales Tax became effective March 1, 2006.
5. The City, St. Louis County, Missouri (the "*County*"), and the TDD entered into an Intergovernmental Cooperation Agreement dated as of October 1, 2006 (the "*TDD Agreement*") regarding the funding, promotion, planning, design, construction, improvement, maintenance, or operation of the Transportation Project.
6. A functional portion of the Transportation Project consists of construction of a trail/bikeway system (the "*Levee Trail Project*") along the Monarch Levee (the "*Levee*").
7. The Levee District has jurisdiction over the construction, maintenance, oversight, and improvement of the Levee and drainage system which protects the Chesterfield Valley area.
8. The City and the Levee District entered into a Second Amended and Restated Intergovernmental Cooperation Agreement dated as of December 30, 2005 (the "*Levee Agreement*"), which provides for certain improvements to the Levee and the grant of a recreation easement by the Levee District to the City.
9. The City, the Levee District and the TDD entered into an Intergovernmental Cooperation Agreement dated as of October 1, 2006 (the "*Intergovernmental Cooperation Agreement*"), which provides, among other things, for the City to construct the Levee Trail Project in accordance with the TDD Agreement and the Levee Agreement and for the TDD to finance a portion of the Levee Trail Project in accordance with the terms of the TDD Agreement.

10. The Levee District intends to construct and improve the Levee upon certain real property located at 1695 Baxter Road and 1 Wiegand Drive that is currently owned by Wiegand and is legally described on **Exhibit A**, attached hereto and incorporated herein by reference (the "*Wiegand Property*"), which construction and improvements are depicted on **Exhibit B**, attached hereto and incorporated herein by reference (the "*Levee Improvements*").

11. As part of the Levee Improvements, the Levee District has indicated its willingness to construct certain improvements that would accommodate the construction of that portion of the Levee Trail Project to be located on the Wiegand Property as described in **Section 8** of this Agreement (the "*Levee District Trail Improvements*"), provided that the TDD agrees to provide funding for such improvements in accordance with this Agreement and Wiegand agrees to provide certain interests in the Wiegand Property necessary to construct such improvements in accordance with this Agreement.

12. The Levee District, the TDD, the City and Wiegand desire to enter into this Agreement to provide for the financing of that portion of the Levee Improvements that would accommodate the construction of the Levee Trail Project on the Wiegand Property and to provide for the acquisition of certain interests in the Wiegand Property necessary to construct such improvements.

AGREEMENT

In consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

Section 1. Recitals. All of the above and foregoing Recitals are incorporated into and made a part of this Agreement.

Section 2. Rules of Interpretation. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context indicates otherwise, words importing the singular number shall include the plural and vice versa, and words importing persons shall include firms, associations and corporations, including public bodies, as well as natural persons. All references in this Agreement to designated "Articles," "Sections" and other subdivisions are, unless otherwise specified, to the designated Articles, Sections and subdivisions of this instrument as originally executed.

Section 3. Representations by the Levee District. The Levee District hereby represents and warrants that it has full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations hereof, and all of the foregoing have been or will be duly and validly authorized and approved by all necessary Levee District proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid, and binding obligation of the Levee District, enforceable in accordance with its terms. To the best of the Levee District's knowledge and belief, no official or employee of the Levee District has any significant or conflicting interest, financial or otherwise, in the transactions contemplated hereby.

Section 4. Representations by the TDD. The TDD hereby represents and warrants that it has full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations hereof, and all of the foregoing have been or will be duly and validly authorized and approved by all necessary TDD proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the TDD, enforceable in accordance with its terms. To the best of the TDD's knowledge and belief, no official or employee of the TDD has any significant or conflicting interest, financial or otherwise, in the transactions contemplated hereby.

Section 5. Representations by Wiegand. Wiegand hereby represents and warrants that he has full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations hereof. Accordingly, this Agreement constitutes the legal, valid and binding obligation of Wiegand, enforceable in accordance with its terms.

Section 6. Acquisition of Wiegand Property to Construct Bike Path/Levee Trail. Subject to the conditions set forth herein, Wiegand shall provide to the City and/or the TDD an easement in and to that portion of the Wiegand Property depicted on **Exhibit C**, attached hereto and incorporated herein by reference, to provide for recreational trail easements or licenses over that portion of the Wiegand Property necessary to construct the portion of the Levee Trail Project to be located on the Wiegand Property. In addition to the easement depicted on **Exhibit C**, Wiegand shall provide to the City and/or the TDD a temporary construction easement upon such portion of the Wiegand Property adjacent to the easement depicted on **Exhibit C** as reasonably necessary to allow working room and storage of materials and equipment in connection with the construction of the Levee Trail Project. Any such easements or licenses are subject to the following conditions:

(a) The City and/or the TDD agree to construct a fence or other mechanism to limit access to the Wiegand Property to agreed-upon times, with such fence or other mechanism to be constructed and maintained by the City and/or the TDD at its sole cost and expense.

(b) Prior to commencement of construction of the Levee Trail Project on the Wiegand Property, the City and/or the TDD shall deliver to Wiegand evidence reasonably satisfactory to Wiegand that the City and/or the TDD 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 the Levee Trail Project by the City and/or the TDD in the amounts listed below:

(i) The City and/or the TDD shall secure commercial general liability insurance policies for coverage of the injuries and damage for which it, as a political subdivision, is legally obligated under Missouri Law. Each policy shall be in the minimum amount of \$2,000,000. The insurance policies shall be maintained in force during the term of the license set forth on **Exhibit G**, attached hereto and incorporated herein by reference (the "*License*"). Certificate(s) of Insurance stating that the policies are in full force and effect and that the same will not be altered, amended or terminated without ten (10) days prior written notice to Wiegand shall be sent to Wiegand.

(ii) Notwithstanding anything herein to the contrary, no provision, term, or condition in this **Section 6** shall constitute, or be construed as, a waiver of the defenses of a sovereign immunity, official immunity, or governmental immunity by whatever name as set forth in Section 537.600 RSMo. *et seq.*, for any monetary amount whatsoever, or of any other defenses, howsoever named, that are, or in the future may become, available to the parties by statute or common law.

(iii) The commercial general liability insurance policies secured under this **Section 6** shall include endorsements to restrict coverage in a manner as will preserve fully for the parties the defenses of sovereign immunity, official immunity, or governmental immunity, by whatever name as set forth in Section 537.600 RSMo. *et seq.*, for any monetary amount whatsoever, and any other defenses, howsoever named, that are, or in the future may become, available to the parties by statute or common law.

(c) To the extent authorized by law, and without waiving sovereign immunity available to the City and the TDD under Missouri law, the City and/or the TDD shall defend, indemnify and hold harmless Wiegand and the Wiegand Foundation, Inc., and any of their officials, officers, employees, agents and representatives from and against any and all damages, liability, claims, fines, allocations,

losses, costs, and expenses, including reasonable attorneys' fees, arising out of or relating to the operation or use of the Levee Trail Project on the Wiegand Property, including without limitation any claim arising out of any negligence by the City and/or the TDD, regardless of whether the City's and/or the TDD's negligence is the sole cause of the alleged injury; provided, however, neither the City nor the TDD shall indemnify Wiegand or the Wiegand Foundation, Inc. or any of their officials, officers, employees, agents and representatives from claims arising from the gross negligence or willful misconduct of Wiegand or the Wiegand Foundation, Inc. or any of their officials, officers, employees, agents and representatives. The limited obligation of the City and/or the TDD to indemnify Wiegand and the Wiegand Foundation, Inc. and any of their officials, officers, employees, agents and representatives shall not under any circumstance constitute, or be construed as, a waiver of the City's and/or the TDD's defenses of sovereign immunity, official immunity, or governmental immunity by whatever name as set forth in Section 537.600 RSMo. et seq., for any monetary amount whatsoever, or of any other defenses, howsoever named, that available to the parties by statute or common law.

(d) The City and/or the TDD shall be solely responsible for and shall have exclusive control over construction, maintenance, and operation of the Levee Trail Project on the Wiegand Property, including the payment of all costs and expenses associated with the same.

(e) The City and/or the TDD shall use such easements or licenses granted by Wiegand as part of a greenway system of trails or part of a dedicated system of trails that is designed exclusively for the purposes designated in Section 258.100 RSMo., and shall not include roads or streets, or sidewalks, walkways or paths which are intended solely to connect neighborhoods for pedestrian traffic, such as common sidewalks or walkways. It is the intention of the parties that Wiegand and the Wiegand Foundation, Inc., and any of their officials, officers, employees, agents and representatives shall be immune from civil liability for injuries to the extent provided in Section 258.100.2 RSMo.

Section 7. Future Construction of Restroom Facility. Subject to the conditions set forth herein, if, in conjunction with construction of the Levee Trail Project on the Wiegand Property or at any time in the future, the City and/or the TDD seeks to provide publicly accessible restroom facilities for trail users, Wiegand shall provide to the City easements or licenses in and to that portion of the Wiegand Property depicted on **Exhibit D**, attached hereto and incorporated herein by reference. Also, subject to the conditions set forth herein, Wiegand further agrees that he will grant those easements or licenses reasonably necessary for the installation, use and maintenance of such restroom facilities, including without limitation connection to water, sewer and private on-site sanitary sewer and pump station, on that portion of the Wiegand Property depicted on **Exhibit D**. Any such easements and/or licenses are subject to the following conditions:

(a) The restroom facility shall consist of one unisex toilet and lavatory and Wiegand and the City and/or the TDD shall agree on the size of the structure and the overall design.

(b) The City and/or the TDD shall pay for all costs associated with the construction, operation, maintenance and monitoring of the restroom facility, including costs associated with all utilities, sewer and water necessary for construction and operation of the restroom facility. The City and/or the TDD shall be responsible for signage related to the facility, which shall include the hours of operation and a number to call in case of complaints regarding the restroom facility.

(c) There shall only be one means of ingress and egress from the Levee Trail Project to the restroom facilities, with such means of ingress and egress to be constructed and maintained at the sole cost of the City and/or the TDD. Subject to Wiegand's approval, the City and/or the TDD will construct a fence or other mechanism to limit access to the Wiegand Property to the agreed upon times, with such mechanism to be constructed and maintained by the City and/or TDD at its sole cost and expense.

(d) Prior to commencement of construction of the restroom facilities on the Wiegand Property, the City and/or the TDD shall deliver to Wiegand evidence reasonably satisfactory to Wiegand that the City and/or the TDD 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 the restroom facilities by the City and/or the TDD in the amounts listed below:

(i) The City and/or the TDD shall secure commercial general liability insurance policies for coverage of the injuries and damage for which it, as a political subdivision, is legally obligated under Missouri Law. Each policy shall be in the minimum amount of \$2,000,000. The insurance policies shall be maintained in force during the term of the easement or license granted by Wiegand pursuant to this **Section 7**. Certificate(s) of Insurance stating that the policies are in full force and effect and that the same will not be altered, amended or terminated without ten (10) days prior written notice to Wiegand shall be sent to Wiegand.

(ii) Notwithstanding anything herein to the contrary, no provision, term, or condition in this **Section 7** shall constitute, or be construed as, a waiver of the defenses of a sovereign immunity, official immunity, or governmental immunity by whatever name as set forth in Section 537.600 RSMo. *et seq.*, for any monetary amount whatsoever, or of any other defenses, howsoever named, that are, or in the future may become, available to the parties by statute or common law.

(iii) The commercial general liability insurance policies secured under this **Section 7** shall include endorsements to restrict coverage in a manner as will preserve fully for the parties the defenses of sovereign immunity, official immunity, or governmental immunity, by whatever name as set forth in Section 537.600 RSMo. *et seq.*, for any monetary amount whatsoever, and any other defenses, howsoever named, that are, or in the future may become, available to the parties by statute or common law.

(e) To the extent authorized by law, and without waiving sovereign immunity available to the City and the TDD under Missouri law, the City and/or the TDD shall defend, indemnify and hold harmless Wiegand and the Wiegand Foundation, Inc., and any of their officials, officers, employees, agents and representatives from and against any and all damages, liability, claims, fines, allocations, losses, costs, and expenses, including reasonable attorneys' fees, arising out of or relating to the operation or use of the restroom facilities on the Wiegand Property, including without limitation any claim arising out of any negligence by the City and/or the TDD, regardless of whether the City's and/or the TDD's negligence is the sole cause of the alleged injury; provided, however, neither the City nor the TDD shall indemnify Wiegand or the Wiegand Foundation, Inc. or any of their officials, officers, employees, agents and representatives from claims arising from the gross negligence or willful misconduct of Wiegand or the Wiegand Foundation, Inc. or any of their officials, officers, employees, agents and representatives. The limited obligation of the City and/or the TDD to indemnify Wiegand and the Wiegand Foundation, Inc. and any of their officials, officers, employees, agents and representatives shall not under any circumstance constitute, or be construed as, a waiver of the City's and/or the TDD's defenses of sovereign immunity, official immunity, or governmental immunity by whatever name as set forth in Section 537.600 RSMo. *et seq.*, for any monetary amount whatsoever, or of any other defenses, howsoever named, that available to the parties by statute or common law.

(f) In the event that Wiegand constructs a new structure on the Wiegand Property that lies within the area depicted on **Exhibit D**, Wiegand shall provide publicly accessible restroom facilities consisting of one toilet and one lavatory as part of such new structure, provided that public access to such restroom facilities may be restricted at any time daily between sunset and sunrise and any time such new structure is occupied by more than 25 visitors attending an event (such as a fundraiser, art exhibition or similar event) at such new structure. Further, if Wiegand constructs such structure which includes

restroom facilities available to trail users, the City and/or the TDD no longer have the right to construct a stand-alone facility. Furthermore, subparagraphs (b)-(e) of this **Section 7** shall apply with respect to any restroom facility made available to trail users as part of such structure. To the extent Wiegand receives any bills or invoices directly, the City and/or the TDD shall pay to Wiegand, on a monthly basis and within thirty (30) days of Wiegand's receipt of such invoices, all utility expenses (including, but not limited to, sewer, water, and electricity) and other expenses associated with use of said restroom facility by trail users.

Section 8. City's Right of First Refusal to Purchase Wiegand Property. Upon execution of this Agreement, Wiegand shall grant to the City an exclusive right of first refusal (the "*ROFR*") to purchase all or any portion of the Wiegand Property upon the following terms and conditions:

(a) The term of the ROFR shall commence upon the execution of this Agreement and shall continue until December 31, 2059 (the "*ROFR Term*").

(b) During the ROFR Term, if Wiegand desires to sell fee simple title to all or any portion of the Wiegand Property to an unrelated third party and has received a written offer from such third party, then Wiegand shall deliver written notice thereof to the City together with a written offer (the "*Sale Offer*") to the City to sell all or any such portion of the Wiegand Property to the City on the same terms and conditions as are contained in said third party offer. The Sale Offer may be a letter offer with limited terms including without limitation purchase price, due diligence period, and contingencies to closing.

(c) Upon receipt of a Sale Offer, the City shall have the right to exercise the ROFR by (i) executing and delivering to Wiegand a counterpart of the Sale Offer within 30 calendar days after City's receipt of the Sale Offer; and (ii) delivering to the title company named in the Sale Offer an amount equal to the earnest money as specified in the Sale Offer. If the City exercises the ROFR as aforesaid, the accepted Sale Offer shall constitute a binding sale contract (any such accepted Sale Offer being referred to herein as a "*Sale Contract*") between the City and Wiegand on the terms and conditions thereof. The City and Wiegand shall add any missing or necessary negotiated terms to the Sale Contract that were not included as part of the Sale Offer. Any such Sale Contract shall govern the rights and obligations of the parties with respect to the purchase and sale of all or any such portion of the Wiegand Property. The closing on the sale of all or any such portion of the Wiegand Property shall be conducted in accordance with the terms of the Sale Contract of this Agreement. In the case of any conflict between the terms of the Sale Contract and this Agreement, the terms of the Sale Contract shall govern.

(d) If the City does not accept a Sale Offer within said 30-day period, then the City shall be deemed to have elected not to exercise the ROFR and Wiegand shall have the right thereafter to sell, transfer or convey all or any such portion of the Wiegand Property to the third party which submitted the offer to purchase all or any such portion of the Wiegand Property on the same terms as the Sale Offer. If such sale, transfer or conveyance fails to occur for any reason, then the ROFR and the terms of this **Section 8** shall apply to any subsequent third-party offers to purchase all or any portion of the Wiegand Property. If such sale, transfer or conveyance to an unrelated third party does occur, then all of the City's rights under this **Section 8** shall terminate and expire and the City shall have no further right pursuant to the ROFR to purchase all or any such portion of the Wiegand Property that is sold, transferred or conveyed to such unrelated third party per the Sale Offer, but the ROFR and the terms of this **Section 8** shall apply to any subsequent third-party offers to purchase any such portion of the Wiegand Property not previously sold, transferred or conveyed to an unrelated third party. Furthermore, if such sale, transfer or conveyance to an unrelated third party does occur, then all of the City's and/or the TDD's rights under **Section 7** shall terminate and expire.

(e) If the City exercises the ROFR but breaches the City's obligations under the Sale Contract and, as a result thereof, the sale fails to close, then (i) the ROFR shall terminate and the City shall have no further right to purchase all or any portion of the Wiegand Property; and (ii) Wiegand shall have all of the rights granted to Wiegand under the Sale Contract.

(f) If the City exercises the ROFR but Wiegand breaches its obligations under the Sale Contract, then the City shall have, in addition to all of the rights and remedies available to the City under the Sale Contract, the right to seek specific performance of the Sale Contract.

(g) Notwithstanding anything to the contrary herein, (1) a transfer of all or any portion of the Wiegand Property to or from Wiegand to an affiliate of Wiegand, including, but not limited to, the Wiegand Foundation, Inc., or (2) a transfer of all or any portion of the Wiegand Property to any third-party individual or entity with the condition that the third-party individual or entity cannot further transfer or convey that interest other than to the Wiegand Foundation, Inc. or an affiliate of Wiegand, shall not require Wiegand to comply with the requirements of this Section 8 or afford the City the right to purchase all or any such portion of the Wiegand Property being transferred to the affiliate or third-party individual or entity pursuant to the ROFR; provided, however, any such affiliate or third-party individual or entity shall be bound by the provisions of this Section 8 and shall, at the time of such sale, transfer or conveyance, specifically acknowledge that (i) such affiliate or third-party individual or entity shall be bound by the provisions of this Section 8 and (ii) the provisions of this Section 8 do not constitute an illegal restraint on alienation of all or any such portion of the Wiegand Property.

(h) The City and Wiegand shall have the right to obtain equitable relief to enforce the obligations of the other party under this Section 8.

(i) Upon execution of this Agreement, a memorandum of the ROFR shall be recorded in the real property records as a restriction against the Wiegand Property, which memorandum shall be in substantially the form of Exhibit E, attached hereto and incorporated herein by reference.

Section 9. Construction of the Levee Improvements. The Levee District shall construct the Levee District Trail Improvements, consisting of all materials, labor and construction necessary to provide for the portion of the Levee Trail Project to be located on the Levee Improvements, including without limitation grading and installation of aggregate base to allow for paving of a 10-foot wide asphalt trail by the City or the TDD. The Levee District shall coordinate construction of the Levee Improvements with construction of the proposed flood wall as designed and proposed by the United States Army Corps of Engineers in order to provide for construction of that portion of the Levee Trail Project to be located on the Levee Improvements.

Section 10. Paving of the Levee Trail Project. The City or the TDD shall pave that portion of the Levee Trail Project located on the Levee Improvements in accordance with the TDD Agreement, the Intergovernmental Cooperation Agreement and this Agreement. The Levee District shall review and approve the Bike Path Plans (as defined in the Levee Agreement) and, upon approval of the Bike Path Plans in accordance with Section 9.13 of the Levee Agreement, the Levee District shall execute the License in the form of Exhibit G, attached hereto and incorporated herein by reference.

Section 11. TDD Financing of the Levee Trail Project on the Levee Improvements. Within 30 days of execution of this Agreement, the TDD shall pay to the Levee District the amount of Two Hundred Sixty Eight Thousand Dollars (\$268,000) (the "*TDD Reimbursable Costs*") for the costs incurred in connection with the construction of the Levee Improvements necessary to provide for that portion of the Levee Trail Project located on the Levee Improvements. The Levee District shall be responsible for all costs in excess of the TDD Reimbursable Costs for the Levee Improvements. Pursuant

to the Intergovernmental Cooperation Agreement and the Levee Agreement, the Levee District has agreed to cooperate with the City and the TDD in connection with the issuance of permits as necessary for the construction and operation of the Levee Trail Project.

Section 12. Completion of the Levee Improvements. Upon completion of the Levee District Trail Improvements, the Levee District shall furnish to the TDD and Wiegand a Notice of Completion, which Notice of Completion shall be in substantially the form of Exhibit F, attached hereto and incorporated herein by reference.

Section 13. Remedies on 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 any party or any permitted successor or assign, the defaulting or breaching party shall, upon written notice from any of the other parties, proceed to immediately cure or remedy such default or breach, and shall, in any event within 30 days after receipt of such notice, commence to cure or remedy such default or breach. 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 or parties may institute such proceedings as may be necessary or desirable in its or their opinion to cure and remedy such default or breach, including without limitation proceedings to compel specific performance by the defaulting or breaching party.

Section 14. Rights and Remedies Cumulative. The rights and remedies reserved by the Levee District, the TDD, the City and Wiegand hereunder and those provided by law shall be construed as cumulative and continuing rights. No one of them shall be exhausted by the exercise thereof on one or more occasions. The Levee District, the TDD, the City and Wiegand shall be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions hereof, notwithstanding availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity.

Section 15. Notices. Any notice, demand, or other communication required by this Agreement to be given to either party hereto to the other shall be in writing and shall be sufficiently given or delivered if dispatched by (a) United States first class mail, postage prepaid; (b) facsimile; (c) hand delivery; or (d) a nationally recognized overnight delivery service to the following addresses:

To the Levee District: Monarch-Chesterfield Levee District
c/o Husch & Eppenberger LLC
190 Carondelet Plaza
Suite 600
Clayton, MO 63105-3441
Attention: David Human
Facsimile: (314) 480-1505

To the TDD: Chesterfield Valley Transportation Development
District
c/o City of Chesterfield
690 Chesterfield Parkway West
Chesterfield, MO 63017
Attention: Executive Director
Facsimile: (636) 537-4798

with a copy to: Armstrong Teasdale LLP
One Metropolitan Square, Suite 2600
St. Louis, Missouri 63102
Attention: Robert D. Klahr
Facsimile: (314) 621-5065

To Wiegand: Don Wiegand
1 Wiegand Drive
Chesterfield, Missouri 63005-1401
Attention: Don Wiegand
Facsimile: [Insert Fax Number]

with a copy to: Carmody MacDonald P.C.
120 S. Central Ave., Suite 1800
Clayton, Missouri 63105
Attention: Gerard T. Carmody
Facsimile: (314) 854-8660

To the City: City of Chesterfield
690 Chesterfield Parkway West
Chesterfield, MO 63017
Attention: City Administrator
Facsimile: (636) 537-4798

with a copy to: Stewart, Mittleman, Heggie &
Henry, LLC
222 S. Central Avenue
Suite 501
St. Louis, MO 63105
Attention: Robert M. Heggie
Facsimile: (314) 863-5312

The Levee District, the TDD, Wiegand and the City may from time to time designate, by notice given hereunder to the other parties, another address to which subsequent notices or other communications shall be sent.

Section 16. Severability. If any provision hereof is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 17. Governing Law. This Agreement shall be taken and deemed to have been fully executed, made by the parties in, and governed by the laws of the State of Missouri for all purposes and intents.

Section 18. Execution in Counterparts. This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

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

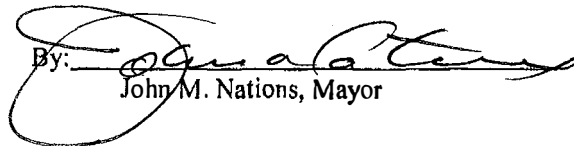
IN WITNESS WHEREOF, the Levee District has caused this Agreement to be executed in its name and has caused its seal to be affixed thereto, and attested as to the date first above written.

**MONARCH-CHESTERFIELD LEVEE
DISTRICT**

By: _____
President of the Board of Supervisors

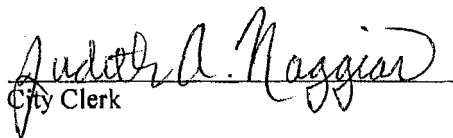
IN WITNESS WHEREOF, the City has caused this Agreement to be executed in its name and has caused its seal to be affixed thereto, and attested as to the date first above written.

THE CITY OF CHESTERFIELD, MISSOURI

By: 
John M. Nations, Mayor

[SEAL]

ATTEST:


City Clerk

IN WITNESS WHEREOF, the TDD has caused this Agreement to be executed in its name and has caused its seal to be affixed thereto, and attested as to the date first above written.

**CHESTERFIELD VALLEY TRANSPORTATION
DEVELOPMENT DISTRICT**

By: _____
Chair of the Board of Directors

[SEAL]

ATTEST:

Secretary of the Board of Directors

IN WITNESS WHEREOF, Wiegand has caused this Agreement to be executed in its name and has caused its seal to be affixed thereto, and attested as to the date first above written.

By: _____
Don Wiegand

EXHIBIT A

LEGAL DESCRIPTION OF THE WIEGAND PROPERTY

(Attached hereto.)

[The legal description to be attached will relate to the two parcels of property having St. Louis County Assessor Locator Identification Nos. 17T220942 and 17T310335 and located at 16905 Baxter Road and 1 Wiegand Drive, Chesterfield, MO 63005]

EXHIBIT B

DEPICTION OF THE LEVEE IMPROVEMENTS

(Attached hereto.)

EXHIBIT C

**DEPICTION OF THE PORTION OF THE WIEGAND PROPERTY
NECESSARY TO CONSTRUCT THE LEVEE IMPROVEMENTS**

(Attached hereto.)

EXHIBIT D

**DEPICTION OF THE PORTION OF THE WIEGAND PROPERTY AVAILABLE FOR
CONSTRUCTION OF PUBLIC RESTROOM FACILITIES**

(Attached hereto.)

5 ✓

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

Title of Document: Memorandum of Right of First Refusal

Date of Document: April 1, 2010

Grantor: Don F. Wiegand

Grantor's Address: 1 Wiegand Drive
Chesterfield, MO 63005-1401

Grantee: City of Chesterfield, Missouri

Grantee's Address: 690 Chesterfield Parkway West
Chesterfield, Missouri 63017

Legal Description: See Exhibit A attached hereto

Reference Book and Page: N/A

Upon recording return to:

Robert D. Klahr
Armstrong Teasdale LLP
One Metropolitan Square, Suite 2600
St. Louis, MO 63102

MEMORANDUM OF RIGHT OF FIRST REFUSAL

THIS MEMORANDUM OF RIGHT OF FIRST REFUSAL (this "*Memorandum*") is made and entered into as of April 1, 2010, between DON F. WIEGAND, an unmarried individual residing in St. Louis County, Missouri ("*Wiegand*") and the CITY OF CHESTERFIELD, MISSOURI, a third class city of the State of Missouri (the "*City*"). The following recitals form the basis of this Memorandum:

A. Wiegand is a party to that certain Cooperation Agreement dated as of April 1, 2010 (the "*Agreement*") among the Monarch-Chesterfield Levee District, the Chesterfield Valley Transportation Development District, the City and Wiegand, whereby Wiegand agreed to grant to the City a right of first refusal to purchase certain real estate located in St. Louis County, Missouri described on Exhibit A, attached hereto and incorporated herein by reference (the "*Property*").

B. Wiegand and the City desire to confirm and ratify and to provide notice of the Agreement, including without limitation, the terms and conditions described in this Memorandum.

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

1. Subject to the covenants and conditions contained in the Agreement, Wiegand has granted to the City a right of first refusal to purchase all or any portion of the Property. The term of the City's right of first refusal shall expire on December 31, 2059.
2. This Memorandum does not alter, amend, modify, or change the Agreement in any respect. All of the provisions of the Agreement are hereby incorporated by reference in this Memorandum. In the event of any conflict between the provisions of this Memorandum and the Agreement, the provisions of the Agreement shall control.
3. If the City fails to exercise its right of first refusal and all or a portion of the Property is sold, transferred or conveyed to an unrelated third party, then the City's right of first refusal shall terminate and expire and the City shall have no further right to purchase all or any such portion of the Property that is sold, transferred or conveyed to such unrelated third party.

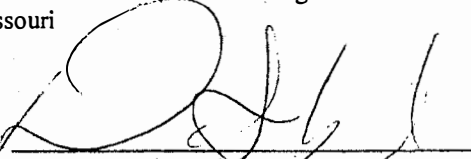
[Signatures appear on following pages.]

SIGNATURE PAGE FOR
MEMORANDUM OF RIGHT OF FIRST REFUSAL

IN WITNESS WHEREOF, Wiegand has executed this Memorandum as of the day and year first above written.

WIEGAND:

DON F. WIEGAND,
an unmarried individual residing in St. Louis County,
Missouri

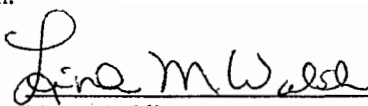
By 

Don F. Wiegand

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

On this 5th day of May, 2010, before me appeared Don Wiegand, to me personally known, who being by me duly sworn did say that he is an individual residing in St. Louis County, Missouri, and that said instrument was signed by him, and he acknowledged said instrument to be his free act and deed.

IN WITNESS 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

My commission expires: 1-21-2012

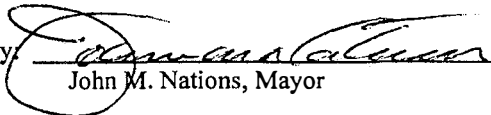


LINDA M. WALSH
My Commission Expires
January 21, 2012
St. Louis County
Commission #08448789

SIGNATURE PAGE FOR
MEMORANDUM OF RIGHT OF FIRST REFUSAL

IN WITNESS WHEREOF, the City has executed this Memorandum as of the day and year first above written.

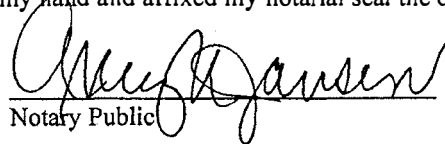
CITY: CITY OF CHESTERFIELD, MISSOURI,
a Missouri political subdivision

By: 
John M. Nations, Mayor

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

On this 19th day of MAY 2010, before me, the undersigned, a Notary Public in and for said State, personally appeared John M. Nations, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the City of Chesterfield, Missouri, a Missouri political subdivision, and that said instrument was signed in behalf of said city by authority of its governing body, and said officer 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 notarial seal the day and year last above written.


Notary Public

My commission expires: OCT. 3, 2010

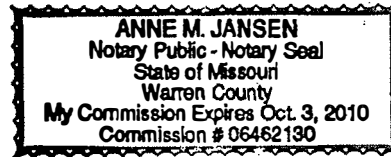


EXHIBIT A TO MEMORANDUM OF RIGHT OF FIRST REFUSAL

Legal Description of Property

Parcel 1:

A tract of land located in U.S. Survey 2031, Township 45 North, Range 4 East and being more particularly described as follows: Beginning at the Southwest property corner of a tract of land conveyed to Don F. Wiegand by deed recorded in Deed Book 8234, Page 1325 of the St. Louis County Records; thence South 88°57'50" East along the South line of the aforesaid Wiegand tract a distance of 392.20 feet to a point, said point being the Southeast property corner of the aforesaid Wiegand tract; thence departing last said south line South 01°02'10" West 20.00 feet; thence North 88°57'50" West 515.58 feet to a point; said point being on the eastern right-of-way line of Baxter Road, 82 ft. wide; thence, following said eastern right-of-way line of Baxter Road, on a curve to the right whose radius point bears South 81°52'32" East 534.00 feet from the last mentioned point, a distance of 321.25 feet to a point; thence leaving said eastern right-of-way line South 36°59'38" East 41.36 feet to a point; said point being the northwest corner of the aforementioned property; thence South 00°02'23" West 84.33 feet to a point; thence South 13°39'03" West 155.19 feet to the Point of Beginning and containing 35,716 square feet or 0.82 acres more or less. This property being located at 16905 Baxter Road and having St. Louis County Assessor Locator Identification Number 17T220942.

Parcel 2:

A tract of land in U.S. Survey 2031 Township 45 North Range 4 East and described as follows: Beginning at the intersection of the center line of Chicago, Rock Island and Pacific Railroad right of way, with the center line of a County road, 60 feet wide established by Deed recorded in Book 1434, Page 260 of the St. Louis County Records, thence North 3 degrees 30 minutes East 186.20 feet and South 89 degrees 35 minutes East 163 feet to the Southwest corner and the point of beginning of the property herein described, thence North 13 degrees 01 minute East along the center line of a private road, 155.21 feet, thence North 0 degrees 33 minutes West 84.33 feet, thence South 89 degrees 35 minutes East 359.81 feet, thence South 0 degrees 25 minutes West 235.79 feet, thence North 89 degrees 35 minutes West 392.20 feet to the place of beginning, containing 2.00 acres, more or less, to center line of private road. This property being located at 1 Wiegand Drive and having St. Louis County Assessor Locator Identification Number 17T310335.

EXHIBIT F

NOTICE OF COMPLETION

The undersigned, Monarch-Chesterfield Levee District, pursuant to that certain Cooperation Agreement dated as of November 1, 2009 (the "*Agreement*"), among the Monarch-Chesterfield Levee District (the "*Levee District*"), the Chesterfield Valley Transportation Development District (the "*TDD*") and Don Wiegand ("*Wiegand*"), hereby certifies to the TDD and Wiegand as follows:

1. As of _____, 20____, the Levee Improvements (as defined in the Agreement) upon the Wiegand Property (as defined in the Agreement) have been substantially completed in accordance with the Agreement.

2. The construction of the Levee Improvements has been performed in a workmanlike manner and substantially in accordance with the construction plans, as modified by any approved changes.

3. Copies of the final lien waivers received by the Levee District from its general contractor (and subcontractors, to the extent required) for the Levee Improvements are set forth as **Appendix A**, attached hereto and incorporated herein by reference.

4. This Notice of Completion is being issued by the Levee District to the TDD and Wiegand in accordance with the Agreement to evidence the Levee District's satisfaction of all material obligations and covenants with respect to the Levee Improvements.

5. The total amount of TDD Reimbursable Costs associated with the Levee Improvements (as defined in the Agreement) is Two Hundred Sixty Eight Thousand Dollars (\$268,000).

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand this _____ day of _____, 20____.

MONARCH-CHESTERFIELD LEVEE DISTRICT

By: _____

Name: _____

Title: _____

EXHIBIT G

FORM OF LICENSE

**CONSTRUCTION, MAINTENANCE AND USE LICENSE FOR
THE MONARCH-CHESTERFIELD LEVEE TRAIL**

THIS CONSTRUCTION, MAINTENANCE AND USE LICENSE ("*License*") is made and entered into this ___ day of _____ 20___, by and among the Monarch-Chesterfield Levee District, a Missouri statutory levee district (the "*Levee District*") and the City of Chesterfield, Missouri, a Missouri third class city (the "*City*").

WHEREAS, the Levee District owns, operates and maintains a levee in St. Louis County, Missouri, known as the Monarch-Chesterfield Levee (the "*Levee*");

WHEREAS, the City is engaged in efforts to establish an interconnecting trail and parks within its jurisdiction, which includes the Levee District;

WHEREAS, the Levee District has jurisdiction over construction, maintenance, improvement and use of the Levee;

WHEREAS, the City and the Levee District desire to arrange for the construction and maintenance of a walking and biking trail (the "*Levee Trail*") atop the Levee within the area described in this License and other similar licenses granted in connection with the Levee Trail (collectively, the "*License Area*"); and

WHEREAS, this License shall address the duties and responsibilities of the parties hereto with regard to the construction and maintenance of the Levee Trail.

NOW THEREFORE in consideration of the mutual promises, covenants and agreements herein contained, the sufficiency of which are hereby acknowledge, the parties mutually agree to the following:

SECTION I
Grant of License

1. **Grant of License.** Subject to the terms and conditions of this License, the Levee District agrees to the following:

(a) 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 property set forth in Exhibit A attached hereto (“Phase ___ License Area”), subject to the Levee District’s use of the Levee to construct, maintain, repair, operate, patrol and replace a permanent seepage berm and a flood protection levee, a storm water pump station, related storm water drainage improvements, including all appurtenances thereto, a right of ingress and egress thereto, and to exercise all powers granted to levee districts under Chapters 245 and 246 RSMo 2000.

(b) The Levee District further grants to the City a permit to construct, at the City’s sole cost and expense, the Levee Trail along those sections of the License Area where the Levee District has not constructed a roadway; provided that the Levee District shall have vehicular access to the Levee Trail 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 Levee Trail. The Levee District shall have copies of keys or any other device necessary to obtain access through the gates or barriers. The Levee Trail shall be constructed in accordance with the Plans (as hereinafter defined).

SECTION II
City Responsibilities

2. **City to Acquire Easements.** The License granted hereunder is expressly contingent and conditioned upon the City identifying and obtaining a permanent easement from each owner of the underlying fee title of the License Area on which the Levee is located. The City shall provide the Levee District with a copy of such easements prior to commencement of construction of the Levee Trail.

3. **Review and Approval of Plans.**

(a) The City has submitted and the Levee District has approved site plans for the Levee Trail entitled “_____”, _____, dated _____ and sealed _____ (the “Plans”), set forth as Exhibit B attached hereto.

(b) Prior to any material changes to the Plans, the City shall submit to the Levee District for review by the Levee District, its engineers and the U.S. Army Corps of Engineers, a copy of any modifications to the Plans. The Levee District shall have 45 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.

(c) Any additional work, other than routine maintenance, shall be subject to review and approval by the Levee District, its engineers and the U.S. Army Corps of Engineers. The City shall not commence or cause commencement of such additional work prior to obtaining a permit from the Levee District authorizing such work. Such additional work shall include, but not be limited to: installation of signs, gates, crossings, modification of the Levee Trail, excavation in the Levee Trail, or repair of the Levee Trail, or other work not contained in the original approved Plans.

4. Levee Trail Construction. The City shall be solely responsible for all construction of the Levee Trail, including all costs associated therewith, and shall establish itself as the contact for all construction service providers, including engineers and contractors. In addition, the City shall ensure that all invoices, bills or other demands for payment related to construction are addressed to the City at City's main office. The Levee District shall not be responsible for the construction of the Levee Trail or any costs associated therewith. The construction of the Levee Trail shall be in accordance with the Plans.

5. Levee Trail Maintenance. The City shall be solely responsible for all maintenance activities associated with the Levee Trail, and shall establish itself as the contact for all maintenance providers. In addition, the City shall ensure that all invoices, bills or other demands for payment related to maintenance are addressed to the City at the City's main office. The Levee District shall not be responsible for the maintenance of the Levee Trail or any costs associated therewith.

The City shall arrange for and ensure proper and reasonable maintenance and operation of the Levee Trail. All maintenance and operation activities directed and/or engaged in pursuant to this Section shall be in accordance with the Plans and shall comply with all requirements and regulations of the U.S. Army Corps of Engineers and the Levee District with respect to the Levee. All agreements entered

into or made necessary pursuant to this Section shall be subject to the prior approval of the Levee District. Such maintenance under this Section shall include, without limitation, the following:

(a) *Herbicides and Pesticides:* The City shall be responsible for herbicide treatment to control weeds on the Levee Trail, but may only apply or have applied pesticides, herbicides, rodenticides, or any other chemicals to the Levee Trail, not the Levee in general. The City will provide a schedule for Levee Trail treatment applications defining the yearly maintenance program. The prior written consent of the Levee District will be required to apply any chemicals under this provision, such consent not unreasonably withheld.

(b) *Trail Surface:* The Levee Trail and the parking areas serving the same, if any, shall be maintained by the City and inspected periodically for repairs as necessary to keep the Levee Trail in a suitable condition for recreational use. Repairs such as crack filling and Levee Trail surface replacement shall be completed to keep the Levee Trail in a suitable condition. All resurfacing must be pre-approved by and coordinated with the Levee District.

(c) *Access Points and Gates:* The City shall be responsible for the maintenance of all Levee Trail access points and gates.

(d) *Trees:* No trees are to be planted on or near the Levee, including on or near the Levee Trail. Wildflowers and other shallow root native flowering plants and ground cover, however, may be planted along the Levee Trail subject to prior Levee District review and approval.

(e) *Trash:* The City shall be responsible for trash and debris removal on and near the Levee Trail, and parking areas serving the same, if any, and shall empty all trash containers on a regular basis. The City shall be responsible for provision, and repair or replacement, of all trash containers and barrels, and all associated attachments to the trash containers and barrels (poles, stands, etc.).

(f) *Signs:* The City shall provide information and regulatory signs for all Levee Trail access points. Other signs may be posted as necessary for directional, informational, or regulatory purposes within the License Area. No sign whatsoever may be posted without the prior written approval

of the Levee District. The logos of the City shall be placed on major signs at each entrance to the Levee Trail. The City shall maintain these signs.

(g) *Benches:* Benches may be provided by the City in selected areas along the Levee Trail and parking areas serving the same, if any, as approved by the Levee District. If benches are provided, the City shall be responsible for maintenance and clean-up of same.

(h) *Mowing:* The City shall be responsible for mowing the area from the top of the Levee Trail down the levee side slopes a width of 6 to 8 feet with at least two passes on a riding lawn mower.

5. Levee Repair. The City shall repair or pay to repair any damage, including the restoration of rip-rap, soil and seeding and mulching, caused to the Levee, including side slopes, during Levee Trail construction, maintenance or operation, or by use of the Levee Trail by the public or the City. All repairs or restoration shall be to the Levee District's satisfaction.

6. Levee Trail Security. All local ordinances and/or laws for the City and the County of St. Louis, as applicable to the Levee Trail within the various jurisdictions, will be enforced by City. The City will provide for patrol personnel to patrol the Levee Trail on a periodic and continuous basis to ensure the enforcement of the various rules, regulations, and ordinances. Fire suppression service and any costs related thereto for the Levee Trail shall be provided by the City.

7. Insurance. Prior to commencement of construction of the Levee Trail by the City, the City shall deliver to the Levee District evidence reasonably satisfactory to 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 the Levee Trail by the City in the amounts listed below.

(a) The City shall secure commercial general liability insurance policies for coverage of the injuries and damage for which it, as a political subdivision, is legally obligated under Missouri Law. Each policy shall be in the minimum amount of \$2,000,000. The insurance policies shall be maintained in force during the term of this License. Certificate(s) of Insurance stating that the policies are

in full force and effect and that the same will not be altered, amended or terminated without ten (10) days prior written notice to the Levee District shall be sent to the Levee District.

(b) Notwithstanding anything herein to the contrary, no provision, term, or condition in this License shall constitute, or be construed as, a waiver of the defenses of a sovereign immunity, official immunity, or governmental immunity by whatever name as set forth in Section 537.600 RSMo. *et. seq.*, for any monetary amount whatsoever, or of any other defenses, howsoever named, that are, or in the future may become, available to the parties by statute or common law.

(c) The commercial general liability insurance policies secured under this Section shall include endorsements to restrict coverage in a manner as will preserve fully for the parties the defenses of sovereign immunity, official immunity, or governmental immunity, by whatever name as set forth in Section 537.600 RSMo. *et seq.*, for any monetary amount whatsoever, and any other defenses, howsoever named, that are, or in the future may become, available to the parties by statute or common law.

8. Payment and Performance. The City shall pay when due all valid claims for labor and material furnished in connection with the Levee Trail. The City shall not create, permit or suffer, and shall promptly discharge and satisfy of record or bond against, any lien, encumbrance, charge or other right or interest which shall be or become a lien, encumbrance or charge against the License Area or any portion thereof, save and except for those liens, encumbrances, charges or security interests or other rights or interests consented to in writing by the other, or those mortgages, assignments of rents, assignments of leases or other mortgage documentation placed thereon by the City in financing the acquisition or construction of the License Area or Levee Trail.

9. Indemnification.

(a) To the extent authorized by law, and without waiving sovereign immunity available to the City under Missouri law, the City shall defend, indemnify and hold harmless the Levee District and the Levee District's officials, officers, employees, agents and representatives from and against any and all damages, liability, claims, fines, allocations, losses, costs, and expenses, including

reasonable attorneys' fees, arising out of or relating to this License, the License granted hereunder, or the use of or improvement to the Levee Trail by the City or any third party; provided, however, the City shall not indemnify the Levee District from claims arising from the gross negligence or willful misconduct of the Levee District. The limited obligation of the City to indemnify the Levee District shall not under any circumstance constitute, or be construed as, a waiver of the City's defenses of sovereign immunity, official immunity, or governmental immunity by whatever name as set forth in Section 537.600 RSMo. et seq., for any monetary amount whatsoever, or of any other defenses, howsoever named, that available to the parties by statute or common law.

(b) To the extent authorized by law, and without waiving sovereign immunity available to the City under Missouri law, the City shall defend, indemnify and hold harmless the Levee District and the Levee District's officials, officers, employees, agents and representatives from and against any and all damages, liability, claims, fines, allocations, losses, costs, and expenses, including reasonable attorneys' fees, arising out of or relating to use by the Levee District of the Levee Trail for Levee construction, repair, maintenance or emergency measures; provided that the Levee District will seek to include the costs to repair Levee Trail damage in any claim submitted to FEMA for emergency protective measures.

SECTION III **Levee District Rights and Responsibilities**

1. Primary Purpose of Levee.

(a) The parties hereto agree that, notwithstanding anything to the contrary contained anywhere in this License, the primary purpose of the Levee is to protect against flooding within the Levee District (the "*Primary Purpose*"). The parties hereto further agree that the rights, interests and privileges of the parties hereto, any other sponsors of the Levee Trail, and the users thereof, are subordinate and secondary to the Primary Purpose of the Levee and the Levee District's rights and interests in promoting the Primary Purpose, including the Levee District's efforts to undertake emergency measures, reasonable maintenance, inspection, repair and operation of the Levee.

(b) In the event that the Levee District, or any utility in contact with the Levee, shall engage, or direct others to engage, in specified maintenance, repair, removal or other construction on the Levee, the Levee Trail or the portion thereof identified by the Levee District may be closed and made unavailable for recreation uses, if such closure is required to conduct the activity. In the event that any maintenance, repair, removal or other construction undertaken by the Levee District, or a party engaged by it, causes the removal or alteration of the Levee Trail or any improvements related to the Levee Trail, the Levee District, or any engaged parties, shall use reasonable care as to not damage the Levee Trail. Notwithstanding the foregoing, the Levee District shall have no obligation to repair or replace any portion of the Levee Trail in the event any portion of the Levee Trail is damaged or removed by the Levee District for the construction, extraordinary or routine maintenance, operation of the Levee or for any other Levee District purpose. The City or its agents shall be solely responsible for the maintenance and repair of the Levee Trail.

(c) The Levee District shall have the right to close the Levee Trail, in its sole discretion, in emergency conditions, which shall include storm or flood events when the Missouri River is anticipated to reach thirty-two (32) m.s.l. at the St. Charles Gauge.

2. **Inspection.** The Levee District shall have the right to inspect the Levee Trail at any and all times during the duration of this License. The City shall at all times permit and facilitate inspection of the Levee Trail by the Levee District and its agents.

3. **Financial Obligations.** The Levee District shall have no financial obligation of any kind with respect to the Levee Trail. Further, the parties agree that this License should be construed strictly with respect to the obligations of the Levee District hereunder and liberally construed with respect to the rights of the Levee District hereunder. No financial or other obligations to act or fail to act shall be implied or inferred in this License with respect to the Levee District.

Section IV
General Provisions

1. **Term.** The term of this License shall commence as of the date first written above and shall continue until terminated according to the following terms:

(a) Levee District may terminate this License if: (i) jurisdiction governing the Levee District requires removal of the Levee Trail; (ii) removal of the Levee Trail is required by court order; or (iii) the City defaults and fails to cure such default within 60 days, or, if the City is diligently pursuing such cure, up to 180 days.

(b) The City may terminate this License at anytime, subject to any obligations to repair the Levee and subject to any indemnification obligation, which shall survive termination of this License.

In both cases, upon termination, the City shall remove the Levee Trail at its sole cost; all terms governing the City's work on the Levee shall apply.

2. **Liaison.** Each party hereto shall identify, in writing, to the other parties hereto, one employee as its designated liaison with regard to and for purposes of this License. All communications regarding this License and its performance, other than those which require a specific notice, shall be directed to such designated liaison.

3. **Notice.** Any notice, demand, communication, or request required or permitted hereunder shall be in writing, except where otherwise herein designated by telephone, and delivered in person or sent by certified, return receipt requested, via United States mail, or via facsimile transmission, as follows:

To the City:

City of Chesterfield
Attn: CITY ADMINISTRATOR
690 Chesterfield Parkway West
Chesterfield, Missouri 63017
Phone: 636-537-4000
Fax: 636 537 4798

IN WITNESS WHEREOF, the City has executed this Agreement as of the day and year first above written.

City of Chesterfield

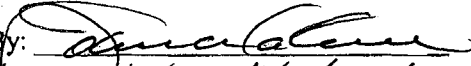
By: 
Name: John Madison
Title: Mayor

EXHIBIT B TO LICENSE

Plans

(To be inserted upon execution of License.)