

AN ORDINANCE OF THE CITY OF RICHMOND HEIGHTS, MISSOURI APPROVING A SECOND AMENDMENT TO REDEVELOPMENT AGREEMENT BY AND BETWEEN MULLENIX RICHMOND HEIGHTS REDEVELOPMENT CORPORATION AND THE CITY OF RICHMOND HEIGHTS, MISSOURI, FOR REDEVELOPMENT AREA NAMED BRENTWOOD BOULEVARD/CLAYTON ROAD REDEVELOPMENT AREA, FORMS A TRANSPORTATION DEVELOPMENT DISTRICT (TDD) AND APPROVES AND CONSENTS TO THE USE AND ESTABLISHMENT OF A COMMUNITY IMPROVEMENT DISTRICT (CID) FOR THE REDEVELOPMENT AREA.

WHEREAS, The City and Developer have entered into a certain Redevelopment Agreement referred to as the BRENTWOOD BOULEVARD/CLAYTON ROAD REDEVELOPMENT AREA dated as of June 2, 2003 (the "Original Agreement"), as amended by that certain First Amendment to Redevelopment Agreement dated as of October 17, 2005 (the "First Amendment" and, collectively with the Original Agreement, the "Agreement"), providing for the redevelopment of a certain area (the "Redevelopment Area") described in Exhibit C to the Original Agreement consistent with the terms of a certain Redevelopment Plan as set forth in Exhibit A to the Original Agreement.

WHEREAS, that since the date that the Redevelopment Plan was initially approved by the City and the date on which the Agreement was executed, the scope of the Redevelopment Project (as defined in the Agreement) has substantially increased, and other changes have occurred which necessitate the parties entering into a Second Amendment to Redevelopment Agreement as set forth in Exhibit "B".

WHEREAS, pursuant to the Missouri Transportation Development District Act, Sections 238.200 to 238.275, inclusive, of the Revised Statutes of Missouri, as amended, the Brentwood Boulevard/Clayton Road Redevelopment District (the "District") has been formed for the purpose of financing certain transportation improvements within and around the Redevelopment Area; and

WHEREAS, pursuant to the Missouri Commercial improvement District Act, Sections 67.1401 through 67.1475, of the Revised Statutes of Missouri, as amended, (the CID Act") the Brentwood Boulevard/Clayton Road Community Improvement District shall be formed for the purpose of imposing a sales tax in an amount not to exceed 1% of retail sales within the Redevelopment Area.

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

SECTION 1. The Second Amendment to Redevelopment Agreement attached hereto as Exhibit "B" pursuant to the terms and conditions of this Amendment is approved and the Mayor and Clerk of the City of Richmond Heights, Missouri are hereby authorized and directed to sign and attest to same on behalf of the City of Richmond Heights.

SECTION 2. The Amendment authorized for execution and attestation shall be in substantially the form and contain the words and figures as per Exhibit "B" which is attached hereto and made a part of this Ordinance as if fully set out herein.

SECTION 3. The sections of this Ordinance shall be severable. In the event that any of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining sections of this Ordinance are valid, unless the court finds that the valid sections of this Ordinance are so essential to and inseparably connected with and dependent upon the void section that it cannot be presumed that the City Council has enacted the valid sections without the void ones, or unless the court finds that the valid sections, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

SECTION 3. This Ordinance shall take effect and be in full force on the thirty-first day following its passage and being signed as provided by law.

PASSED and SIGNED this 3rd day of March, 2008.

BETTY J. HUMPHREY
MAYOR

ATTEST:

PATRICIA S. VILLMER
CITY CLERK

APPROVED AS TO FORM:

KENNETH J. HEINZ
CITY ATTORNEY

First reading: February 18, 2008
Second reading: March 3, 2008

EXHIBIT A
REDEVELOPMENT PLAN
(On file with the City Clerk)

EXHIBIT B

SECOND AMENDMENT TO REDEVELOPMENT AGREEMENT

This Second Amendment to Redevelopment Agreement (this “Amendment”) is made this 3rd day of March, 2008 by and between MULLENIX RICHMOND HEIGHTS REDEVELOPMENT CORPORATION, a Missouri redevelopment corporation (“Developer”) and the CITY OF RICHMOND HEIGHTS, MISSOURI, a home rule charter city and political subdivision of the State of Missouri (“City”).

RECITALS:

The City and Developer have entered into a certain Redevelopment Agreement dated as of June 2, 2003 (the “Original Agreement”), as amended by that certain First Amendment to Redevelopment Agreement dated as of October 17, 2005 (the “First Amendment” and, collectively with the Original Agreement, the “Agreement”), providing for the redevelopment of a certain area (the “Redevelopment Area”) described in Exhibit C to the Original Agreement consistent with the terms of a certain Redevelopment Plan as set forth in Exhibit A to the Original Agreement.

The parties desire to further amend the Agreement pursuant to the terms and conditions of this Amendment and to ratify and affirm the Agreement as hereby amended.

NOW, THEREFORE, in consideration for the mutual promise herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Recitals. The Recitals are incorporated herein and made a part of this Amendment as though fully set forth herein.
2. Definitions. Capitalized terms used in this Amendment shall have the definitions ascribed to them in the Agreement unless otherwise expressly provided herein.
3. Amendments. The Agreement shall be amended as follows:

3.1. Section 1.1 of the Agreement shall be amended by adding the following definitions:

“CID Project”: The improvements as described in the District Project Agreement, including but not limited to the roadway improvements identified in Article IX hereof and certain other public improvements, which improvements shall, in the opinion of counsel to the CID (as defined below), be qualified expenditures for the CID under Missouri law and which improvements are to be completed by the Developer, as agent for the CID, and for which the CID is to

reimburse the Developer for the costs thereof, all pursuant to the District Project Agreement.

“District”: The transportation development district and/or community improvement district formed in connection with the Redevelopment Project to be created and maintained pursuant to Article IX hereof and the District Project Agreement.

“District Obligations”: Any transportation development and/or community improvement revenue notes, bonds or other obligations, singly or in series, issued by the District pursuant to the TDD Act and/or the CID Act, as applicable, and in accordance with this Agreement and the District Project Agreement.

“District Project Agreement”: An intergovernmental cooperation agreement to be entered into between the CID, the TDD and the City, as described in Article IX hereof.

“District Sales Tax”: The sales tax to be levied by the District.

“TDD Project”: The improvements as described in the District Project Agreement, including but not limited to the funding of all or a portion of a parking garage to provide parking for the Redevelopment Area and the roadway improvements identified in Article IX hereof, which improvements shall, in the opinion of counsel to the TDD (as defined below), be qualified expenditures for the TDD under Missouri law and which improvements are to be completed by the Developer, as agent for the TDD, and for which the TDD is to reimburse the Developer for the costs thereof, all pursuant to the District Project Agreement.

3.2. Article IX is deleted in its entirety and the following is inserted in lieu thereof:

ARTICLE IX

TRANSPORTATION DEVELOPMENT DISTRICT AND COMMUNITY IMPROVEMENT DISTRICT

Section 9.1 Formation of Transportation Development District. The City acknowledges that following acquisition of all of the Property, the Developer intends to petition the Circuit Court of St. Louis County, Missouri for the creation of a Transportation Development District (“TDD”) within the Redevelopment Area under the Missouri Transportation Development District Act, Sections 238.200 through 238.280 of the Revised Statutes of Missouri, as amended (the “TDD Act”). Developer shall cause the TDD to impose a sales tax in an amount not to exceed 1% of retail sales within the Redevelopment Area. The City consents to the use and establishment of the TDD and shall take such actions and enter into such agreements as are reasonably acceptable to the City so long as the

City does not incur any unreimbursed expense or liability in furtherance of the establishment of the TDD or its administration.

Section 9.2 Formation of Community Improvement District. The City acknowledges that following acquisition of all of the Property, the Developer intends to petition the City for the creation of a Community Improvement District (“CID”) pursuant to the Missouri Community Improvement District Act, Sections 67.1401 through 67.1475 of the Revised Statutes of Missouri, as amended (the “CID Act”). Developer shall cause the CID to impose a sales tax in an amount not to exceed 1% of retail sales within the Redevelopment Area. The City consents to the use and establishment of the CID and shall take such actions and enter into such agreements as are reasonably acceptable to the City so long as the City does not incur any unreimbursed expense or liability in furtherance of the establishment of the CID or its administration.

Section 9.3 District Project Agreement. The parties acknowledge and agree that the creation of a District pursuant to this Section shall be solely for the purpose of providing additional tax revenues for funding the Redevelopment Project Costs, subject to the limitations set forth in the TDD Act and/or the CID Act. The Developer shall cause each District, promptly following its formation and constitution of a board of directors, to (a) authorize and enter the District Project Agreement with the City, and (b) take such necessary steps to impose the District Sales Tax, including but not limited to passing necessary resolutions and submitting the matter of imposing the District Sales Tax to the qualified voters of the District. The District Project Agreement shall provide for (1) the Developer to advance funds for and complete the CID Project and the TDD Project or cause such funds to be advanced and cause the completion of the CID Project and the TDD Project, (2) each District to issue District Obligations to the Developer or its affiliate(s), to the extent necessary, to reimburse the Developer or its affiliate(s) for the costs incurred in completing the CID Project and the TDD Project, subject to limitations contained in the District Project Agreement, (3) each District’s levy of the District Sales Tax, (4) the City’s collection of District Sales Tax revenues (if applicable), and (5) the operation and governance of each District pursuant to certain requirements. The parties agree that the Developer shall be authorized to designate a majority of the governing body of any District. Each petition for creating the District shall provide that the District’s continued existence shall be conditioned upon the District entering into the District Project Agreement.

Section 9.4 Cooperation. The City will cooperate with and assist the Developer in all proceedings relating to the creation and certification of the TDD and the CID. The Developer shall pay or cause to be paid all costs incurred by the City in connection with the creation of the CID and the TDD and the issuance of District Obligations (if any). The Developer may seek reimbursement of such costs from the CID and/or the TDD, as applicable. The Developer agrees that it will not, without the City’s prior written consent, seek or consent to the formation

of any other transportation development district, community improvement district or similar district that encompasses any portion of the Redevelopment Area.

Section 9.5 Roadway Improvements. The Developer shall (a) provide land reasonably required by St. Louis County for widening of Brentwood Boulevard for the purpose of one additional turn lane, at no cost to the City or the County, and (b) as agent of the District, design and construct traffic calming, pedestrian safety, lighting and other streetscape improvements to be made by the City on and/or near Brentwood Boulevard, as reasonably determined by the City, similar to such improvements along/near Brentwood Boulevard south of Galleria Parkway.

4. Ratification. The Agreement as amended hereby is ratified and affirmed and acknowledged by both parties to be in full force and effect.

IN WITNESS WHEREOF, the City and Developer have caused this Amendment to be executed in their respective names as of the date first above written.

CITY OF RICHMOND HEIGHTS, MISSOURI

By: _____
Betty Humphrey, Mayor

Attest: _____
Name: _____
Title: _____

Approved as to Form

Kenneth C. Heinz, City Attorney

MULLENIX RICHMOND HEIGHTS REDEVELOPMENT CORPORATION

By: _____
Michael C. Mullenix, President

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

On this ____ day of _____, 2008, before me appeared **BETTY HUMPHREY**, to me personally known, who, being by me duly sworn, did say that she is the Mayor of the **CITY OF RICHMOND HEIGHTS, MISSOURI**, an incorporated political subdivision of the State of Missouri, and that the seal affixed to the foregoing instrument is the seal of said City, and said instrument was signed and sealed in behalf of said City by authority of its City Council, and said **BETTY HUMPHREY** acknowledged said instrument to be the free act and deed of said City.

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

Name: _____
Notary Public - State of Missouri
Commissioned in St. Louis County

(SEAL)

My Commission Expires:

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

On this ____ day of _____, 2008, before me appeared **MICHAEL C. MULLENIX**, to me personally known, who, being by me duly sworn, did say that he is the President of **MULLENIX RICHMOND HEIGHTS REDEVELOPMENT CORPORATION**, a Missouri redevelopment corporation, and that he is authorized to sign the instrument on behalf of said corporation, and acknowledged to me that he executed the within instrument as said corporation's free act and deed.

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

Name: _____
Notary Public - State of Missouri
Commissioned in St. Louis County

(SEAL)

My Commission Expires:

EXHIBIT C

Property description of Redevelopment Area

A tract of land being part of Blocks 1 and 3 of Darstmoor, a subdivision according to the plat thereof, recorded in Plat Book 17, Page 18 of the St. Louis County records and a part of Francis Place, 50 feet wide, all being located in U.S. Survey 485, Township 45 North, Range 6 East of the 5th Principal Meridian, City of Richmond Heights, St. Louis County, Missouri and being more particularly described as follows:

Beginning at the Northeasterly corner of Lot C of Block 1 of above said Darstmoor, said point also being on the Southerly line of Clayton Road, variable width; thence along last said Southerly line South 04 degrees 07 minutes 29 seconds West 20.04 feet and South 82 degrees 22 minutes 54 seconds East 134.09 feet to a point on the Westerly line of Interstate Highway I-170 as established by deed recorded in Book 4752 Page 291 of the above said records; thence along last said Westerly line, and along the Westerly line of Interstate Highway I-170 as established by deed recorded in Book 4460 Page 10, Book 4620 Page 435, and Book 4678 Page 598 of the above said records the following courses and distances: South 16 degrees 04 minutes 20 seconds East 55.48 feet, South 30 degrees 01 minutes 28 seconds West 58.62 feet to a point on the Northerly line of a 15 feet wide alley, vacated by Ordinance No. 3353 of the City of Richmond Heights, a certified copy of which is recorded in Book 6914 Page 1428 of the above said records; thence crossing last said alley South 08 degrees 37 minutes 39 seconds West 15.00 feet to a point in the Southerly line of above said alley; thence continuing along the Westerly line of said Interstate Highway I-170 the following courses and distances: South 12 degrees 58 minutes 06 seconds East 57.37 feet; South 12 degrees 58 minutes 56 seconds East 52.32 feet and South 12 degrees 58 minutes 18 seconds East 52.32 feet to a point on the Southerly line of Lot 36 of above said Block 3; thence along last said Southerly line and the Westerly prolongation thereof North 85 degrees 51 minutes 31 seconds West 148.85 feet; thence departing last said Southerly line and the Westerly prolongation thereof North 04 degrees 07 minutes 29 seconds East 100.00 feet to a point on the Easterly prolongation of the Northerly line of Lot 29 in Block 1 of above said Darstmoor; thence along last said Easterly prolongation of the Northerly line of said Lot 29 and the Northerly line of said Lot 29, North 85 degrees 51 minutes 31 seconds West 175.00 feet to the Easterly line of a 15 feet wide alley in Block 1 of said Darstmoor; thence leaving last said Northerly line and along last said Easterly line North 04 degrees 07 minutes 29 seconds East 66.61 feet and North 50 degrees 52 minutes 18 seconds East 6.85 feet to the Southerly line of a 15 feet wide Alley in said Block 1; thence departing last said Southerly line North 07 degrees 37 minutes 06 seconds East 15.00 feet to the Northerly line of last said 15 feet wide Alley; thence along last said Northerly line North 82 degrees 22 minutes 54 seconds West 126.64 feet to the Easterly line of Brentwood Boulevard, variable width; thence departing last said Northerly line and along last said Easterly line the following courses and distances: North 04 degrees 07 minutes 29 seconds East 74.03 feet; Northeasterly along a curve to the right for which the chord bears North 50 degrees 51 minutes 55 seconds East 65.54 feet and the radius point bears South 85 degrees 52 minutes 31 seconds East 45.00 feet, an arc distance of 73.42 feet; South 82 degrees 23 minutes 39 seconds East 5.00 feet and North 07 degrees 30 minutes 25 seconds East 3.36 feet to the Southerly line of above said Clayton Road; thence departing last said Easterly line and along last said Southerly line South 82 degrees 22 minutes 54 seconds East 217.98 feet to the POINT OF BEGINNING, containing 83,446 square feet or 1.916 acres more or less, according to calculation performed by Stock and Associates Consulting Engineers, Inc. on September 27, 2005.