

AN ORDINANCE OF THE CITY OF RICHMOND HEIGHTS, MISSOURI, AMENDING THE HADLEY TOWNSHIP REDEVELOPMENT PLAN AND AUTHORIZING THE EXECUTION OF A SECOND AMENDMENT TO REDEVELOPMENT AGREEMENT WITH MICHELSON-HADLEY HEIGHTS DEVELOPMENT, LLC.

WHEREAS, the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865 of the Revised Statutes of Missouri, as amended (the “Act”), authorizes municipalities to undertake redevelopment projects in blighted, conservation or economic development areas, as defined in the Act; and

WHEREAS, the City Council has previously approved a plan for redevelopment known as the Hadley Township Redevelopment Plan (the “Redevelopment Plan”), for an area containing approximately 63 acres and consisting of two redevelopment project areas, which collectively are generally bounded by a portion of the Highway 40/Interstate 64 right-of-way and Dale Avenue on the north; Laclede Station Road on the east; West Bruno Avenue on the south; and Hanley Road on the west (collectively, the “Redevelopment Area”), as depicted in Appendix A of the Redevelopment Plan and legally described in Appendix B of the Redevelopment Plan; and

WHEREAS, the Redevelopment Plan envisions (1) a mixed-use development within Redevelopment Project Area 1, which could include retail, service, restaurant, office, hotel and single-family and multi-family residential development, and (2) primarily residential infill on individual lots, coupled with associated infrastructure improvements, within Redevelopment Project Area 2; and

WHEREAS, the City and Michelson Commercial Realty and Development, L.L.C., a Missouri limited liability company (“MCRD”), entered into a Redevelopment Agreement for the Hadley Township Redevelopment Area dated as of November 17, 2006 (the “Original Agreement”), wherein MCRD agreed to redevelop Redevelopment Project Area 1, and the City authorized such redevelopment, upon the terms and conditions contained in the Original Agreement; and

WHEREAS, MCRD assigned its rights under the Original Agreement to Michelson-Hadley Heights Development, LLC (the “Developer”) by the Assignment of Redevelopment Agreement dated March 1, 2007; and

WHEREAS, to further facilitate the redevelopment of Redevelopment Project Area 1, the City and the Developer agreed to amend the Original Agreement and entered into the First Amendment to Redevelopment Agreement dated as of April 16, 2007 (collectively with the Original Agreement, the “Agreement”); and

WHEREAS, to further facilitate the redevelopment of Redevelopment Project Area 1, the City Council now desires to approve the 2008 Amendment, Hadley Township Redevelopment Plan attached hereto as **Exhibit A** and to authorize the execution of the Second Amendment to Redevelopment Agreement attached hereto as **Exhibit B**;

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

SECTION 1. The City Council hereby approves the 2008 Amendment, Hadley Township Redevelopment Plan attached hereto as **Exhibit A**.

SECTION 2. The City Council hereby approves the Second Amendment to Redevelopment Agreement in substantially the form attached hereto as **Exhibit B**, with such changes therein as shall be approved by the officers of the City executing the same. The Mayor is hereby authorized and directed to execute, on behalf of the City, the Second Amendment to Redevelopment Agreement between the City and the Developer, and the City Clerk is hereby authorized and directed to attest to the Second Amendment to Redevelopment Agreement and to affix the seal of the City thereto.

SECTION 3. The officers, agents and employees of the City are hereby authorized and directed to execute all documents and take such necessary steps as they deem necessary and advisable in order to carry out and perform the purpose of this Ordinance.

SECTION 4. The sections of this Ordinance shall be severable. If any section of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining sections shall remain valid, unless the court finds that: (a) the valid sections are so essential to and inseparably connected with and dependent upon the void section that it cannot be presumed that the City Council has or would have enacted the valid sections without the void ones; and (b) the valid sections, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

SECTION 5. 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; provided, if the Developer has not executed the Second Amendment to Redevelopment Agreement within 15 days after such date, all rights conferred by this Ordinance on the Developer shall terminate.

PASSED and SIGNED this 2nd day of July, 2008.

JAMES J. BECK
MAYOR

ATTEST:

PATRICIA S. VILLMER
DEPUTY CITY CLERK

APPROVED AS TO FORM:

KENNETH J. HEINZ
CITY ATTORNEY

First reading: June 16, 2008
Second reading: July 2, 2008

EXHIBIT A

[2008 Amendment, Hadley Township Redevelopment Plan]

EXHIBIT B

[Second Amendment to Redevelopment Agreement]

SECOND AMENDMENT TO REDEVELOPMENT AGREEMENT

THIS SECOND AMENDMENT TO REDEVELOPMENT AGREEMENT (this “Second Amendment”) is entered into as of the 4th day of August, 2008 (the “Effective Date”), by and between the **CITY OF RICHMOND HEIGHTS, MISSOURI**, an incorporated political subdivision of the State of Missouri (the “City”), and **MICHELSON-HADLEY HEIGHTS DEVELOPMENT, LLC**, a Missouri limited liability company (the “Developer”). (*Words and phrases having a defined meaning in the herein-defined Agreement shall have the same respective meanings when used herein unless otherwise expressly stated herein.*)

RECITALS:

1. The City and Michelson Commercial Realty and Development, L.L.C., a Missouri limited liability company (“MCRD”), entered into a Redevelopment Agreement for the Hadley Township Redevelopment Area dated as of November 17, 2006 (the “Original Agreement”), wherein MCRD agreed to redevelop RPA 1 of the Redevelopment Area (as defined in the Original Agreement), and the City authorized such redevelopment, upon the terms and conditions contained in the Original Agreement.
2. MCRD assigned its rights under the Original Agreement to the Developer by the Assignment of Redevelopment Agreement dated March 1, 2007.
3. To further facilitate the redevelopment of RPA 1, the City and the Developer agreed to amend the Original Agreement and entered into the First Amendment to Redevelopment Agreement dated as of April 16, 2007 (collectively with the Original Agreement, the “Agreement”).
4. The City and the Developer wish to further amend the Agreement as provided in this Second Amendment.

THEREFORE, in consideration of the premises and mutual agreements of the parties set forth herein, the parties hereto agree as follows:

1. **Section 3.1.1** is hereby amended by adding a new paragraph (f) to read as follows:

(f) Notwithstanding anything to the contrary in this Section, all Family Owned Residential Property that is occupied by the record owner of such property as a residence and is subject to a Family Owned Option Agreement, but not including any property that is subject to condemnation proceedings or where the owner has brought and as of the Effective Date maintains any legal action against the Developer and/or the City, shall be deemed an “Owner Occupied Property.” No later than five (5) business days after the Effective Date, the Developer shall cause \$1,000 of escrow deposit monies held under each Family Owned Option Agreement to be released to the owners of each Owner Occupied Property subject to such agreements.

2. **Section 3.1.5** is hereby amended by:

- a. Deleting paragraph (a) and replacing it with the following:

(a) No later than August 29, 2008, the Developer will provide notice to all owners of Owner Occupied Property and to all owners of Property within the Residential Phase (excluding

properties subject to condemnation proceedings) that the Developer either (i) intends to close on such Properties between November 28, 2008 and December 29, 2008, inclusive (provided that an owner of such a Property may request the closing be delayed until no later than January 15, 2009), or (ii) terminate the Redevelopment Agreement.

(1) If the Developer elects to provide notice of its intent to close on the Owner Occupied Property and on properties within the Residential Phase as provided above, the Developer shall secure its obligation to complete such closings through an irrevocable letter of credit or other form of collateral reasonably acceptable to the City Attorney. A copy of the letter of credit or other acceptable form of collateral must be delivered to the City before the City will close on the sale of Parcel Nos. 1 and 4 described in **Section 3.3**.

(2) Before sending the notice of its intent to close on the Owner Occupied Property and on properties within the Residential Phase as provided above, the Developer shall provide evidence satisfactory to the City, in the City's reasonable discretion, that the Developer has (or will have, on the closing date), funds in an amount sufficient to acquire all remaining Property within the Residential Phase and to construct the Redevelopment Project for the Residential Phase.

(3) If the Developer elects to close on the Owner Occupied Property and on properties within the Residential Phase, the Developer shall allow all owner occupants of such properties, if they so desire, to remain in such properties rent-free until June 15, 2009, provided that in accordance with each respective Family Owned Option Agreement, if applicable, a portion of the sale proceeds may remain in escrow until such occupants vacate.

(4) Before sending the notice of its intent to close on all remaining Property within the Southern Commercial Phase (or any subphase thereof), the Developer shall provide evidence satisfactory to the City, in the City's reasonable discretion, that the Developer has (or will have, on the closing date), funds in an amount sufficient to acquire all remaining Property within the Southern Commercial Phase (or any subphase thereof) and to construct the Redevelopment Project for the Southern Commercial Phase (or any subphase thereof).

b. Adding a new paragraph (d) as follows:

(d) Notwithstanding any provision of this Agreement to the contrary, the Developer cannot extend the time for performance under this Section for any reason.

3. **Section 3.2.2** is hereby amended by deleting the first sentence of paragraph (c) and replacing it with the following:

Within 30 days after the Effective Date of this Agreement, and within 60 days after the filing of any report of commissioners' award subsequent to the Effective Date of this Agreement, the Developer shall either (1) notify the City that it is terminating this Agreement pursuant to **Section 7.1** hereof, (2) settle the condemnation proceeding, (3) pay the amount of any commissioners' award issued in conjunction with any such condemnation proceeding either directly to the Clerk of the Circuit Court or to the City for payment of such commissioners' award by the City to the Clerk of the Circuit Court, which payment the City agrees to

immediately make to the Clerk, or (4) advise the City that the Developer will indemnify the City for all liabilities and costs associated with any condemnation proceedings and secure such indemnity by an irrevocable letter of credit or other form of collateral reasonably acceptable to the City Attorney.

4. **Section 3.3** is hereby amended by:

a. Adding the following to the end of the paragraph (c):

The Developer may, with at least fifteen (15) days' advance written notice to the City, acquire Parcel Nos. 1 and 4 at any time after the Developer has delivered to the City an acceptable letter of credit or other form of collateral pursuant to **Section 3.1.5**. The purchase price of Parcel Nos. 1 and 4 may be paid in the form of a promissory note payable by the Developer (the "Northern City Parcels Note"). The Northern City Parcels Note shall be in form and substance reasonably acceptable to the City Attorney, and must include the following terms: (1) interest shall accrue at a rate of 4.58%, compounding on each February 1 and August 1, beginning on February 1, 2009, until paid; and (2) accrued interest and principal shall be due within ninety (90) days after demand therefor, which demand shall not occur before the earlier of (A) June 1, 2011 or (B) the date on which either the City or the Developer terminates the Redevelopment Agreement. The Northern City Parcels Note shall be secured by an irrevocable letter of credit or other form of collateral reasonably acceptable to the City Attorney.

b. Deleting paragraph (d) and replacing it with the following:

(d) In addition to the cash compensation provided in the preceding paragraph, the Developer agrees to relocate the City's existing public works facility (Parcel No. 9 above) to a site mutually acceptable to the City and the Developer (the "Approved Relocation Site"). The Developer shall acquire an option to purchase the Approved Relocation Site before closing on Parcel Nos. 1 and 4 referenced above, and shall maintain such option to acquire, or shall acquire the Approved Relocation Site, until the earlier of (1) the date on which the Developer acquires Parcel No. 9 as provided herein, or (2) the date on which the Developer terminates this Agreement with respect to the Southern Commercial Phase. The relocated public works facility shall be functionally equivalent to the existing facility, and shall include at a minimum the components described in **Exhibit K** hereto. Prior to relocation by the City, the Developer shall (1) acquire all Property necessary to undertake the Southern Commercial Phase or any subphase thereof that includes Parcel No. 9, and (2) convey fee title to the Approved Relocation Site or cause fee title to the Approved Relocation Site to be conveyed to the City by general warranty deed or special warranty deed, subject to utility easements, rights-of-way and other conditions to title satisfactory to the City Attorney in his reasonable discretion, which encumbrances shall not interfere with the use of the site for the intended purposes.

5. **Section 3.5.1** is hereby amended by deleting the Construction Schedule therein and replacing it with the following:

Activity	Maximum Time for Performance (Absent Force Majeure)	Maximum Time for Performance (With Force Majeure)
Submit Notice of Acquisition (all Property described in Section 3.1.5)	December 1, 2007	August 29, 2008
Submit Notice of Acquisition (remainder of Residential Phase and Southern Commercial Phase)	February 1, 2008	Duration of any Litigation, but no later than December 1, 2009
Submit Notice of Acquisition (Northern Commercial Phase)	February 1, 2008	Duration of any Litigation, but no later than February 1, 2010
Close on the Property described in Section 3.1.5)	December 29, 2008 (or January 15, 2009 if requested by the seller)	December 29, 2008 (or January 15, 2009 if requested by the seller)
Close on remaining Property in the Residential Phase and Southern Commercial Phase	3 months after delivery of the Notice of Acquisition	Earlier of (1) 6 months after delivery of the Notice of Acquisition or (2) 30 months after delivery of the Notice of Acquisition due to Litigation filed after delivery of the Notice of Acquisition
Close on the Property (Northern Commercial Phase)	30 days after the delivery of the Notice of Acquisition	Earlier of (1) 90 days after the delivery of the Notice of Acquisition or (2) 30 months after delivery of the Notice of Acquisition due to Litigation filed after delivery of the Notice of Acquisition
Commence the Work (Residential Phase and Southern Commercial Phase)	6 months after closing on the Property	Earlier of (1) 9 months after closing on the Property or (2) 33 months after closing on the Property due to Litigation filed after closing on the Property (but not to exceed 72 months from the date of the Original Agreement)

Activity	Maximum Time for Performance (Absent Force Majeure)	Maximum Time for Performance (With Force Majeure)
Commence the Work (Northern Commercial Phase)	6 months after closing on the Property	Earlier of (1) 9 months after closing on the Property or (2) 33 months after closing on the Property due to Litigation filed after closing on the Property (but not to exceed 72 months from the date of the Original Agreement)
Submit Certificate of Substantial Completion (Residential Phase and Southern Commercial Phase)	48 months from the date of the Original Agreement	72 months from the date of the Original Agreement
Submit Certificate of Substantial Completion (Northern Phase)	60 months from the date of the Original Agreement	72 months from the date of the Original Agreement

6. **Section 3.7** is hereby amended by inserting the following after the first sentence: “If the Developer and/or McBride and Sons Homes, Inc. provides submittals for zoning and other land-use requirements by June 23, 2008, which submittals conform to the City’s ordinances and are otherwise satisfactory to the City in its sole and absolute discretion, the City agrees to (a) approve or deny such submittals on or before August 22, 2008, and (b) make any modifications to this Agreement on or before August 22, 2008, that may be necessary to conform this Agreement to any approved submittals.”

7. **Section 3.12** is hereby amended by:

a. Deleting paragraph (a) and inserting a new paragraph (a) as follows:

(a) The Developer shall, following delivery of the Notice of Acquisition for the Northern Commercial Phase or the Southern Commercial Phase or a subphase thereof, petition the proper authority for the creation of a Transportation Development District (“*TDD*”) pursuant to Sections 238.200 through 238.275 of the Revised Statutes of Missouri, as amended (the “*TDD Act*”) and/or a Community Improvement District pursuant to Sections 67.1401 through 67.1475 of the Revised Statutes of Missouri, as amended (the “*CID Act*”). The parties acknowledge and agree that the creation of a TDD pursuant to this Section shall be solely for the purpose of providing additional tax revenues for funding the Redevelopment Project Costs. The Developer shall cause the District, promptly following its formation and constitution of a board or directors, to authorize and enter the District Project Agreement with the City, which agreement shall provide for (1) the Developer to advance funds for and complete the District Project, (2) the District to issue District Notes to the Developer, to the extent necessary, to reimburse the Developer for the costs incurred in completing the District Project, subject to limits contained therein, (3) the District’s levy of the District Tax, (4) the City’s pledge of District Revenues which constitute Economic Activity Tax Revenues to the repayment of District Obligations, (5) the City’s collections of District Revenues (if applicable), and (6) the operation and governance of the District pursuant to certain requirements. The parties agree that the Developer shall be

authorized to designate a majority of the governing body of any TDD or CID. The 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.

b. Deleting paragraph (d) and inserting a new paragraph (d) as follows:

(d) The Developer shall, following acquisition of all Property within the North Commercial Phase, petition the City for creation of a CID (the "NCP CID"). The creation of the NCP CID shall be subject to Paragraphs (a) and (b) of this Section, except that (1) the Developer shall cause the NCP CID to levy a 1% sales tax (the "NCP CID Sales Tax"); (2) the City will not pledge any NCP CID Sales Tax revenues deposited into the Special Allocation Fund pursuant to Section 99.845 of the TIF Act to any District Project, but rather will retain such revenues in the Special Allocation Fund for use pursuant to **Section 6.2** hereof; (3) the NCP CID may issue obligations in support of a District Project in an amount not to exceed net proceeds of \$1,000,000 (exclusive of issuance costs) (the "Senior NCP CID Obligations"); (4) the City will annually seek the appropriation of an amount equal to 50% of its City sales taxes received from the City which were generated from within the NCP CID from hotel room sales to the NCP CID to pay debt service on the Senior NCP CID Obligations; and (5) upon retirement of the Senior NCP CID Obligations, the NCP CID shall remain in existence and shall appropriate all NCP Sales Tax revenues under control of the NCP CID to the City for deposit into the Special Allocation Fund for use pursuant to **Section 6.2** hereof. Additionally, the NCP CID may issue additional obligations in support of a District Project, but the NCP CID cannot pay principal of or interest on such additional obligations while any TIF Obligations are outstanding.

c. Inserting a new paragraph (f) as follows:

(f) Nothing herein shall limit the District's ability to issue subordinate obligations in support of the District Project.

8. **Section 4.1** is hereby amended by:

a. Deleting subparagraph (a)(2) and replacing it with the following:

(2) with respect to the Southern Commercial Phase, including each of two subphases thereof whose boundaries, subject to approval of the City, will be certified by the Developer prior to the issuance of any TIF Notes for either subphase, the sum of \$20,500,000, which sum shall be allocated pro rata between the subphases based on the ratio of the area of each subphase to the total area of the Southern Commercial Phase;

b. Deleting paragraph (e) and replacing it with the following:

(e) Notwithstanding the foregoing, the Maximum Reimbursement Amount will be reduced by (i) \$3,000,000 with respect to the Southern Commercial Phase and (ii) \$2,000,000 with respect to the Northern Commercial Phase, if the Developer does not cause the District to impose the District Tax encompassing the applicable phase before the earlier of (1) the issuance of TIF Bonds relating to such phase or (2) one year following the issuance of TIF Notes relating to such phase.

c. Adding a new paragraph (f) as follows:

(f) Notwithstanding the foregoing, the Maximum Reimbursement Amount will not be interpreted to include any debt issued by the District that is subordinate to the District Obligations, generally supports the Redevelopment Project and does not interfere with the Developer's obligations under the Redevelopment Agreement.

9. The first sentence of **Section 5.1** is hereby deleted and replaced with the following:

Section 5.1. Issuance of TIF Notes. The City agrees to issue TIF Notes in substantially similar form to **Exhibit G** hereto, for each of the Residential Phase, the Northern Commercial Phase and each subphase of the Southern Commercial Phase to reimburse the Developer for Reimbursable Redevelopment Project Costs up to the maximum amount established in **Section 4.1** hereof.

10. The entirety of **Section 5.1.2** is hereby deleted and replaced with the following:

5.1.2. Conditions Precedent to the Issuance of TIF Notes. No TIF Notes shall be issued with respect to the Residential Phase, the Northern Commercial Phase or either subphase of the Southern Commercial Phase until such time as the City has received from the Developer (1) the Notice of Acquisition for the respective phase or subphase, and all attachments thereto; (2) evidence that the Developer has closed or, simultaneously with the issuance of the TIF Notes, will close, on the acquisition of all Property within the phase or subphase for which the TIF Notes will be issued; (3) evidence that the Developer has closed or, simultaneously with the issuance of the TIF Notes, will close, on the private financing for all Redevelopment Project Costs to be paid by the Developer within the respective phase or subphase, which includes not less than a 10% equity investment in the form of cash or cash equivalent; and (d) a Certificate of Reimbursable Redevelopment Project Costs in substantially the form attached as **Exhibit F** hereto. TIF Notes for any phase or subphase may be issued prior to or subsequent to the issuance of TIF Notes for any of the other phases or subphases.

11. **Section 6.1** is hereby amended by inserting the following after the first sentence: "The City may create such further accounts and subaccounts as required to carry out the intent of this Agreement."

12. **Section 6.2** is hereby amended by adding a new paragraph (d) as follows:

(d) Notwithstanding the foregoing, if the City issues TIF Notes for a phase or subphase pursuant to **Section 5.1**, the TIF Revenues from the applicable phase or subphase shall be applied to the applicable series of TIF Obligations, as more fully described in the Note Ordinance.

13. The entirety of **Section 7.1** is hereby deleted and the following is inserted in lieu thereof: "At any time prior to the delivery of the Certificate of Substantial Completion for any phase of the Redevelopment Project, the Developer may, by giving written notice to the City and after surrender to the City of all outstanding TIF Notes relating to such phase by the Developer for cancellation in accordance with the Note Ordinance, abandon the applicable phase of the Redevelopment Project and terminate this Agreement and the Developer's obligations hereunder with respect thereto if the Developer determines, in its sole discretion, that such phase of the Redevelopment Project is no longer economically feasible."

14. **Section 7.2(a)** is hereby amended to read as follows:

(a) The City may terminate this Agreement at any time prior to the delivery of the Certificate of Substantial Completion relating to either the Residential Phase or the Southern Commercial Phase, as applicable, if:

(1) the Developer defaults in or breaches any provision of this Agreement and fails to cure such default or breach pursuant to **Section 7.6** hereof, or breaches any representation or warranty contained in **Section 8.2** hereof; or

(2) the Developer fails to complete the activities listed in **Section 3.5** relating to the Residential Phase or the Southern Commercial Phase, as applicable, within the times specified therein (subject to extension in accordance with **Section 7.7**); or

(3) within 72 months of the date of adoption of the TIF Ordinance, the Developer fails to substantially complete the Work relating to the Residential Phase or the Southern Commercial Phase, as applicable, and deliver a Certificate of Substantial Completion relating to the Residential Phase or the Southern Commercial Phase, as applicable, to the City in accordance with the requirements of **Section 3.10** of this Agreement. The time for performance specified in this subparagraph (c) is not subject to extension pursuant to **Section 7.7** of this Agreement.

15. **Section 7.3** is hereby amended by:

a. Revising subparagraph (a)(2) to read as follows:

(2) any TIF Notes or other TIF Obligations issued in connection with a phase or subphase for which the City has not accepted a Certificate of Substantial Completion shall be deemed null, void and cancelled;

b. Revising subparagraph (a)(3) to read as follows:

(3) the Developer shall re-convey to the City all City Parcels and City Streets previously transferred to the Developer, except that if the Developer has provided a letter of credit or other form of collateral acceptable to the City as required by **Section 3.1.5**, the Developer need not re-convey Parcel Nos. 1 and 4 described in **Section 3.3** or the parcels and streets located in the Northern Commercial Phase and the Residential Phase. The City Parcels and City Streets shall be re-conveyed in substantially the same condition as the property was in when it was conveyed to the Developer, and free and clear of all liens or encumbrances (other than those to which the property was subject at the time it was conveyed to the Developer. Upon the City's request, the Developer and any other party holding an interest in such property shall promptly execute a deed effecting such re-conveyance; and

16. **Section 7.3(b)(3)** is hereby amended to read as follows:

(3) the Developer shall re-convey to the City all City Parcels and City Streets previously transferred to the Developer, except that if the Developer has provided a letter of credit or other form of collateral acceptable to the City as required by **Section 3.1.5**, the Developer need not re-convey Parcel Nos. 1 and 4 described in **Section 3.3** or the parcels and streets located in the Northern Commercial Phase and the Residential Phase. The City Parcels and City Streets shall be re-conveyed in substantially the same condition as the property was in when it was conveyed to the Developer, and free and clear of all liens or encumbrances (other than those to which the property was subject at the time it was conveyed to the Developer. Upon the City's request, the Developer and any other party holding an interest in such property shall promptly execute a deed effecting such re-conveyance; and

17. **Section 2** of the First Amendment is hereby deleted.

18. **Section 7.7(b)** is hereby deleted and replaced with the following:

(b) No event under (a) shall be deemed to exist (1) as to any matter that could have been avoided by the exercise of due care, (2) as to any matter initiated or unreasonably sustained by the Developer, and (3) unless the Developer provides the City with a written notice within 20 days of the commencement of such claimed event specifying the event of force majeure. Times for performance shall be extended only for the duration of the event of force majeure.

19. All references to “\$46,250,000” in the Agreement are deleted and replaced with “\$48,250,000.”

20. All references to “\$38,250,000” in the Agreement are deleted and replaced with “\$40,250,000.”

21. On August 1, 2008, the Developer shall advance to the City the sum of \$25,000 for payment or reimbursement of the City’s planning, legal, financial and other consultants as they relate to the Redevelopment Plan, the Redevelopment Project and this Agreement. In addition, within ten (10) days after the City notifies the Developer that the amount available for payment or reimbursement of such costs is less than \$10,000, the Developer shall advance to the City an additional \$25,000 to be used for such purpose. Within 30 days after the City’s acceptance of the Certificate of Substantial Completion, the City shall remit to the Developer any amounts that have been advanced under this Section and which have not been spent for costs incurred by the City pursuant to this Section. All sums advanced under this Section shall constitute Reimbursable Redevelopment Project Costs to be reimbursed to the Developer from the proceeds of TIF Obligations issued as provided in this Agreement.

22. **Exhibit C** to the Agreement is revised by replacing the amount of \$30,000,000 with the amount of \$32,000,000.

23. Except as previously modified hereby, all other terms and conditions of the Agreement shall remain in full force and effect.

24. This Second Amendment may be executed in counterparts, each of which shall constitute an original. The parties may sign this Second Amendment by facsimile copies, and any such facsimile copy shall be deemed to be an original, and no objections shall be made to the introduction into evidence of any telefaxed copy on grounds related to the telefaxed copy not being an original.

* * *

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

CITY OF RICHMOND HEIGHTS, MISSOURI

(SEAL)

By: _____
James J. Beck, Mayor

Attest:

Patricia S. Villmer, Deputy City Clerk

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

**MICHELSON-HADLEY HEIGHTS
DEVELOPMENT, LLC**

**By: Michelson Commercial Realty and
Development, L.L.C., its manager**

By: _____
Timothy L. Berry, Executive Vice President