

AN ORDINANCE OF THE CITY OF RICHMOND HEIGHTS, MISSOURI APPROVING A THIRD AMENDMENT TO REDEVELOPMENT AGREEMENT BY AND BETWEEN MICHELSON-HADLEY HEIGHTS DEVELOPMENT, L.L.C. AND THE CITY OF RICHMOND HEIGHTS, MISSOURI, FOR THE HADLEY TOWNSHIP REDEVELOPMENT AREA AS AN EMERGENCY MEASURE.

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 and the Second Amendment to Redevelopment Agreement dated as of August 4, 2008, (collectively with the Original Agreement, the "Agreement"),

WHEREAS, that since the date that the Redevelopment Plan was initially approved by the City and the date on which the Redevelopment Agreement was executed, some changes have occurred and the Michelson Hadley Heights Development, L.L.C. and the City

have agreed to further amend the Agreement as provided in this Third Amendment as set forth in Exhibit "A".

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

SECTION 1. The Third Amendment to Redevelopment Agreement attached hereto as Exhibit "A" 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 "A" which is attached hereto and made a part of this Ordinance as if fully set out herein.

SECTION 3. This Ordinance shall take effect and be in full force immediately following its passage and being signed as provided by law. This ordinance is deemed an emergency measure necessary for the immediate preservation of the public peace, health or safety of its residents because it is needed to allow purchase of residences from property owners who desire to move elsewhere and have commitments for other properties.

PASSED and SIGNED this 18th day of August, 2008.

JAMES J. BECK
MAYOR

ATTEST:

PATRICIA S. VILLMER
CITY CLERK

APPROVED AS TO FORM:

KENNETH J. HEINZ
CITY ATTORNEY

First reading: August 18, 2008
Second reading: August 18, 2008 Emergency Measure

EXHIBIT A

[Third Amendment to Redevelopment Agreement]

THIRD AMENDMENT TO REDEVELOPMENT AGREEMENT

THIS THIRD AMENDMENT TO REDEVELOPMENT AGREEMENT (this “Third Amendment”) is entered into as of the ____ 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 and the Second Amendment to Redevelopment Agreement dated as of August 4, 2008 (collectively with the Original Agreement, the “Agreement”).
4. The City and the Developer wish to further amend the Agreement as provided in this Third Amendment.

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

Subsection (1) of the definition of “Redevelopment Project” in Section 1.1 of the Agreement is hereby deleted and replaced with the following new subsection (1):

- (1) the portion of the Redevelopment Project south of Dale Avenue that is intended for residential development (single-family attached and detached homes and other residential uses approved by the City) as shown on the Concept Site Plan (the “Residential Phase”).

The following is added as new Section 3.2(c) of the Agreement:

Notwithstanding anything in this Article III or elsewhere in this Agreement to the contrary, with respect to any contract entered into by the Developer and the owner of real property for the sale of any real property located within the boundaries of the Redevelopment Project where there has been a claim of breach by any party related to such contract, in such event, Developer is authorized to ask the City to commence a condemnation action against such real property without any additional offers, notices, mediations, or other requirements of this Agreement except for those required by state law.

Section 3.2.2 is hereby amended by deleting the first sentence of paragraph (c) and replacing it with the following two new sentences:

For all commissioners’ awards filed on or before August 1, 2008, the Developer shall, on or before September 30, 2008, 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. For all commissioners' awards filed after August 1, 2008, the Developer shall, within 60 days after the filing of such award, 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.

Exhibit B to the Original Agreement is hereby deleted and replaced with the following new Exhibit B attached to this Third Amendment as Exhibit B. All references to the Concept Site Plan or Exhibit B under the Agreement shall be deemed to refer to Exhibit B attached to this Third Amendment and incorporated herein. There is no Exhibit A to this Third Amendment.

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

This Third Amendment may be executed in counterparts, each of which shall constitute an original. The parties may sign this Third 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 Third Amendment as of the day and year first above written.

CITY OF RICHMOND HEIGHTS, MISSOURI

By: _____

James J. Beck, Mayor

(SEAL)

Attest:

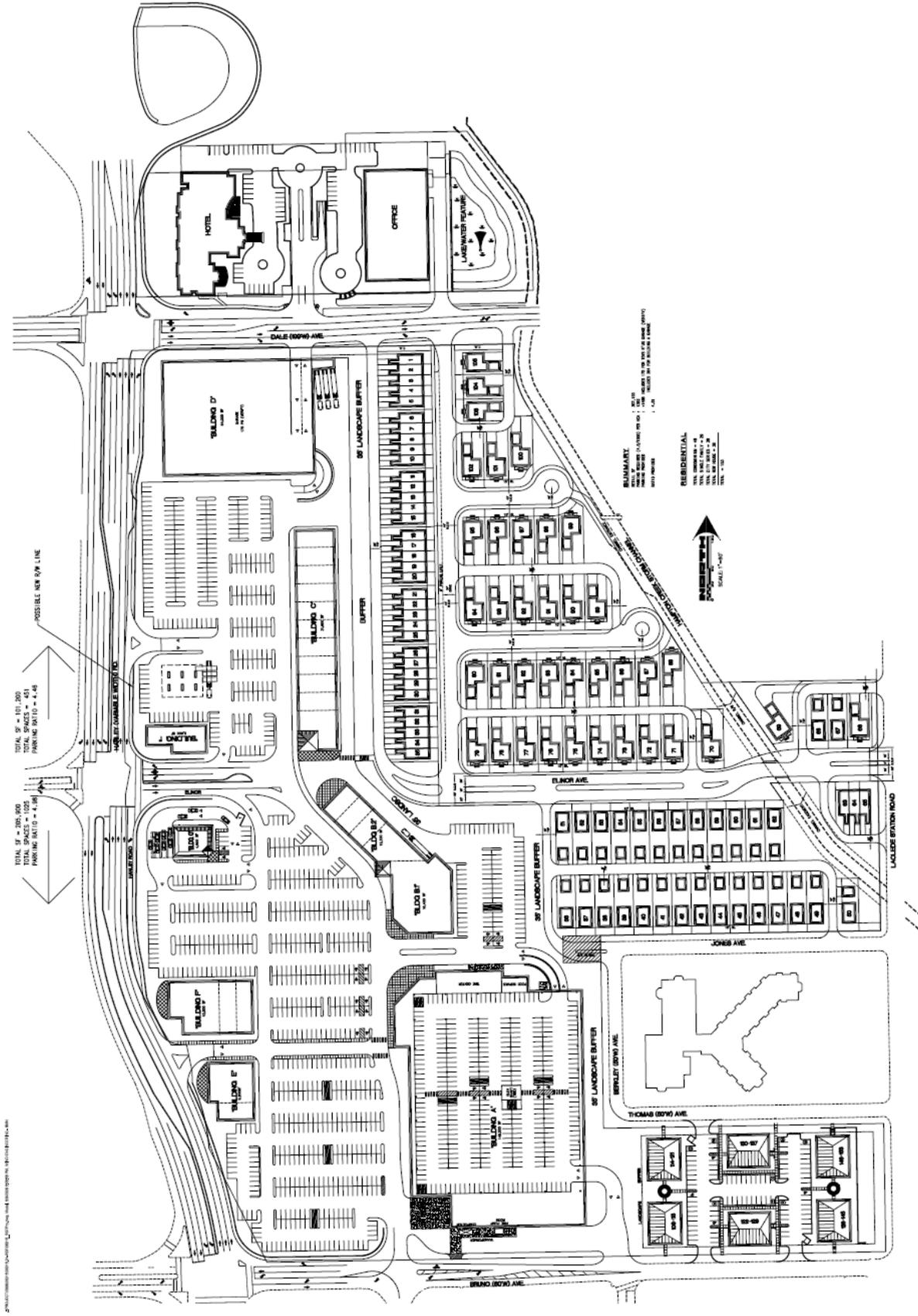
Patricia S. Villmer, Deputy City Clerk

IN WITNESS WHEREOF, the parties hereto have executed this Third Amendment 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**



TOTAL SF = 285,000
 TOTAL SPACES = 1032
 PARKING SPACES = 4,46

TOTAL SF = 181,200
 TOTAL SPACES = 451
 PARKING SPACES = 4,46

DATE: 08/11/2010 10:00 AM

REMARKS:
 1. SEE THE SITE PLAN FOR THE LOCATION OF THE HOTEL AND OFFICE BUILDINGS.
 2. SEE THE SITE PLAN FOR THE LOCATION OF THE RESIDENTIAL BUILDINGS.
 3. SEE THE SITE PLAN FOR THE LOCATION OF THE PARKING SPACES.

RESIDENTIAL:
 TOTAL NUMBER OF UNITS = 451
 TOTAL GROSS AREA = 181,200 SF
 TOTAL NET AREA = 150,000 SF
 TOTAL GROUND COVER = 10%

