

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release is made and entered into by and between The City of Jefferson, Missouri, a municipal corporation (hereinafter "City"), Ruben and Carol Wieberg, married persons (hereinafter collectively "Wieberg") and Neidert Properties, LLC, a Missouri Limited Liability Company (hereinafter "Neidert"), collectively, the "Parties". For the purposes of this Agreement, the Parties shall specifically include the officials, employees, officers and those acting by, for and through City; the heirs, assigns, and those acting by, for and through Wieberg with the exception of any claim(s) Wieberg may have against their insurer, American Family Insurance; and the members, officers, employees, and those acting by, for and through Neidert, including but not limited to Andy Neidert.

WITNESSETH

WHEREAS, Neidert is the owner of real property located at 200 East High Street, Jefferson City, Missouri; and Wieberg is the owner of real property located at 202 East High Street, Jefferson City, Missouri, each located within the corporate limits of City; and

WHEREAS, on or about June 7, 2018, 200 East High Street suffered a catastrophic structural failure of its west wall; and

WHEREAS, 200 East High Street and 202 East High Street physically share a wall, same being the east wall of 200 East High Street, with said wall being located on the legally owned property of Neidert ("the Supporting Wall"); and

WHEREAS, City declared that 200 East High Street and 202 East High Street were dangerous buildings pursuant to the City Code, and that the dangerous conditions of said buildings required abatement; and

WHEREAS, through significant research, engineering, and investigation, it has been determined by competent engineers that the state of the Supporting Wall is such that 200 East High Street may be demolished in such a manner that 202 East High Street and the Supporting Wall can be left standing; and

WHEREAS, there are currently pending two separate lawsuits concerning this issue, same being Cole County Case No. 18AC-CC00416, styled *Neidert Properties LLC v. Wieberg, et al.*, and Cole County Case No 19AC-CC00142, styled *Wieberg, et al. v. City of Jefferson*; and

WHEREAS, there is currently pending an appeal of Cole County Case No. 18AC-CC00416 in the Western District of Missouri Court of Appeals, bearing Case No. WD83241.

WHEREAS, the Parties have agreed upon terms as set forth herein that will allow for the demolition of 200 East High Street in such a manner as will give the best possible ability to preserve 202 East High Street, and the Parties hereto desire to memorialize those terms as set forth further herein, with the intent to be legally bound hereby.

NOW THEREFORE, in consideration of these premises, and of the joint and mutual covenants contained herein and for other good and valuable consideration, the adequacy and receipt of which is by all Parties hereby acknowledged, the Parties, with the intent to be legally bound, agree as follows:

1. **Mutual Release.** In consideration of the mutual promises herein and other good and valuable consideration, the Parties individually and on behalf of their officers, members, shareholders, executors, assigns, agents, trustees, heirs, successors, spouses and employees, hereby release, acquit and forever discharge any and all claims, rights, duties and obligations that each may have against any other party hereto, or such party's officers, members, shareholders, agents, trustees, heirs, successors, spouses and employees, or any of them, arising out of or related to: (1) the ownership, occupancy, and use of the Supporting Wall and such portion of 200 East High Street as is set forth in Exhibit A hereto; (2) the partial collapse of 200 East High Street; (3) the obligations as to the cost of demolition of 200 East High Street and all factors associated with such demolition except as may be particularly set forth herein; and (4) or any other related incident, occurrence, casualty, matter or thing occurring prior to the date of this Settlement Agreement, as well as those losses, damages or consequences thereof which may hereafter develop and those which have already developed or are now apparent. Notwithstanding the foregoing, this Mutual Release shall not apply to the City's March 15, 2019 Findings of Fact and Conclusions of Law ordering repair or demolition of 202 East High Street until the work described in Paragraphs 6.C and 6.F below is complete.
2. **No Admission of Liability.** The Parties enter into this Settlement Agreement and Mutual Release as a full and complete settlement of any and all claims against the others and nothing herein shall be construed as an admission of liability of the Parties, such liability being expressly disputed and denied. All preliminary recitals are for context only and are not binding on the Parties.
3. **Consideration.** Neidert agrees to transfer to Wieberg the real estate described on Exhibit A hereto (with the understanding that such description has not been prepared by a formal licensed surveyor, and that a formal survey for deed purposes will be effectuated at a later date when time is not so of the essence). Neidert further agrees to transfer to City the remainder of 200 East High Street (again, legal description to follow) for use as City, in its sole discretion, shall deem appropriate and in the best interests of the City of Jefferson. Wieberg agrees to hold harmless Neidert and City for any damage or alleged damage caused upon them by the facts and circumstances described herein. Wieberg and Neidert agree to dismiss both pending lawsuits with prejudice, and the pending appeal with prejudice, upon the execution hereof. City and Neidert agree to allow Wieberg the right to temporarily use 200 East High Street (post demolition) for their needs in further repairing and shoring of the Supporting Wall. The Parties do hereby

acknowledge, admit, stipulate and agree that the consideration received hereunder do not represent the payment of damages or contractual obligations, but rather, are made solely as costs of avoiding future litigation, costs and expenses.

4. **Acknowledgement.** The Parties represent and acknowledge that they have read this Settlement Agreement and Mutual Release and executed same after first having the opportunity to receive advice of counsel. The Parties represent and acknowledge that they have taken into account not only the known and anticipated claims to which they hereby acknowledge and agree are covered by this Settlement and Mutual Release, but also any and all unknown and unanticipated claims which they hereby acknowledge are covered hereby.
5. **Severability.** In the event that any one or more of the provisions of this agreement shall be held invalid, illegal or unenforceable, then such invalidity, illegality or unenforceability shall not affect any other portion hereof, and this agreement shall be construed by disregarding the invalid, illegal or unenforceable provision(s).
6. **Specific Terms.**

A. Neidert shall within ten (10) days following execution of this Agreement execute a Quit-Claim Deed transferring clean title to Wieberg for the real estate described on Exhibit A hereto.

B. Neidert shall within ten (10) days following execution of this Agreement transfer the remainder of 200 East High Street by Quit-Claim deed to City.

C. Wieberg will follow the plans pertaining to the original shoring of the Supporting Wall set forth in Exhibit B to reinforce and insure, to the best terms possible, the Supporting Wall, with said work to be completed within 21 days from the execution hereof by all Parties. The 21day period shall be extended by mutual agreement of the parties if weather does not permit the work, such consent being not unreasonably withheld or denied.

D. City will contract with ARSI, Inc. to demolish 200 East High Street in a manner that leaves the Supporting Wall substantially intact, pursuant to the terms of Exhibit C hereto. Wieberg acknowledges that Exhibit C hereto describes a manner of demolition of 200 East High Street that fulfills the goals stated in this Paragraph 6.D.

E. Neidert will hold harmless the City for hazardous and non-hazardous landfill fees in excess of Seventeen Thousand Dollars (\$17,000.00) incurred by the City under its contract with ARSI up to a maximum excess of Five Thousand Dollars (\$5,000.00). The City shall cause ARSI to track and itemize such landfill fees. Neidert may have an asbestos removal professional present during demolition to monitor any unknown or previously unremovable asbestos materials and ARSI's removal activities, if any, but shall not interfere with the City's contractor.

F. Following the demolition of 200 East High Street by ARSI, Inc., City will provide Wieberg a written notice of completion of demolition activities. Wieberg, within the ninety (90) days of such notice, weather permitting, will take the final steps set forth in Exhibit B to further shore up the western side of the common wall, creating an exterior masonry surface compatible with the historic nature of the surrounding neighborhood.

G. It is expressly understood that the terms hereof do NOT extend to any claim(s) that any party hereto may have against their own insurer, co-insurer or excess insurer, said claims being expressly excluded here from.

H. No later than fourteen (14) days after execution of this Settlement Agreement and Mutual Release, Neidert and Wieberg shall dismiss with prejudice each and every one of their respective claims pending in Cole County Case No. 18AC-CC00416, such that said case is dismissed in its entirety, with prejudice.

I. No later than fourteen (14) days after execution of this Settlement Agreement and Mutual Release, Wieberg shall dismiss with prejudice each and every one of their claims in Cole County Case No. 19AC-CC00142, such that said case is dismissed by Wieberg in its entirety, with prejudice

J. No later than fourteen (14) days after execution of this Settlement Agreement and Mutual Release, Wieberg shall dismiss with prejudice the appeal currently pending in the Western District of Missouri Court of Appeals of Cole County Case No. 18AC-CC00416, same being Western District Case Number WD83241.

K. If Wieberg is unable to complete the shoring up and repair work within the timeframes described in Paragraphs 6.C and 6.F, Wieberg shall demolish the structure at 202 East High in accordance with the requirements of the City Code. If Wieberg fails to so demolish the structure at 202 East High Street under this Paragraph, the City may be entitled to demolish said structure. If the City demolishes said structure under this Paragraph, Wieberg shall convey title to 202 East High Street by Quit Claim deed to the City for no further consideration. City shall be entitled to recover all costs incurred by the City to demolish 202 East High Street, minus the fair market value of 202 East High Street, as determined by an independent third party licensed appraiser hired by the City, provided that nothing shall obligate the City to pay Wieberg compensation for title to 202 East High Street or assume liability under any note, mortgage, or deed of trust on 202 East High Street.

J. Each party shall be responsible for their own attorney's fees and costs incurred in all litigation surrounding the incidents described herein.

7. **Entire Agreement.** This document constitutes the entire and exclusive agreement between and among the Parties hereto on the matters set forth herein, and any and all prior or contemporaneous agreements, understandings, promises, representations, warranties and covenants, whether written or oral and whether express, implied, or apparent, are hereby deemed to be superseded by this agreement.

8. **Breach.** Should any of the Parties, following the execution hereof, breach any one or more terms of this agreement, then either or both of the remaining Parties hereto shall have the right to bring an action to enforce the terms hereof in the Circuit Court of Cole County, Missouri, including by specific performance. Prior to the bringing of said suit, the party claiming breach shall first send, by certified mail, a notice to the breaching party to cure said breach within ten (10) days. This notice shall not apply to any alleged breach of paragraph 6 hereof. Should the breaching party fail to so cure the breach, then the party or Parties seeking to enforce the terms hereof shall be entitled to an award of attorney's fees and costs from the breaching party, should the Court find that such a breach has occurred.
9. **Governing Law.** This Agreement shall be governed by the laws of the State of Missouri.
10. **Headings.** The paragraph headings contained herein are solely for ease of use and shall not be considered as affecting the rights and obligations set forth herein.
11. **Notification.** Any mailing or notifications required herein shall be sent as follows:
- To Wieberg: c/o David G. Bandré, Bandré Hunt & Snider, LLC, 227 Madison, Jefferson City, MO 65101
- To Neidert: c/o John Landwehr, Cook Vetter Doerhoff & Landwehr, P.C., 231 Madison Street, Jefferson City, MO 65101
- To City: c/o Ryan Moehlman, City Counselor, 320 East McCarty Street, Jefferson City, MO 65101

Accordingly, in witness of the mutual covenants and obligations contained herein, and with the intent to be bound hereby, the Parties hereunto set their hands on the date set forth below.

City of Jefferson, Missouri

Carrie Tergun
 By: Mayer
 Dated: 1-22-2020

Ruben and Carol Wieberg

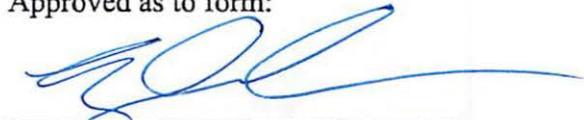
Carol Wieberg
 Carol Wieberg, Individually
 Dated: 12-27-19

Neidert Properties, LLC

Andy Neidert
 By: Andy Neidert, Member
 Dated: 12-30-19

Ruben Wieberg
 Ruben Wieberg, Individually
 Dated: 12/27/19

Approved as to form:



City Counselor