

BILL NO. 1317

ORDINANCE NO. 1209

AN ORDINANCE AUTHORIZING THE CITY OF CHESTERFIELD TO ENTER INTO AGREEMENTS FOR THE ACQUISITION OF PROPERTY, THE EXCHANGE OF PROPERTY AND ASSOCIATED AGREEMENT FOR LAND LOCATED IN THE CHESTERFIELD VALLEY FOR A PARK AND SPORTS COMPLEX WITH ASSOCIATED PARK FACILITIES WITH THE CHESTERFIELD COMMUNITY ASSOCIATION, INC.; H. KING CARTER AND VIRGINIA E. CARTER AND WILLIAM B. ASH.

WHEREAS, the City of Chesterfield has determined that it is in the best interest of the City of Chesterfield to develop a park and Sports Complex site for use of the residents of the City of Chesterfield located in Chesterfield Valley; and,

WHEREAS, the City of Chesterfield has previously purchased from Dorothy M. Moore, 40 acres of property which was the first step in the acquisition of the Sports Athletic Complex site; and,

WHEREAS, the City of Chesterfield has negotiated with the Chesterfield Community Association, Inc. for management services of the Sports Complex; and,

WHEREAS, the City of Chesterfield, in order to accomplish its concept of having a sports center has determined that it will enter into an agreement whereby it shall exchange the property that it receives from William B. Ash with the property being acquired by the Chesterfield Community Association, Inc. (property being the Successful Investors, Inc.) so that the City of Chesterfield will have one contiguous site for its Sports Complex; and,

WHEREAS, the City of Chesterfield has determined that as part of the overall park plan, that it is in the best interest of the City of Chesterfield to acquire land behind the Chesterfield Monarch Levee, and immediately adjacent to the properties being acquired for its Sports Complex for continued retention of open acreage, all of which the City Council has determined is in the best interest of the City of Chesterfield; and,

WHEREAS, in accordance with the negotiations which have transpired, the City Council hereby approves the following:

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

Section 1. The City of Chesterfield hereby approves the Exchange Agreement between the City of Chesterfield and the Chesterfield Community Association, a copy of which is attached hereto and made a part hereof as Exhibit A.

Section 2. The City of Chesterfield hereby re-adopts and approves the terms of the Purchase And Sale Agreement entered into by the City of Chesterfield and William B. Ash, a copy of

which is marked as Exhibit B and made a part hereof, and authorizes the City Administrator to renew said contract in substantial conformance with the attached agreement which has expired, but which Mr. Ash is willing to re-execute.

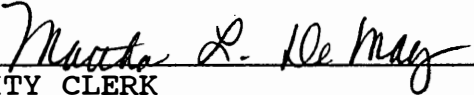
Section 3. The City of Chesterfield hereby approves the Purchase And Sale Agreement, a copy of which is marked as Exhibit C, between H. King Carter and Virginia E. Carter.

Section 4. This Ordinance shall be in full force and effect from and after its passage and approval.

Passed and approved this 18TH day of NOVEMBER, 1996.


MAYOR

ATTEST:


CITY CLERK

CITY OF CHESTERFIELD/CHESTERFIELD COMMUNITY ASSOCIATION, INC.
EXCHANGE AGREEMENT

This Exchange Agreement ("Agreement") is made this _____ day of November, 1996 by and between the City of Chesterfield, a municipal corporation, ("City") and Chesterfield Community Association, Inc. ("CCA").

1. **Transfer of Property.** In consideration of the covenants herein contained and of One Dollar (\$1.00) each paid by the other, receipt of which is hereby acknowledged, CCA agrees to exchange all of the property identified on Exhibit "A" with City for all of the property identified on Exhibit "B" both of which exhibits are incorporated herein by reference and said transfer shall be by special warranty deed free and clear of all liens and encumbrances except all easements, rights of way and restrictions, if any, of record.

2. **Consideration.** As consideration for the transfer of the properties between the parties, each party considers the transfer of like acreage one to the other. For the discrepancy of property being transferred by City to CCA, the parties further agree that additional consideration is in the benefit received by City in the agreement reached between the parties under the terms of the Cooperative and Maintenance Agreement dated November ____, 1996.

As additional consideration for the agreements reached herein, City shall retain for the additional consideration of \$ _____ in hand paid by the City to CCA, the receipt of which is hereby acknowledged, does hereby give, grant, extend, and confer on the City of Chesterfield the exclusive right to construct and maintain a stormwater drainage system, including stormwater improvements, on the strip or strips of ground described as shown on the attached "Easement Plat" marked Exhibit "C" and made a part hereof, and to use such additional space adjacent to the right-of-way so granted as may be required for working room during the construction period. The City of Chesterfield may from time to time enter upon said premises to construct, reconstruct, or maintaining the stormwater improvements aforesaid, and may assign its rights in this easement to the State, County, or other political subdivisions of the State. The right-of-way hereby granted is irrevocable and shall continue forever.

All stormwater easements as dedicated to the City of Chesterfield per the above, shall not be in the possession or control of the City. Nor shall the City be responsible for the maintenance, inspection, alteration, repair, operation, or removal of any stormwater drainage system.

The exchange of property, the easement herein, and the benefits received by City in the Agreement in its entirety is considered full consideration by both parties.

3. **Parking Lot Entrance and Parking Easement.** While acknowledging the separate ownership and use of the Sports Complex area being developed by each party in the Chesterfield Valley, the parties desire to construct and use a common parking lot entrance and parking lot area for the Sports Complex. The parking lot of approximately 614 spaces shall be constructed on the property ultimately owned by City as depicted on Exhibit "D" attached hereto and identified as "H" and made a part hereof by reference and further desires to create a mutual easement in favor of each other for common use of the parking lot by all parties in accordance with the terms of the Parking Lot Entrance and Parking Easement attached as Exhibit "E" and made a part hereof. Both parties agree to execute the original of Exhibit "E" simultaneously with the closing of the underlying land transfer as set out in this agreement.

As further consideration for the Parking Easement set out above, the parties agree that the Maintenance Agreement dated November ____, 1996 and the benefits derived by City therein from additional consideration. In addition, the parties agree that the full dollar value of the drainage easements as set out in paragraph 2 above is _____. As further consideration for this Parking Easement and the acceptance of the reduced cash payment by City, the parties agree that the balance is an additional part consideration of said easement. Lastly, CCA agrees to pay, in any year in which it is not operating the City complex under the Maintenance Agreement identified above or any extension or renewal thereof, City the sum of \$1,500 per year due and payable on March 1 of each such year.

4. **Wetlands.** The parties have identified 3.8 acres that is a part of the acreage being transferred by City to CCA as wetlands by the Corps of Engineer. As part of the consideration of this agreement, City shall have the wetlands designation removed for full development of the

transferred property in accordance with the concept plan identified on Exhibit "D" attached hereto. City agrees that it has or shall immediately prepare and submit the necessary 404 Permit with all supplemental information to the Corps of Engineers for development of the CCA site; prepare and coordinate all other necessary documents required by the Corps, including any comprehensive valley wide 404 Permit requirements; to provide documents preparation and construction services for the development of any Mitigation Bank for said site; and shall also acquire, at the City's cost, any mitigation property required.

If the City is unable to have the wetland determination removed or mitigated and as a result the entire CCA fields are not available prior to the start of the baseball season for spring 1998, the City shall pay to CCA the sum of \$5,000 as damages. If the CCA fields are not available by reason of the failure to remove the wetlands determination prior to the 1998 fall soccer season, the City shall pay to CCA \$5,000 as damages.

5. **Contract Date; Closing Date; Place of Closing.** The "Contract Date" shall be the date on which the last party executes this Agreement. The "Closing Date" shall be on or before November 30, 1996 at an agreeable time or on a date and time as soon as parties may agree in writing. The "Closing", wherein the transaction is finalized and monies and properties are exchanged, shall take place in the offices of Title Insurers Agency, 226 South Meramec, Suite 100, Clayton, Missouri 63105. For further Closing details, See Paragraph 11.

6. **Due Diligence Period.** From the Contract Date up to and including the five (5) days prior to the Closing Date, each party shall obtain and/or commission a title commitment and any other necessary report deemed necessary for the conveyance of clear title from one to the other.

Each party is also permitted, during this time frame, to perform inspections and studies on the Property. The "Inspections and Studies" shall include, but are not limited to, the following: (i) boundary line, spot and topographical surveys; (ii) soil and water samples; (iii) boring tests; (iv) testing for the presence of hazardous wastes; (v) review of access to the Property. These listed Inspections are the only Inspections on which any contingencies shall be based.

Such actions and such time frames constitute “**Due Diligence**” and “**Due Diligence Period**”, respectively. Such actions shall be at the sole expense of the party undertaking the action. Such reports and commitments shall be provided by each party to the other prior to the expiration of the Due Diligence Period.

7. **Due Diligence Cure/Change.** If either party is not reasonably satisfied with the results of its Due Diligence, or if either learns of changes in the Title or Property which could affect the value of the consideration under Paragraph 2, above, then each shall inform the other party in writing, at least five (5) days prior to Closing Date, of such dissatisfaction or change, respectively. The party which receives the written notification have five (5) days in which to cure the dissatisfaction or to renegotiate the consideration of the Agreement. If no such notification is received by the party, then the non-notifying party shall be deemed to have waived the objection, if any, to the Due Diligence performed.

In the event that either party is unwilling to renegotiate or cure the dissatisfaction, then this Agreement may be terminated upon the written notification of the opposite party by the party requesting the renegotiation or change. In the event of termination, this Agreement shall be null and void, and neither party shall have any further rights or obligations to the other, except as specifically stated in this Agreement.

8. **Access and Inspections.** Each party hereby grants to the other, as of the Contract Date, the right of access to inspect and study the Property pursuant to this Agreement.

9. **Representations and Warranties.** Each party represents and warrants that, as of the Closing Date, to wit:

- a. Each party has lawful right and authority to execute this Agreement and to consummate the transactions contemplated herein and shall demonstrate same on or before the Closing Date by delivery by City of an ordinance approving this Agreement; by CCA providing a certified resolution of CCA’s authorization and

approval of this Agreement; and a certificate of good standing issued by the Secretary of State of Missouri immediately prior to the Closing Date for CCA.

b. No litigation, bankruptcy or other legal proceeding is pending against the Property unless herein disclosed;

c. No violations of federal, state or local law or regulations, to the knowledge of the other or their agents or assigns upon the Property, specifically, without limitation, no hazardous substances, wastes or materials have been deposited, dumped or stored either above or below the Property.

10. **Contingencies.** The parties acknowledge that this Agreement is contingent upon the following conditions either occurring or being waived by the party to whom the benefit of the contingency inures, to wit:

a. Conveyance of title pursuant to Paragraph 3, above.

b. Each party's Representations and Warranties pursuant to Paragraph 9 above, being true on the Contract Date and remaining true throughout the Closing Date and the Closing of this Agreement.

c. Parties' satisfaction with the Due Diligence conducted during the Due Diligence Period.

d. Parties' satisfaction and performance of all applicable covenants contained in this Agreement.

e. The completion of the acquisition of other properties (Locator #'s of 16V12-0065, 7376-944, 7584-1358, 7601-2336, 16V12-0054, 7061-2336, 16021-0045, 7265-2306, 16V21-0056, 7244-1382 by City; the completion of a land swap of properties (Locator #16V21-0056) owned by Successful Investors with properties (Locator #17V63-0059, 16V31-0035) owned by CCA; CCA consummating a satisfactory Lease with Successful Investors and Carter or their agents, successors or assigns, which Lease contains the right to leaseback from Carter and Successful Investors; the Property and the adjacent property to be swapped with Successful Investors until late fall of 1998.

11. **Closing Events and Adjustments.** CCA and City agree to close on this transaction only in the event all contingencies are either met to the satisfaction of, or waived in writing by, the parties to whom the benefit of the contingency inures. Further, both CCA and Carter have the right to negotiate with the title company during the Closing as to the execution of documentation, provided such negotiation is based on reasonable objections to the title company's procedures or documentation.

All other common adjustments shall be made during the Closing, exclusively including: each party being charged for taxes, utilities and assessments through the Closing Date.

12. **Real Estate Commissions.** Neither party has commissioned any real estate broker, agent or salesperson; therefore, no such payments shall be made as a part of this Closing. However, should such a real estate broker, agent or salesperson ("Agent") lay claim to a commission due to the sale of the Property; then the party for whom the Agent claims to be commissioned shall indemnify and hold harmless the other party for all payments, costs and reasonable attorneys' fees associated with the defense and/or payment of such claim.

13. **Termination/Default.** In the event that any of the Contingencies delineated in Paragraph 10 are not met or in the event of Termination as otherwise defined in this Agreement, this Agreement shall be deemed to be null and void. Parties to this Agreement shall have no further obligation to each other.

14. **Additional Agreement.**

a. **Pump Easement.** CCA shall have the right to pump all undesired surface or drainage water from their property, at their expense, over the current levee or any future levee onto and upon the unprotected property owned by City on the river side of the levee which shall include the right to traverse upon the property of the City in order to reach any discharge point established by agreement of the parties. A copy of the Easement is marked Exhibit "F" and attached hereto and incorporated herein.

b. Contract Construction. If any provision of this Agreement shall be unlawful, then such provision shall be null and void, but the remainder of this Agreement shall remain in full force and effect and binding upon CCA and Carter. This Agreement constitutes the entire understanding and agreement between the parties and may not be amended, supplemented, or modified except in writing executed by both of the parties. This Agreement shall be binding upon the parties and their successors and assigns. To the extent applicable, this Agreement and all related documents shall be governed by the laws of Missouri.

c. Execution in Counterparts. This Agreement may be executed in two or more identical counterparts and shall inure to the benefit of and be binding on the parties hereto, their respective heirs, representatives, successors and assigns.

d. Notices. All notices shall be in writing and shall be given by either (i) certified U.S. Mail, return receipt requested, postage pre-paid and addressed as follows; or (ii) courier delivery to the following address; or (iii) facsimile transmission directed to the following facsimile numbers. Notices shall be deemed to have been made upon deposit into the U.S. Mail, if mailed, or upon receipt if delivered by courier delivery or facsimile transmission. All notices to City shall be directed to Michael G. Herring, City Administrator, 922 Roosevelt Parkway, Chesterfield, Missouri 63017, fax number 537-4799. All notice to CCA shall be directed to Chesterfield Community Association, c/o Proctor Products, Attn: John Proctor, 160 Chesterfield Industrial Blvd., Chesterfield, Missouri 63017, fax number 532-2889.

So Agreed this date: _____

CCA, CHESTERFIELD COMMUNITY ASSOCIATION

By: _____

CITY OF CHESTERFIELD, MISSOURI

By: _____
Michael G. Herring, City Administrator

LEGAL DESCRIPTION
Successful Investors Property

A tract of land in U.S. Surveys 102, Township 45 North, Range 3 East, in the City of Chesterfield, St. Louis County, Missouri and being further described as follows:

Beginning at a point on the North line of Missouri State Highway 40TR as established by Cause #290860 of the Circuit Court for St. Louis County, recorded in Deed Book 6343, page 824 of the St. Louis County Records, said point being the Southeast corner of a tract of land conveyed to The Successful Investors, by deed recorded in Book 7244, page 1382 of the St. Louis County Records; thence along the North line of said Highway 40TR, North 84 degrees 08 minutes 11 seconds West, 572.17 feet to the Southwest corner thereof; thence North 11 degrees 56 minutes 00 seconds West, 1,482.74 feet to the Northwest corner thereof; thence North 68 degrees 00 minutes 00 seconds East, 223.00 feet to the Northeast corner thereof; thence South 11 degrees 56 minutes 00 seconds East, 1,689.41 feet to the point of beginning and containing 20.00 acres more or less according to survey executed by The Clayton Engineering Company July, 1996.

GA

LEGAL DESCRIPTION
Ash Property

A tract of land in U.S. Surveys 102, 150, Township 45 North, Range 3 East, in the City of Chesterfield, St. Louis County, Missouri and being further described as follows:

Beginning at a point on the North line of Missouri State Highway 40TR as established by Cause #290860 of the Circuit Court for St. Louis County, recorded in Deed Book 6343, page 824 of the St. Louis County Records, said point being the Southeast corner of a tract of land conveyed to William Ash, Trustee, by deed recorded in Book 8782, page 658 of the St. Louis County Records; thence along the North line of said Highway 40TR, North 84 degrees 08 minutes 11 seconds West, 709.02 feet to the Southwest corner thereof; thence North 11 degrees 56 minutes 00 seconds West, 1,716.11 feet to Northwest corner thereof; thence North 83 degrees 35 minutes 11 seconds East, 678.23 feet to the Northeast corner thereof, thence South 11 degrees 56 minutes 00 seconds East, 1,867.58 feet to the point of beginning and containing 27.77 acres more or less according to survey executed by The Clayton Engineering Company July, 1996.

CLB

STORMWATER DRAINAGE EASEMENT

TO WHOM IT MAY CONCERN:

KNOW ALL MEN BY THESE PRESENTS: That CCA, Chesterfield Community Association, for and in consideration of the sum of One Dollars (\$1.00) and other valuable consideration to Chesterfield Community Association, Inc. in hand paid by the City of Chesterfield the receipt of which is hereby acknowledged, do(es) hereby give, grant, extend, and confer on the City of Chesterfield the exclusive right to construct and maintain a stormwater drainage easement, including stormwater improvements, on the strip or strips of ground described as shown on the attached "Easement Plan" marked Exhibit "A" and made a part hereof, and to use such additional space adjacent to the right-of-way so granted as may be required for working room during the construction period. The City of Chesterfield may from time to time enter upon said premises to construct, reconstruct, or maintaining the stormwater improvements aforesaid, and may assign its rights in this easement to the State, County, or other political subdivisions of the State. The right-of-way hereby granted is irrevocable and shall continue forever.

All stormwater easements as dedicated to the City of Chesterfield per the above, shall not be in the possession or control of the City. Nor shall the City be responsible for the maintenance, inspection, alteration, repair, operation or removal of any stormwater drainage system.

IN WITNESS WHEREOF, the said CCA, Chesterfield Community Association, has caused these presents to be signed by its _____ and its corporate seal to be affixed this _____ day of November, 1996.

By:

Attest:

Secretary

EXHIBIT C

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

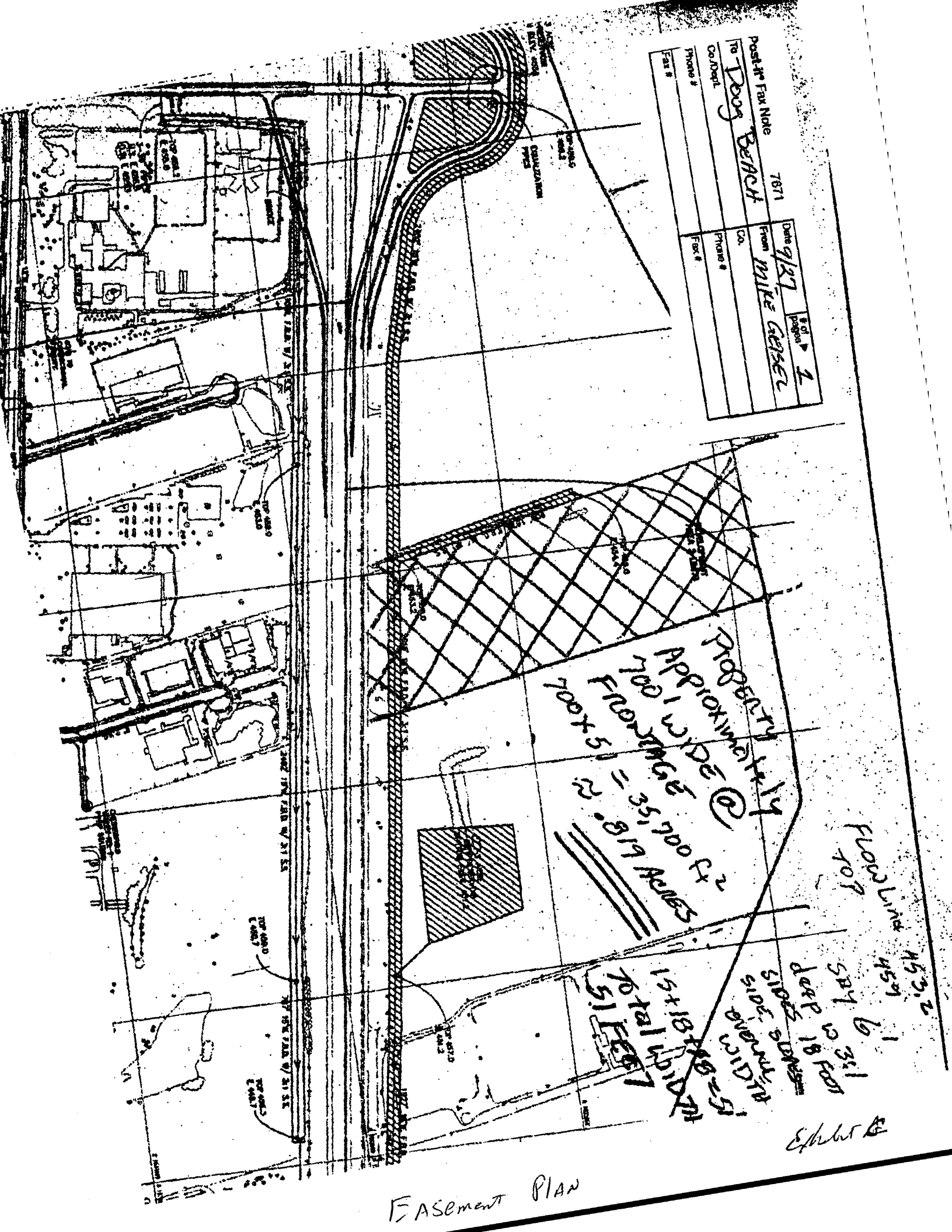
On the ___ day of _____, 1996, before me, the undersigned Notary Public, personally appeared _____, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that _____ executed the same as the free act and deed of said Joint Venture.

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.

Notary Public

My Commission Expires:

Post-It Fax Note	7871	Date	9/27	Sheet	1
To	DOUG BENCH	From	MIKE GERBER	Project	
Co/Dept		Co.			
Phone #		Phone #			
Fax #		Fax #			



PROPERTY APPROXIMATELY 700' WIDE @ FLOOR LINE = 35,700 SQ FT = 819 ACRES

FLOOR LINE 453.2 1 504 6 351 1 DEEP 18 FEET SIDE SIDE WIDTH 51 FEET

15 x 18 FEET 10 x 11 FEET 51 FEET

EASEMENT PLAN

Exhibit B

PARKING LOT ENTRANCE AND PARKING LOT EASEMENT AGREEMENT

THIS AGREEMENT, made this _____ day of November, 1996, by and between the City of Chesterfield, a Missouri Municipal Corporation, hereinafter referred to as "City" and CCA, Chesterfield Community Association, a Missouri Corporation, hereinafter referred to as "CCA";

WHEREAS, the parties desire to construct and use a common parking lot entrance and parking lot area as designated on attachment "A" which is incorporated and made a part hereof as if fully set out herein, and;

WHEREAS, there is the desire to create a mutual easement in favor of each other for common use of the parking lot entrance by all parties.

NOW THEREFORE, for and in consideration of the mutual grant of easements between the parties and the mutual covenants contained herein, the parties agree as follows:

That City of Chesterfield, a Municipal Corporation, for and in consideration of the sum of One Dollar (\$1.00) and other valuable consideration received from CCA and in hand paid by CCA, the receipt of which is hereby acknowledged, does hereby give, grant, extend and confer on CCA a non-exclusive easement over the parking entrance and parking lot as identified on Exhibit "A" and said non-exclusive easement shall be for pedestrian and vehicular ingress and egress to and from all parts of the parking lot to and from CCA property and for use by CCA and its successors, assigns, lessees, employees, invitees, agents and customers, subject to the non-exclusive rights of the City of Chesterfield, its citizens, its successors, assigns, lessees, employees, invitees and agents for the same purposes hereinabove described.

The easement herein granted and covenants herein set forth shall run with the respective properties for which granted to the benefit of the grantees parties' property and to the benefit of the grantee party, its successors, assigns, and lessees.

City of Chesterfield

By: _____
City Administrator

By: _____
CCA, Chesterfield Community
Association

Exhibit D

Attest:

Secretary

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

On the ___ day of _____, 1996, before me, the undersigned Notary Public, personally appeared MICHAEL HERRING, CITY ADMINISTRATOR FOR THE CITY OF CHESTERFIELD, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as 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.

Notary Public

My Commission Expires:

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

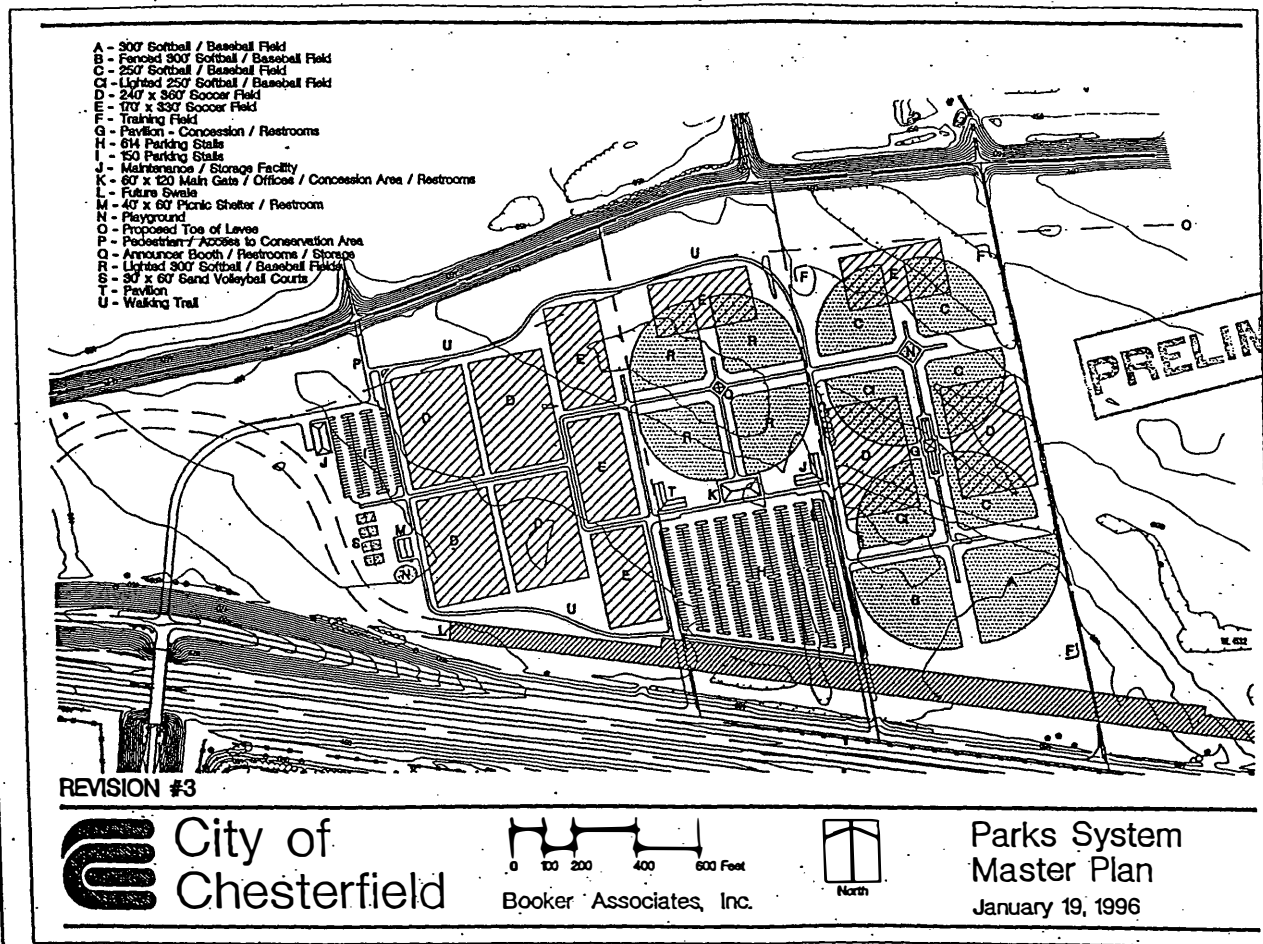
On the ___ day of _____, 1996, before me, the undersigned Notary Public, personally appeared _____, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that _____ executed the same as the free act and deed for CCA.

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.

Notary Public

My Commission Expires:

EXHIBIT D



P U M P E A S E M E N T

TO WHOM IT MAY CONCERN:

KNOW ALL MEN BY THESE PRESENTS: That the City of Chesterfield, a Missouri Corporation, for and in consideration of the sum of One Dollar (\$1.00) and other valuable consideration the City of Chesterfield, CCA, Chesterfield Community Association, in hand paid by CCA, the receipt of which is hereby acknowledged, does hereby give, grant, extend and confer on CCA, Chesterfield Community Association, the non-exclusive right to construct and maintain piping as may be necessary by CCA, to pump onto properties owned by the City and located on property located outside the Chesterfield Monarch Levee and described on Exhibit A attached hereto and incorporated herein by reference all undesired surface and drainage waters from its adjacent property as described on Exhibit B, attached hereto and incorporated herein by reference plus the use of a strip or strips of ground upon the City property and from time to time shall have the right to enter upon the premises and the properties owned by City of Chesterfield to construct, reconstruct or place hoses and/or such other equipment as necessary to discharge any of the undesired water as set out above.

The granting of said Easement shall not make the City of Chesterfield responsible for the maintenance, inspection or in any other way responsible for the discharge of the undesired water as set out above.

IN WITNESS WHEREOF, the said City of Chesterfield has caused these presents to be signed by its City Administrator and its corporate seal to be affixed this _____ day of November, 1996.

City of Chesterfield

By: _____
City Administrator

Attest:

Clerk

EXHIBIT F

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

On the ___ day of _____, 1996, before me, the undersigned Notary Public, personally appeared _____, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that _____ executed the same as the free act and deed of the City of Chesterfield.

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.

Notary Public

My Commission Expires:

PURCHASE AND SALE CONTRACT

This Contract is made this 26 day of April, 1996, between William G. Ash, (hereafter "Seller") and the City of Chesterfield, Missouri, a Third Class City of the State of Missouri, (hereafter "City").

The Property. Seller hereby agrees to sell and the City agrees to purchase a certain estate (the "Property") situated in St. Louis County, Missouri, bounded and described as follows:

See Attached Exhibit "A"

Conveyance. The Property is to be conveyed by a good and sufficient warranty deed conveying a good and clear title to the same, free from all encumbrances.

Consideration. For the above-described deed of conveyance, City shall pay a sum not to exceed Seven Hundred Seventy Six Thousand One Hundred Dollars (\$776,100.00), (based upon \$30,000 per acre net price) of which One Hundred (\$100.00) Dollars shall be paid upon acceptance of this contract by Seller, and Seven Hundred Seventy Six Thousand Dollars (\$776,000.00) to be paid by City upon closing based upon the purchase of 25.87 acres of property. The sale price to be adjusted by the exact acreage after survey.

Fair market value. The fair market value will be established by certified appraisers obtained by Seller. The City acknowledges that the property has a fair market value that may exceed \$30,000 per acre as provided herein and both parties acknowledge that the consideration paid by City for the conveyance made by the Seller

reflects an intention on the part of Seller to make a contribution to City based upon the appraisal value.

Title and Deed. Title shall be marketable in fact and Seller shall convey marketable title by special warranty deed (or fiduciary deed where applicable) subject to the following exceptions: (a) easements, liens or encumbrances created by or assumed by Buyer in writing; (b) deed, building and use restrictions, building lines, rights of way, mineral rights or conditions, all of record, if any; (c) recorded easements, provided that such easements do not adversely affect the use of the Property for residential purposes as presently built, or underlie any structures; (d) easements apparent upon inspection of the Property; and (e) and any other encumbrances appearing as a matter of record. After receipt of the title commitment, if City determines that any matter of record (a) which is not within the Seller's control to correct and (b) which would adversely affect the use of the Property, Buyer may (a) declare the Contract null and void; provided Buyer shall notify Seller, in writing, of such declaration within 7 days of receipt of the title commitment, or (b) Buyer may accept a title insurance policy insuring against any title defects beyond the Seller's control. If Seller fails to meet the requirements of the title commitment and eliminate any title defects within Seller's control by the final Contract closing date, Buyer may declare this contract null and void. Nothing in this section is to be construed to require Buyer to accept title which is not marketable in fact unless Buyer expressly waives such right

or closes and thereby accepts title which is not marketable in fact.

Possession. At the time of closing, the City shall receive full possession of the property, free of all tenants, the Property to be then in the same condition in which it is now.

Taxes and Assessments. Taxes, special assessments and like charges shall be apportioned as of the day of closing.

Failure to Convey Title. If the Seller shall be unable to give clear and unencumbered title or to make conveyance as stipulated herein, any payments made under this Contract shall be refunded, and all other obligations of either party hereunto shall cease, but the acceptance of a deed and possession by the City shall be deemed to be a full performance and discharge hereof.

Closing. The closing date shall be on or before June 1, 1996 ("Closing"). At or before Closing, both Seller and City shall deposit with an escrow agent to be named by City all funds and instruments necessary to complete this Contract. Escrow fees and other closing costs are to be paid by Seller.

Seller Warranties. Seller makes the following express warranties, which will survive Closing:

- a) There are presently no mechanic's liens placed against the Property, and there has been no work done on the Property which will result in the placement of any mechanic's liens.
- b) There are no leases on the Property.
- c) That the owners named herein are all of the owners of said property.

Other than the above, Seller makes no warranties, express or implied, except as may be hereafter contained herein, concerning the Property.

City's Duty and Obligation: The City will attempt to enact an ordinance or ordinances on or before June 1, 1996, authorizing the City to purchase the Property, consistent with the terms and conditions of this Contract. In the event City does not enact said ordinance(s) prior to said date, this Contract shall be null and void. Provided, however, that nothing contained herein shall be construed to prevent the parties from amending this Contract to conform to said City ordinance(s).

City shall notify Seller in writing no later than ten (10) days before Closing of any failure to meet this contingency, at which time this contract will terminate and City shall be entitled to a refund of City's deposit.

Contingencies. This sale is contingent upon the approval by City, in the City's sole discretion, of all written inspections and/or review of soil analysis, Phase I Environmental review, wetlands review and review of all easements. The City shall arrange for all inspections, which shall be paid for by the City, Seller shall provide reasonable access to the Property.

If the City is not satisfied with any of the above inspections, the City shall notify Seller in writing of any deficiencies not later than ten (10) days before closing. Seller shall have sixty (60) days to correct any deficiencies, at Seller's expense, and this Contract will then continue in full force and

effect for an additional sixty (60) days. If Seller chooses not to correct the deficiencies contained in any of the above named reports, Seller shall notify City in writing within four (4) days of receiving notice from the City as to deficiencies in any individual report, and City shall then have the option of declaring this contract null and void and shall have its deposit returned.

If City fails to notify Seller of deficiencies by that date, this Contract shall no longer be contingent upon the above inspection results and Seller shall no longer be obligated to correct any deficiencies.

All of City's duties and obligations hereunder are contingent upon City's actual receipt and acceptance of each of the following items within twenty (20) calendar days after acceptance of this Sale Contract by all parties including approval by the Chesterfield City Council. Acceptance of each item shall be in City's sole discretion and, unless otherwise noted, at City's sole cost and expense:

a) True and complete copies of all surveys, certificates or abstracts of title, commitments for title insurance, and title insurance policies affecting or pertaining to the "Property";

b) True and complete copies of all written, schedules or summaries of any oral or written notices received from any governmental or quasi-governmental authority or utility pertaining to the "Property" in Seller's possession;

c) City's satisfactory review (as determined by City's sole discretion) of all of the items provided by Seller pursuant to the

above paragraphs within five (5) calendar days following receipt of such items;

Acquisition of Other Properties: This Contract is further contingent upon:

a) The City is completing the acquisition and closing on the "Valley Park Site" which includes the purchase and exchange of all of the following properties: Moore property approximately 40 acres identified by locator #'s 16V12-0065, 7376-944, 7584-1358, 7601-2336, 16V12-0054, 7601-2336, the Ash property of approximately 25.87 acres identified by locator #'s 16021-0045, 7265-2306; the Carter property of 43 acres, identified by locator #'s 6874-34, 6901-1941, 6024-7531; the purchase of 6.29 acres of Chesterfield Community Association, Inc. (CCA) property by Carter, identified by locator #160V31-0035; a swap between CCA and The Successful Investors of approximately 21.74 acres (less the narrow strip) identified by locator #'s 17V63-0059, 6960-1565 for the Successful Investors property locator #'s 16V21-0056, 7244-1382 for approximately 19.44 acres that lies between the Ash and Moore property (formerly Successful Investors) for the Ash properties acquired above by City and CCA's entering into a long term joint use, maintenance and operation contract;

b) City's appropriating adequate sums for the acquisition of the "Property" by the date of closing;

If City cannot perform in accordance with Paragraphs (a-b) above and final decision by the Chesterfield City Council has not been rendered, the City shall by written notice to Seller no later

than ten (10) days before the date set for closing, have the right to extend for sixty (60) calendar days, the dates mentioned in Paragraphs (a-b) and the closing date to obtain all necessary approvals and/or agreements. In the event said approvals or agreements are not granted during the said extended period, as designated in the notice to Seller, this contract shall be null and void and all earnest money deposits refunded in full unless the parties mutually agree to extend such times in writing.

Environmental Requirements.

a) The City has had the property inspected and is satisfied that there are no environmental impediments to this Contract based upon said inspection. City shall, however, have the right to have the property reinspected before the closing to certify that there have been no changes pending the closing of this Contract to purchase. If such supplemental reports are not acceptable to City in its sole discretion, then upon written notice to Seller within ten (10) calendar days before closing, this contract shall become null and void and earnest money shall be returned to City. Absence of written notice by end of said period shall constitute removal of this contingency.

b) Seller represents and warrants that neither Seller nor, to its knowledge, anyone else which has been an owner and/or operator of the property has used, disposed of or released any pollutants, contaminants, hazardous or toxic substances or hazardous or solid wastes, petroleum (including crude oil or any fraction thereof), natural gas or synthetic gas, including mixtures

thereof, whether liquefied or not, or asbestos upon the property or on or beneath the surface of or into the atmosphere or any body of water in or about the property in violation of any law or regulation of any local, state or federal agency, or in a manner that would require response under the Comprehensive Environmental Response, Compensation and Liability Act or similar state or local statute. Seller has not received any notices or advisories from regulatory authorities concerning the existence, use, discharge or release of any such pollutants, contaminants, hazardous or toxic substances or hazardous or solid wastes, petroleum (including crude oil or any fraction thereof), natural gas or synthetic gas, including mixtures thereof, whether liquefied or not, or in a manner that would require response under the comprehensive Environmental Response, Compensation and Liability Act or similar state or local statute. Seller further represents that on the date of closing hereunder the property, to Seller's knowledge, shall be free of any and all pollutants, contaminants, hazardous or toxic substances or hazardous or solid wastes, petroleum (including crude oil or any fraction thereof), natural gas or synthetic gas, including mixtures thereof, whether liquefied or not, or asbestos, the presence of any of which would be in violation of any law or regulation of any state, local or federal agency.

Binding Effect. This Contract shall be binding upon and shall be to the benefit of the parties and will survive this Contract and be binding upon the parties and their heirs, respective successors, representatives and assigns.

Time is of the Essence. Time is of the essence in this Contract.

Governing Law. This Contract shall be considered a Contract for the sale of real property and shall be construed in accordance with the laws of the State of Missouri, including the requirement to act in good faith.

Warranties Survive. Seller's warranties ^{and representations} shall not survive and shall expire on sale of the property. Warranties ^{and representations} do not cover events which first occur after closing. rjk

Entire Contract. This document constitutes the entire contract between the parties hereto and there are no other understandings, written or oral, relating to the subject matter hereof, and may not be changed, modified or amended, in whole or in part, except in writing signed by all parties.


Notices. All notices shall be delivered to the respective parties at the following addresses:

City of Chesterfield
c/o Michael Herring
City Administrator
922 Roosevelt Parkway
Chesterfield, MO 63017

Alan B. Bornstein
One Metropolitan Square
Suite 3000
St. Louis, Missouri 63102

The parties acknowledge that they have read and agreed to the terms and conditions of this contract, and they understand this will become legally binding upon their signing below:

Dated: 4-26, 19 96



Seller
William G. Ash

Dated: _____, 19 _____

Seller

City of Chesterfield

Dated: _____, 19__

Michael G. Herring
City Administrator

PURCHASE AND SALE CONTRACT

This Contract is made this _____ day of June, 1996, between H. King Carter and Virginia E. Carter, his wife, (hereafter "Seller") and the City of Chesterfield, Missouri, a Third Class City of the State of Missouri, (hereafter "City").

The Property. Seller hereby agrees to sell and the City agrees to purchase a certain estate (the "Property") situated in St. Louis County, Missouri, bounded and described as follows:

See Attached Exhibit "A"

Conveyance. The Property is to be conveyed by a good and sufficient warranty deed conveying a good and clear title to the same, free from all encumbrances.

Consideration. For the above-described deed of conveyance, City shall pay a sum not to exceed Four Hundred Thirty Thousand Dollars (\$430,000.00), (based upon \$10,000 per acre net price for 41 acres, 2 acres at \$5,000 net price per acre and \$10,000 for relinquishment of the road easement) of which One Hundred (\$100.00) Dollars shall be paid upon acceptance of this agreement by Seller, and Four Hundred Twenty Nine Thousand Nine Hundred Dollars (\$429,900.00) to be paid by City upon closing based upon the purchase of 43.0 acres of property, and relinquishment of road easement. The sale price to be adjusted by the exact acreage approximate wide after survey. The 43 acres of property shall run generally along the Seller's eastern most boundary in a straight line to the waters of the Missouri River. Seller agrees to

relinquish the current 50 foot road easement running roughly between the existing Successful Investors/Ash property line and the City is to provide for a new 50 foot, approximate width, road easement that is of the current rock quality and dimensions or better that will allow access for Seller to their remaining property. The City shall pay for the construction of the new easement and it shall be completed within one year from the date of this contract. Until such time as the permanent new road easement and road is constructed, City shall provide Seller with access to Seller's property by constructing a temporary road access of like material. The City shall have access to the new 50 foot approximate width easement before the current road is destroyed so long as the City does not encroach upon the Seller's remaining property. The new easement shall be recorded at the City's cost.

Title and Deed. Title shall be marketable in fact and Seller shall convey marketable title by general warranty deed (or fiduciary deed where applicable) subject to the following exceptions: (a) easements, liens or encumbrances created by or assumed by Buyer in writing; (b) deed, building and use restrictions, building lines, rights of way, mineral rights or conditions, all of record, if any; and (c) easements apparent upon inspection of the Property. After receipt of the title commitment, if City determines that any matter of record (a) which is not within the Seller's control to correct and (b) which would adversely affect the use of the Property, Buyer may (a) declare the Contract null and void; provided Buyer shall notify Seller, in

writing, of such declaration within 7 days of receipt of the title commitment, or (b) Buyer may accept a title insurance policy insuring against any title defects beyond the Seller's control. If Seller fails to meet the requirements of the title commitment and eliminate any title defects within Seller's control by the final Contract closing date, Buyer may declare this contract null and void. Nothing in this section is to be construed to require Buyer to accept title which is not marketable in fact unless Buyer expressly waives such right or closes and thereby accepts title which is not marketable in fact.

Possession. At the time of closing, the City shall receive full possession of the property, free of all tenants, the Property to be then in the same condition in which it is now.

Taxes and Assessments. Taxes, special assessments and like charges shall be apportioned as of the day of closing.

Failure to Convey Title. If the Seller shall be unable to give clear and unencumbered title or to make conveyance as stipulated herein, any payments made under this Agreement shall be refunded, and all other obligations of either party hereunto shall cease, but the acceptance of a deed and possession by the City shall be deemed to be a full performance and discharge hereof.

Closing. The closing date shall be on or before August 1, 1996 ("Closing") or at such earlier date as all the contingencies herein are satisfied. At or before Closing, both Seller and City shall deposit with an escrow agent to be named by City all funds

and instruments necessary to complete this Agreement. Escrow fees and other closing costs are to be paid by Buyer.

Seller Warranties. Seller makes the following express warranties, which will survive Closing:

a) There are presently no mechanic's liens placed against the Property, and there has been no work done on the Property which will result in the placement of any mechanic's liens.

b) There are no leases on the Property.

c) That the owners named herein are all of the owners of said property.

Other than the above, Seller makes no warranties, express or implied, except as may be hereafter contained herein, concerning the Property.

City's Duty and Obligation: The City will enact an ordinance or ordinances on or before June 1, 1996, authorizing the City to purchase the Property, consistent with the terms and conditions of this Agreement. In the event City does not enact said ordinance(s) prior to said date, this Agreement shall be null and void. Provided, however, that nothing contained herein shall be construed to prevent the parties from amending this Agreement to conform to said City ordinance(s).

City shall notify Seller in writing no later than ten (10) days before Closing of any failure to meet this contingency, at which time this contract will terminate and City shall be entitled to a refund of City's deposit.

Contingencies. This sale is contingent upon the approval by City, in the City's sole discretion, of all written inspections and/or review of soil analysis, Phase I Environmental review, and review of all easements. The City shall arrange for all inspections, which shall be paid for by the City and Seller shall provide reasonable access to the Property.

If the City is not satisfied with any of the above inspections, the City shall notify Seller in writing of any deficiencies not later than ten (10) days before closing. Seller shall have sixty (60) days to correct any deficiencies, at Seller's expense or cancel this Agreement, and this Agreement will then continue in full force and effect for an additional sixty (60) days. If Seller chooses not to correct the deficiencies contained in any of the above named reports, Seller shall notify City in writing within four (4) days of receiving notice from the City as to deficiencies, and City shall then have the option of declaring this contract null and void and shall have its deposit returned.

If City fails to notify Seller of deficiencies by that date, this Agreement shall no longer be contingent upon the above inspection results and Seller shall no longer be obligated to correct any deficiencies.

All of City's duties and obligations hereunder are contingent upon City's actual receipt and acceptance of each of the following items within five (5) calendar days after acceptance of this Sale Contract by all parties including approval by the Chesterfield City Council. Seller is not responsible for supplying

these items. Acceptance of each item shall be in City's sole discretion and, unless otherwise noted, at City's sole cost and expense:

a) True and complete copies of all surveys, certificates or abstracts of title, commitments for title insurance, and title insurance policies affecting or pertaining to the "Property";

b) True and correct copies of all engineering, construction or development plans and specifications, soil or test boring results, environmental, or other impact studies and all governmental or quasi-governmental approvals or rejections of the same pertaining to "Property";

c) True and complete copies of all written, schedules or summaries of any oral or written notices received from any governmental or quasi-governmental authority or utility pertaining to the "Property" in Seller's possession;

d) City's satisfactory review (as determined by City's sole discretion) of all of the items provided by Seller pursuant to the above paragraphs within five (5) calendar days following receipt of such items;

e) City's obtaining environmental approval;

Acquisition of Other Properties: This contract is further contingent upon:

a) The City closing on the "Valley Park Site" which includes the purchase of all of the following properties: Moore property approximately 40 acres identified by locator #'s 16V12-0065, 7376-944, 7584-1358, 7601-2336, 16V12-0054, 7601-2336, the Ash property

of approximately 25.87 acres identified by locator #'s 16021-0045, 7265-2306; the Carter property of 43 acres, identified by locator #'s 6874-34, 6901-1941, 6024-7531; the purchase of approximately 6.29 acres of Chesterfield Community Association, Inc. (CCA) property located on the western side by Carter, identified by locator #160V31-0035; a swap between CCA and The Successful Investors of approximately 21.74 acres (less the narrow strip) identified by locator #'s 17V63-0059, 6960-1565 less the property sold to Carter for the Successful Investors property locator #'s 16V21-0056, 7244-1382 for approximately 19.44 acres that lies between the Ash and Moore property (formerly Successful Investors) for the Ash properties acquired above by City and CCA's entering into a long term joint use, maintenance and operation contract;

b) City's appropriating adequate sums for the acquisition of the "Property" by the date of closing;

If City cannot close in accordance with Paragraphs (a-b) above and final decision by the Chesterfield City Council has not been rendered, the City shall by written notice to Seller no later than ten (10) days before the date set for closing, have the right to extend for thirty (30) calendar days, the dates mentioned in Paragraphs (a-b) and the closing date to obtain all necessary closings. In the event said closings are not granted during the said extended period, as designated in the notice to Seller, this contract shall be null and void and all earnest money deposits refunded in full unless the parties mutually agree to extend such times in writing;

Environmental Requirements. a) After acceptance of this contract by all parties, Buyer at its expense as set out above shall obtain written inspection reports from a certified testing company of the presence or lack thereof of any contaminants on the "Property". If such reports are not acceptable to City in its sole discretion, then upon written notice to Seller within five (5) calendar days after receipt of said report, this contract shall become null and void and earnest money shall be returned to City. Absence of written notice by end of said period shall constitute removal of said contingency.

b) Seller represents and warrants that neither Seller nor, to its knowledge, anyone else which has been an owner and/or operator of the property has used, disposed of or released any pollutants, contaminants, hazardous or toxic substances or hazardous or solid wastes, petroleum (including crude oil or any fraction thereof), natural gas or synthetic gas, including mixtures thereof, whether liquified or not, or asbestos upon the property or on or beneath the surface of or into the atmosphere or any body of water in or about the property in violation of any law or regulation of any local, state or federal agency, or in a manner that would require response under the Comprehensive Environmental Response, Compensation and Liability Act or similar state or local statute. Seller has not received any notices or advisories from regulatory authorities concerning the existence, use, discharge or release of any such pollutants, contaminants, hazardous or toxic substances or hazardous or solid wastes, petroleum (including crude

oil or any fraction thereof), natural gas or synthetic gas, including mixtures thereof, whether liquified or not, or in a manner that would require response under the comprehensive Environmental Response, Compensation and Liability Act or similar state or local statute. Seller further represents that on the date of closing hereunder the property shall be free of any and all pollutants, contaminants, hazardous or toxic substances or hazardous or solid wastes, petroleum (including crude oil or any fraction thereof), natural gas or synthetic gas, including mixtures thereof, whether liquified or not, or asbestos, the presence of any of which would be in violation of any law or regulation of any state, local or federal agency.

Road Construction. Seller currently has access to his property north of the Monarch levee via a rock and gravel access road running from the north outer road. Buyer agrees to provide access from the north outer road to Seller's property over property owned by Buyer by construction of a road of equal construction to the current roadway. The parties agree that upon agreement of Seller, consent shall not unreasonably be withheld. The parties agree that Buyer may relocate the access points to meet purposes of the park configuration. Said access roadway to be constructed prior to the current road access being destroyed.

Privacy. Buyer agrees to take reasonable steps to notify the public of all City property contiguous to Seller's, including the levy and roadway to the waters of the Missouri River property adjacent to Seller's retained property. Said efforts shall include

the City erecting a reasonable number of signs that state "Private Property No Trespassing per Chesterfield Ordinance #_____", but the parties agree that Buyer does not guarantee that the public will not trespass on said property.

Binding Effect. This Agreement shall be binding upon and shall be to the benefit of the parties and will survive this Agreement and be binding upon the parties and their heirs, respective successors, representatives and assigns.

Time is of the Essence. Time is of the essence in this Contract.

Governing Law. This Contract shall be considered a Contract for the sale of real property and shall be construed in accordance with the laws of the State of Missouri, including the requirement to act in good faith.

Warranties Survive. All Seller's warranties shall survive closing of the sale of the property. Warranties do not cover events which first occur after closing.

Entire Agreement. This Contract constitutes the entire agreement between the parties hereto and there are no other understandings, written or oral, relating to the subject matter hereof, and may not be changed, modified or amended, in whole or in part, except in writing signed by all parties.

Notices. All notices shall be delivered to the respective parties at the following addresses:

City of Chesterfield
c/o Michael Herring
City Administrator
922 Roosevelt Parkway
Chesterfield, MO 63017

H. King Carter
C/O Mark O. Carter
30 Picardy Lane
St. Louis, Missouri 63124

The parties acknowledge that they have read and agreed to the terms and conditions of this contract, and they understand this will become legally binding upon their signing below:

Dated: _____, 19__

Seller
H. King Carter

Dated: _____, 19__

Seller
Virginia E. Carter

City of Chesterfield

Dated: _____, 19__

Michael G. Herring
City Administrator

LEGAL DESCRIPTION
Carter Property

A tract of land in U.S. Surveys 102, Township 45 North, Range 3 East, in the City of Chesterfield, St. Louis County, Missouri and being further described as follows:

Beginning at the Southeast corner of a tract of land conveyed to H. King Carter and Virginia Carter by deed recorded in Book 6924, page 753 of the St. Louis County Records; thence along the South line of said Carter property, South 79 degrees 20 minutes 00 seconds West, 325.30 feet and South 68 degrees 00 minutes 00 seconds West, 499.89 feet to a point; thence departing said South line, North 11 degrees 56 minutes 00 seconds West, 2,485.05 feet to a point on the bank of the minor channel of the Missouri River as located July 24, 1996; thence along the meanders of said bank the following: North 88 degrees 33 minutes 41 seconds East, 66.50 feet, South 66 degrees 29 minutes 43 seconds East, 181.88 feet, North 87 degrees 12 minutes 36 seconds East, 150.69 feet, South 89 degrees 43 minutes 19 seconds East, 201.39 feet and North 77 degrees 53 minutes 56 seconds East, 258.22 feet to a point on the East line said tract conveyed to Carter; thence along said East line of Carter, South 11 degrees 56 minutes 00 seconds East, 2,221.50 feet to the point of beginning and containing 43 acres more or less according to survey executed by The Clayton Engineering Company July, 1996.