

BILL NO. 2468

ORDINANCE NO. 2280

**AN ORDINANCE APPROVING THE SETTLEMENT OF THE LITIGATION BETWEEN FLORIDA RSA#8, L.L.C. D/B/A U.S. CELLULAR AND CHESTERFIELD DRURY, INC AND THE CITY OF CHESTERFIELD**

**WHEREAS**, Florida RSA #8, L.L.C. filed suit against the City on October 24, 2005, claiming a violation the Federal Telecommunications Act of 1996, Procedural Due Process, Equal Protection, Inverse Condemnation and Substantive Due Process; and

**WHEREAS**, the City and U.S. Cellular are now desirous of settling and resolving this dispute; and

**WHEREAS**; The City Council of Chesterfield, Missouri, after careful consideration of the matter and through discussion with the City's attorney, authorized the Mayor of Chesterfield to enter into the attached Settlement Agreement;

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

**Section 1.** The Mayor is hereby authorized to sign the Settlement Agreement.

**Section 2.** The Mayor, City Administrator and the City Attorney are authorized to perform on behalf of the City all obligations required of the City.

**Section 3.** This Ordinance shall be in full force and effect from and after its passage and approval.

Passed and approved this 17<sup>th</sup> day of July, 2006.

  
MAYOR

ATTEST:

  
DEPUTY CITY CLERK



STEWART, MITTLEMAN, HEGGIE & HENRY L.L.C.  
ATTORNEYS AT LAW

October 2, 2006

Mr. Michael G. Herring, ICMA-CM  
City Administrator  
City of Chesterfield  
690 Chesterfield Parkway West  
Chesterfield, Missouri 63017-2079

**Re: Florida RSA #8, LLC d/b/a U.S. Cellular v. City of Chesterfield, Missouri  
United States District Court, Case No. 4:05CV1964MLM**

Dear Mr. Herring:

Enclosed please find the fully signed original of the Settlement Agreement and Release entered into by and between US Cellular, Drury and the City.

Please call if you have any questions or concerns.

Sincerely,

Robert M. Heggie

**Enclosure**

*JJH  
10/4/06*

Allan F. Stewart\*†‡  
Mark D. Mittleman  
Robert M. Heggie\*  
Deborah C. M. Henry  
Lynn R. Huson

PARALEGAL  
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OF COUNSEL  
Joseph R. Niemann

222 South Central Avenue Suite 501. St. Louis, MO 63105-3575 PHONE 314.863.8484 FAX 314.863.5312

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement ("Agreement") is entered into by and between Florida RSA #8, LLC d/b/a U.S. Cellular ("U.S. Cellular"), Drury Chesterfield, Inc. ("Drury"), and the City of Chesterfield ("City"), and;

**WHEREAS**, Drury has developed the Drury Plaza, which is located in the City on property zoned "PC" for "Planned Commercial District," and;

**WHEREAS**, the governing ordinance for the Drury Plaza is Ordinance No. 2173; and,

**WHEREAS**, Ordinance No. 2173 does not include nor specify cell tower or cellular service antenna usage for the Drury Plaza; and,

**WHEREAS**, on August 5, 2005, U.S. Cellular filed with the City its Application for Administrative Approval of the Placement of Antennae and Support Structures ("Application") for a U.S. Cellular Rooftop Antenna at Drury Plaza; and,

**WHEREAS**, on August 12, 2005, the City rejected the Application; and,

**WHEREAS**, on September 16, 2005, U.S. Cellular submitted its Petition for Appeal from Zoning Regulations ("Appeal") to the City; and,

**WHEREAS**, on September 26, 2005, the City rejected the Appeal; and,

**WHEREAS**, as a result of the City's rejection of U.S. Cellular's Application and Appeal, on October 24, 2005, U.S. Cellular filed suit in the United State District Court for the Eastern District of Missouri, Case No. 4:05CV01964 MLM (the "Litigation"); and,

**WHEREAS**, on November 21, 2005, U.S. Cellular moved for partial summary judgment in the Litigation, which motion was denied on February 15, 2006.

**WHEREAS**, on March 3, 2006, Drury was ordered to be joined as a party to the Litigation; and,

**WHEREAS**, the City, U.S. Cellular, and Drury have entered into negotiations concerning the placement of a cellular service antenna on top of the Drury Plaza; and,

**WHEREAS**, there exists a dispute between U.S. Cellular, the City, and Drury regarding placement of a cellular service antenna on top of the Drury Plaza and the permitted uses established for the development in Ordinance No. 2173, which dispute and associated Litigation, the City, U.S. Cellular and Drury now wish to resolve; and,

**WHEREAS**, in order to avoid the expense and uncertainty of further litigation, the parties desire to adjust, compromise, and settle all differences and controversies among themselves;

**NOW, THEREFORE**, in consideration of the premises contained herein and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereby acknowledge and agree as follows:

1. The City hereby states that on behalf of U.S. Cellular and Drury, it has prosecuted a change to Ordinance No. 2173 to allow for the placement of cellular service antennas on top of the Drury Plaza, a copy of which amendment is attached hereto as Ex. A. The City after passage of the amendment to Ordinance No. 2173 on July 17, 2006 will, within two business days, execute this Agreement.
2. By the City approving the aforementioned amendment, the City does not admit any liability to Drury or U.S. Cellular for any wrong doing of any nature or any violation of Drury's or U.S Cellular's constitutional, statutory, or common law rights of any kind and still believes that its actions were an appropriate use and application of its powers and authorities.
3. U.S. Cellular hereby states that it will dismiss with prejudice the Litigation within 3 business days of complete execution of this Agreement.

4. The City will within 3 business days of complete execution of this Agreement give Administrative Zoning Approval to U.S. Cellular pending Application For Administrative Zoning Approval which was conditionally approved by the City.

5. In consideration of the mutual promises and agreements of the parties, U.S. Cellular hereby waives any and all claims that it may have as stated herein below and forever releases, remits, quits and discharges the City from all manner of actions or cause of actions, judgments, executions, constitutional challenges, rights for attorney's fees, rights to sue under 42 USC 1983, rights to sue for inverse condemnation, temporary taking, or any other claim or right which may arise, including all claims for attorney's fees and/or expenses, derivative claims, or any other claims made on behalf of U.S. Cellular against the City, its employees, administrators, City Council Members, agents, assigns, or successors, known or unknown, which they may now have or may have in the future arising out of any of the allegations which were raised or could have been raised in the Litigation and specifically any claims arising from the City's rejection of U.S. Cellular's Application or Appeal.

6. In consideration of the mutual promises and agreements of the parties, U.S. Cellular hereby waives any and all claims that it may have as stated herein below and forever releases, remits, quits and discharges Drury from all manner of actions or cause of actions, judgments, executions, constitutional challenges, rights for attorney's fees, rights to sue under 42 USC 1983, rights to sue for inverse condemnation, temporary taking, or any other claim or right which may arise, including all claims for attorney's fees and/or expenses, derivative claims, or any other claims made on behalf of U.S. Cellular against Drury, its employees, administrators, agents, assigns, or successors, known or unknown, which they may now have or may have in the future

arising out of any of the allegations which were raised or could have been raised in the  
Litigation.

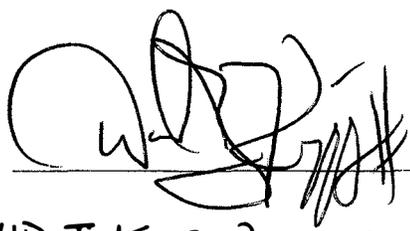
7. In consideration of the mutual promises and agreements of the parties, Drury hereby waives any and all claims that it may have as stated herein below and forever releases, remits, quits and discharges the City from all manner of actions or cause of actions, judgments, executions, constitutional challenges, rights for attorney's fees, rights to sue under 42 USC 1983, rights to sue for inverse condemnation, temporary taking, or any other claim or right which may arise, including all claims for attorney's fees and/or expenses, derivative claims, or any other claims made on behalf of Drury against the City, its employees, administrators, City Council Members, agents, assigns, or successors, known or unknown, which they may now have or may have in the future arising out of any of the allegations which were raised or could have been raised in the Litigation.

8. In consideration of the mutual promises and agreements of the parties, Drury hereby waives any and all claims that it may have as stated herein below and forever releases, remits, quits and discharges U.S. Cellular from all manner of actions or cause of actions, judgments, executions, constitutional challenges, rights for attorney's fees, rights to sue under 42 USC 1983, rights to sue for inverse condemnation, temporary taking, or any other claim or right which may arise, including all claims for attorney's fees and/or expenses, derivative claims, or any other claims made on behalf of Drury against U.S. Cellular, its employees, administrators, agents, assigns, or successors, known or unknown, which they may now have or may have in the future arising out of any of the allegations which were raised or could have been raised in the Litigation.

9. The parties acknowledge that this Agreement contains the entire understanding between the parties, and except as expressly set forth herein, no representations of any kind or character have been made to educe any party's execution of this Agreement.
10. This Agreement and the rights and obligations of the parties hereunder shall be governed by, construed, and interpreted in accordance with the laws of the State of Missouri, without regard to choice or conflict of law rules.
11. This Agreement and the provisions of it shall be binding upon, inure to the benefit of, and are enforceable by or against, the parties and their respective heirs, executors, administrators, legal representatives, successors and assigns.
12. No party may assign or transfer any of its rights or obligations under this Agreement to any other person or entity without the prior written consent of the other parties.
13. Each party shall bear and pay its own attorney's fees, costs and expenses, including any fees, costs or expenses incurred in connection with the preparation and negotiation of this compromise ordinance or any other documents necessary to effectuate this settlement.
14. The parties acknowledge that each of them has read this Agreement, and that each of them has had an opportunity to discuss it with legal counsel of their choosing and has received the advice of such counsel regarding this Agreement and with, their full knowledge of its significance, each understands and agrees that this Agreement is satisfactory and reflects the desire and intent of the parties.

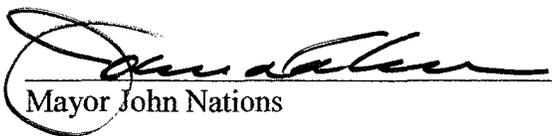
**IN WITNESS WHEREOF**, the parties have executed this Agreement the day and year first above stated.

***FLORIDA R.S.A. #8, LLC D/B/A U.S. CELLULAR***

By:  \_\_\_\_\_

DAVID J. KIPP, REGIONAL MANAGER CONSTRUCTION  
WEST REGION

**CITY OF CHESTERFIELD, MISSOURI**

By:  \_\_\_\_\_  
Mayor John Nations

**DRURY CHESTERFIELD, INC.**

By:  \_\_\_\_\_  
Larry W. Hamfeld V.P.

AN ORDINANCE AMENDING CITY OF CHESTERFIELD ORDINANCE 2173 TO PERMIT PLACEMENT OF DISGUISED COMMUNICATIONS ANTENNAE PER THE REQUIREMENTS OF CITY OF CHESTERFIELD ORDINANCE 1214 ON THE DRURY PLAZA HOTEL, A "PC" PLANNED COMMERCIAL DISTRICT-ZONED DEVELOPMENT LOCATED ADJACENT TO CHESTERFIELD MALL AT THE INTERSECTION OF CLARKSON ROAD AND U.S. HIGHWAY 40/INTERSTATE 64. (P.Z. 13-2006 CITY OF CHESTERFIELD/DRURY PLAZA HOTEL)

WHEREAS, Drury Development Corporation, owners of the Drury Plaza hotel located at the intersection of Clarkson Road and U.S. Highway 40/61, Interstate 64; have expressed the desire to place disguised communications antennae at said hotel, and;

WHEREAS, Ordinance 2173 does not currently permit placement of such equipment or provide criteria for appearance, and;

WHEREAS, the City of Chesterfield, has brought forward a request to amend Ordinance 2173 to permit the proposed use and provide placement criteria, and;

WHEREAS, a public hearing for same was held on June 12, 2006 before the City of Chesterfield Planning Commission and the Commission voted to accept P.Z. 13-2006 as presented; and,

WHEREAS, the City Council, having reviewed said request, voted to approve P.Z. 13-2006 with changes relative to approval of additional antennae and applicable governing sections of the City of Chesterfield Zoning Ordinance.

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

**Section 1.** City of Chesterfield Ordinance 2173, is hereby amended and its governing conditions replaced with new conditions which are established in the Attachment A, which is attached hereto and made a part hereof as is fully set out herein.

**Section 2.** The preliminary approval, pursuant to the City of Chesterfield Zoning Ordinance is granted, subject to all of the ordinances, rules and regulations and the specific conditions as recommended by the Planning Commission in its recommendations to the City Council, which are set out in the Attachment "A", which is attached hereto and made a part hereof.

**Section 3.** The City Council, pursuant to the request filed by the City of Chesterfield requesting the amendment embodied in this ordinance, and pursuant to the recommendations of the City of Chesterfield Planning Commission, does hereby adopt this ordinance pursuant to the power granted to the City of Chesterfield under Chapter 89 of the Revised Statutes of the State of Missouri authorizing the City Council to exercise legislative power pertaining to planning and zoning.

**Section 4.** This ordinance and the requirements thereof are exempt from the warning and summons for violations as set out in Section 1003.410 of the Zoning Ordinance of the City of Chesterfield.

**Section 5.** This ordinance shall be in full force and effect from and after its passage and approval.

Passed and approved this 17<sup>th</sup> day of July, 2006.

  
MAYOR

ATTEST:

DEPUTY Judith A. Higgins  
CITY CLERK

FIRST READING HELD: 7/17/06

## ATTACHMENT A

In keeping with the following Comprehensive Plan policies, these conditions have been developed:

- 1.4 Quality New Development
- 3.0 Quality Commercial Development
- 3.1.1 Quality of Design
- 3.7 Urban Core
- 7.2.1 Maintain Proper Level of Service
- 7.2.3 Maintain Proper Traffic Flow
- 8.3.1 New Development Review for Stormwater Control
- 8.4 Telecommunications Towers and Facilities
- 8.4.1 Placement of Telecommunications Towers and Facilities
- 8.4.2 Safety Concerns
- 8.4.3 Aesthetic Impact

### I. PERMITTED USES

A. The uses allowed in this "PC" Planned Commercial District shall be:

#### PERMITTED USES

- (e) Associated work and storage areas required by a business, firm, or service to carry on business operations.
- (v) Hotels and motels.
- (cc) Parking areas, including garages, for automobiles, but not including any sales of automobiles, or the storage of wrecked or otherwise damaged and immobilized automotive vehicles for a period in excess of seventy-two (72) hours.
- (ii) Restaurants, sit down
- (pp) Permitted signs (See Section 1003.168 'Sign Regulations').

#### ANCILLARY USES

- (f) Auditoriums, ~~churches, clubs, lodges,~~ meeting rooms, ~~libraries,~~ reading rooms, theaters, or any other facility for public assembly.
- (g) Automatic vending facilities for:
  - (i) Ice and solid carbon dioxide (dry ice);
  - (ii) Beverages;
  - (iii) Confections.
- (h) Barber shops and beauty parlors.
- (i) Bookstores.
- (j) Broadcasting, transmitting, or relay towers, studios, and associated facilities for radio, television, and other communications.
- (w) Local public utility facilities, provided that any installation, other than poles and equipment attached to the poles, shall be:
  - (i) Adequately screened with landscaping, fencing or walls, or any combination thereof; or
  - (ii) Placed underground; or

- (iii) Enclosed in a structure in such a manner so as to blend with and complement the character of the surrounding area and
- (iv) Limited to no more than four (4) antenna uses. Additional antenna uses may be approved by the City Administrator if no adverse visual impact on the structure will occur.
  
- (ff) Recreational facilities, indoor and illuminated outdoor facilities, including swimming pools, ~~golf courses, golf practice driving ranges, tennis courts,~~ and gymnasiums, and indoor theaters, ~~including drive-in theaters.~~
- (rr) Stores, shops, markets, service facilities, and automatic vending facilities in which goods or services of any kind, ~~including indoor sale of motor vehicles,~~ are being offered for sale or hire to the general public on the premises.
  
- B. These ancillary uses are permitted only within the building containing the principal permitted uses. No separate access from the exterior building shall be permitted with respect to these uses. The primary purpose of these uses is to serve the occupants and patrons of the principal permitted uses within the building.
  
- C. Such uses shall be limited to the following structures:
  - 1. One 11-story hotel with 289 rooms
  - 2. One 9-story hotel with 140 rooms
  - 3. One Two-level parking garage
  - 4. One Ancillary Conference Center
  - 5. One restaurant
  
- D. The following criteria shall apply:
  - 1. Cabinets for uses “(j)” and “(w)” shall not be visible from street level. Applications for administrative approval of said uses shall exhibit effort to minimize adverse visual impacts of equipment through the use of careful design siting, landscape/screening and innovative camouflage techniques. Said techniques may include, but are not limited to matching of materials/colors to match the principal structure on which all equipment is to be placed; site-proof fencing, disguising to look like architectural features and/or other methods as shown to and approved by the City of Chesterfield.
  - 2. Application for uses “(j)” and “(w)” shall be as outlined in Section 1003.167(19)(5)(b)(1),(2) and (5) and 1003.167(19)(5)(c) of the City of Chesterfield Zoning Ordinance.

## II. FLOOR AREA, HEIGHT AND BUILDING REQUIREMENTS

The following requirements shall apply to the permitted and ancillary uses:

- 1. BUILDING HEIGHT
  - (a) Phase I shall not exceed 11 stories and 110 feet in height (764 feet m.s.l.)
  - (b) Phase II shall not exceed 9 stories and 92 feet in height (746 feet m.s.l.)

2. CONFERENCE CENTER AND RESTAURANT

- (a) The Ancillary Conference Center shall not exceed 4,750 square feet.
- (b) The Restaurant shall not exceed 250 seats.

3. SITE REQUIREMENTS

- (a) A minimum of twenty (20.0) percent greenspace shall be maintained within the property lines of the development. This greenspace calculation shall be exclusive of pedestrian cross-accessways as approved by the City of Chesterfield. Greenspace is calculated by combining all green area and non-paved surfaces and dividing by the total area of the site.

**III. SITE DEVELOPMENT PLAN SUBMITTAL REQUIREMENTS**

Within eighteen (18) months from the preliminary development plan approval date by the City of Chesterfield and prior to issuance of any building permit, the developer shall submit to the City of Chesterfield for their review and approval a Site Development Plan. Where due cause is shown by the developer, this time interval may be extended by the City of Chesterfield.

Failure to comply with the aforementioned time limits will result in the expiration of the preliminary plan for that portion not developed and will require a new public hearing.

Said Site Development Plans shall include but not be limited to the following:

**IV. GENERAL CRITERIA**

1. Outboundary plat and legal description of the property.
2. Location and size, including height above sea level, of all uses, buildings, parking and loading areas, light standards, fencing, free-standing signs, trash enclosures, other above ground structures and landscaping.
3. Existing and proposed contour intervals of not more than two (2) foot, and extending one hundred fifty (150) feet beyond the limits of the site.
4. Existing and proposed roadway, drives, and walkways on and adjacent to the property in question, including location of curb cuts, necessary right-of-way.
5. Location map, north arrow, and plan scale.
6. Parking calculations.
7. Confirmation of compliance with the sky exposure plan and height restrictions as set forth in this ordinance.
8. All existing and proposed easements and rights-of-way on site and all existing or proposed off-site easements and rights-of-way required for utilities, storm water drainage, grading, or other improvements.
9. Specific structure and parking setbacks along all roadways and property lines.

10. The location of the proposed storm sewers, detention basins, sanitary sewers, and connections to existing systems.
11. Location and size of all parking areas.
12. A landscape plan, including, but not limited to, location, sizes, and types of all plant and other material to be used.
13. Area of each building phase.
14. Architectural elevations and building materials addressing City of Chesterfield Design Guidelines.
15. Show existing improvements, including roads and driveways on the opposite side of roadway adjacent to the site, and the location of significant natural features, such as wooded areas and rock formations that are to remain or be removed.
16. Provide comments/approvals from the Metropolitan St. Louis Sewer District, the Missouri Department of Transportation and the Chesterfield Fire Protection Fire District.
17. Signed and sealed in conformance with the State of Missouri Department of Economic Development, Division of Professional Registration, Missouri Board for Architects, Professional Engineers and Land Surveyors requirements.
18. Provide the greenspace percentage for each lot on the plan. Greenspace is calculated by dividing the pervious surfaces by the site area (excluding right-of-ways).

## V. SPECIFIC CRITERIA

The Site Development Plan shall adhere to the following specific design criteria.

1. STRUCTURE SETBACKS – No building or structure, other than boundary walls, retaining walls, signs, light standards, flagpoles or fences, shall be located within the following setbacks:

### PHASE I HOTEL, ANCILLARY CONFERENCE CENTER AND RESTAURANT

- (a) Seventy-five (75) feet from the western boundary of the Planned Commercial (PC) District bearing N 12° 29' 20" W.
- (b) Sixty (60) feet from the western boundary of the PC District bearing N 29° 03' 35" E.
- (c) Sixty (60) feet from the northeastern boundary of the PC District bearing S 54° 53' 25" E.
- (d) Two hundred fifty-five (255) feet from the eastern boundary of the PC District bearing S 15° 56' 21" E, exclusive of the drive-through canopy at the building entrance.
- (e) One hundred forty-five (145) feet from the southeastern boundary of the PC District bearing S 38° 46' 23" W.

- (f) Two hundred forty (240) feet from the southern boundary of the PC District, along Chesterfield Mall Entry No.1, at the curve whose radius point bears S 33° 37' 02" W.
- (g) The drive-through canopy for the hotel shall be one hundred fifty (150) feet from the northeastern boundary of the PC District bearing S 54° 53' 25" E and one hundred seventy (170) feet from the southeastern boundary of the PC District bearing S 38° 46' 23" W.

PHASE II HOTEL

- (a) Seventy-five (75) feet from the western boundary of the PC District, along Chesterfield Center East Drive, at the curve whose radius point bears N 78° 33' 09" W.
- (b) Three hundred ten (310) feet from the northeastern boundary of the PC District bearing S 54° 53' 25" E.
- (c) Forty-two (42) feet from the southeastern boundary of the PC District bearing S 38° 46' 23" W.
- (d) Seventy (70) feet from the southern boundary of the PC District, along Chesterfield Mall Entry No.1, at the curve whose radius point bears S 33° 37' 02" W.

PARKING STRUCTURE

- (a) Fourteen (14) feet from the northeastern boundary of the PC District bearing S 54° 53' 25" E.
- (b) Twenty (20) feet from the eastern boundary of the PC District bearing S 15° 56' 21" E.
- (c) Seventeen (17) feet from the southeastern boundary of the PC District bearing S 38° 46' 23" W, exclusive of the drive to the top level, which shall be ten (10) feet from the same bearing.

2. PARKING AND LOADING SPACE SETBACKS

No parking stall, loading space, internal driveway, or roadway, except points of ingress and egress, shall be located within the following setbacks:

- (a) Fifteen (15) feet from the southeastern boundary of the PC District bearing S 38° 46' 23" W.
- (b) Twelve (12) feet from the southern boundary of the PC District, along Chesterfield Mall Entry No.1, at the curve whose radius point bears S 33° 37' 02" W.
- (c) Ten (10) feet from the western boundary of the PC District, along Chesterfield Center East Drive, at the curve whose radius point bears N 78° 33' 09" W.
- (d) Twelve (12) feet from the western boundaries of the PC District, along Chesterfield Center East Drive, bearing N 12° 29' 20" W and N 27° 04' 53" E.
- (e) Twelve (12) feet from the northeastern boundary of the PC District bearing S 43° 47' 39" E.

3. PARKING AND LOADING REQUIREMENTS

Parking and Loading spaces for this development shall be as required in Section 1003.165 of the City of Chesterfield Zoning Ordinance, with the exception that a ten (10) percent reduction in the required number of parking spaces shall be allowed.

4. ACCESS

- (a) Access to the site shall be limited to two entrances to Chesterfield Center East. The southern most entrance shall be located no closer than 160' to the Chesterfield Mall Entry No. 1, as measured from the edge of pavement to the throat of the entrance, and 150' from the southern boundary of the PC District, along Chesterfield Mall Entry No.1, at the curve whose radius point bears S 33° 37' 02" W. The northern most entrance shall be located no closer than 200' to Chesterfield Airport Road, as measured from the edge of pavement to the throat of the entrance and shall generally align with the existing entrance on the west side of Chesterfield Center East. The entrance geometrics shall conform to the standards of the City of Chesterfield.
- (b) Access points to the main entrance drive (currently shown as the southern most drive) shall be controlled as follows:
  1. Parking spaces along the main drive shall be kept a minimum of 60' from the existing edge of pavement of Chesterfield Center East.
  2. Drive aisles from the parking lots shall be located no closer than 40' to the existing edge of pavement of Chesterfield Center East. A clear line of sight, as defined by a sight distance triangle (each leg of the triangle to be 45' long), shall be maintained. There shall be no parking spaces, plantings, obstructions or signage in excess of 3-1/2 feet in height within the triangle. Additionally, stop signs and stop bars on the cross drive's approaches to the main driveway shall be provided.
  3. Any access, parking lot drive aisle or parking space etc., to the secondary entrance drive (currently shown as the northern most drive) shall be a minimum of 40' from the existing edge of pavement of Chesterfield Center East as directed by the City of Chesterfield, Department of Public Works.

5. Public/Private Road Improvements, Including Pedestrian Circulation

- (a) Conform to the requirement and/or the recommendations of the Missouri Department of Transportation regarding Chesterfield Airport Road (South Outer Road) in this area.
- (b) Pedestrian circulation throughout the development must be addressed. Connection to adjacent properties as directed by Department of Planning.
- (c) The developer shall provide any additional right-of-way, and construct any improvements required by the City of Chesterfield and the Missouri Department of Transportation.

**P.Z. 13-2006 City of Chesterfield (Drury Development Corporation)**

**Planning Commission June 12, 2006**

**City Council July 17, 2006**

**Page 8 of 18**

- (d) A 200 foot dedicated right-turn land shall be constructed on Chesterfield Airport Road (South Outer Road), terminating at Clarkson Road.

6. TRAFFIC STUDY

- (a) Prior to Site Development Plan approval, provide a traffic study, including internal and external circulation, for review, and approval, by the City of Chesterfield Department of Public Works, and the St. Louis County Department of Highways and Traffic.
- (b) Provide a traffic study discussing the impact the site will have on the surrounding road system and methods of mitigating those impacts as directed by the City of Chesterfield and the Missouri Department of Transportation.

7. LANDSCAPE PLAN

The developer shall submit a landscape plan in accord with the Landscape Guidelines adopted by the Planning Commission, either as part of the appropriate Site Development Concept Plan or on a separate drawing to be reviewed as part of said plan, to comply with the following:

- (a) The parking islands and medians surrounding the buildings shall be landscaped.
- (b) If the estimated cost of new landscaping indicated on the Site Development Section Plans as required by the Planning Commission exceeds one thousand (\$1,000) dollars, as determined by a plant nursery, the petitioner shall furnish a two (2) year bond or escrow sufficient in amount to guarantee the installation of said landscaping.
- (c) Prior to release of the Landscape Installation Bond/Escrow, a two (2) year Landscape Maintenance Bond/Escrow will be required.
- (d) The Landscape Plan shall be reviewed by the City of Chesterfield Beautification Committee prior to Site Development plan approval.

7. SIGN REQUIREMENTS

- (a) Ornamental Entrance Monument construction, if proposed, shall be reviewed by the City of Chesterfield department of Public Works, and/or the St. Louis County Department of Highways and traffic, for sight distance considerations prior to installation or construction.
- (b) No advertising signs, temporary signs, portable signs, off site signs, or attention getting devices shall be permitted in this development.
- (c) All permanent freestanding business and identification signs shall have landscaping, which may include, but not be limited to, shrubs, annuals, and other materials, adjacent to the sign base or structural supports. This landscaping shall be as approved by the Planning Commission on the Site Development Plan.

- (d) All other signs shall be permitted in accord with the regulations of Section 1003.168 of the City of Chesterfield Zoning Ordinance.
- (e) The petitioner shall provide a sign package with the Site Development Concept Plan or Site Development Plan.
- (f) Signage shall be limited to the principal use.

8. ARCHITECTURAL ELEVATIONS

- (a) The developer shall submit architectural elevations and building materials. Architectural information is to be reviewed by the Architectural Review Board prior to submission to the Planning Commission.
- (b) There shall be intense landscaping on all the facades of parking structures with a variety of types and sizes, as required in the City of Chesterfield Architectural Guidelines.

9. POWER OF REVIEW

Either Councilmember of the Ward where a development is proposed, or the Mayor, may request that the site plan for a development be reviewed and approved by the entire City Council. This request must be made no later than twenty-four (24) hours before posting the agenda for the next City Council meeting after Planning Commission review and approval. The City Council will then take appropriate action relative to the proposal.

10. MISCELLANEOUS

- (a) Trash enclosures: The location and elevation of any trash enclosures shall be as approved by the Planning Commission on the Site Development Plan. All exterior trash areas shall be enclosed with a six (6) foot high sight-proof enclosure complimented by adequate landscaping approved by the Planning Commission on the Site Development Plan. The material shall be as approved by the Planning Commission in conjunction with the Site Development Plan.
- (b) Mechanical equipment shall be adequately screened by roofing or other material as approved by the Planning Commission.
- (c) All utilities shall be installed underground. The development of this parcel shall coordinate the installation of all utilities in conjunction with the construction of any roadway on site. Utilities Easements that cross over Chesterfield Valley Master Stormwater Easement shall be subordinate to the Chesterfield Valley Stormwater Easements.
- (d) Sleeves for future telecommunication services shall be installed adjacent and/or parallel to any proposed roadway, or other location as directed by the City of Chesterfield, in order to facilitate the installation of utilities and telecommunication infrastructure for current and future users.
- (e) All references herein to the City of Chesterfield Zoning Ordinance or sections thereof shall refer to said Ordinance and amendments thereto as approved by

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the City of Chesterfield City Council, as of the date the petitioner submits a Site Development Plan for review and approval.

## VI. TRUST FUND CONTRIBUTION

The developer shall contribute to the Chesterfield Village Road Trust Fund. These funds are to be allocated at the discretion of the City of Chesterfield. This contribution shall not exceed an amount established by multiplying the ordinance required parking spaces by the following rate schedule:

<u>LAND USE</u>	<u>REQUIRED CONTRIBUTION</u>
Hotel	\$896.62/Parking Space
Restaurant (sit-down)	\$1344.88/Parking Space
Loading Space	\$2,200.73/Loading Space

(Parking space as required by Section 1003.165 of the St. Louis County Zoning Ordinance, with a nine percent reduction allowed for this development)

If types of development differ from those listed the Department of Highways and Traffic shall provide rates.

Credits for roadway improvements will be as approved by the City of Chesterfield and St. Louis County Department of Highways and Traffic.

As this development is located within a trust fund area, any portion of the traffic generation assessment contribution which remains, following completion of road improvements required by the development, shall be retained in the appropriate trust fund.

The amount of this required contribution, if not submitted by January 1, 2003, shall be adjusted on that date and on the first day of January in each succeeding year thereafter in accord with the construction cost index as determined by the St. Louis County Department of Highways and Traffic.

Traffic generation assessment contributions shall be deposited with the City of Chesterfield or St. Louis County in the form of a check made payable to the City of Chesterfield prior to the issuance of building permits. If development phasing is anticipated, the developer shall provide the traffic generation assessment contribution prior to issuance of building permits for each phase of development.

## VII. VERIFICATION PRIOR TO APPROVAL

Prior to approval of the Site Development Concept and Section Plans, the developer shall provide the following:

### 1. ROADWAY IMPROVEMENTS AND CURB CUTS

Obtain approval from the City of Chesterfield Department of Public Works and the St. Louis County Department of Highways and Traffic of the locations of proposed curb cuts, areas of new dedication, and roadway improvements.

### 2. STORMWATER AND SANITARY SEWER

- (a) Detention/retention is to be provided for this site, unless studies undertaken prior to development determine to the satisfaction of the Department of Public Works that is not necessary or is already provided for elsewhere. Detention of storm water runoff is required by providing permanent detention/retention facilities such as dry reservoirs, ponds, underground vaults or another alternative acceptable to the Department of Public Works. The detention/retention basin shall be operational prior to paving of any driveways or parking areas. The location and types of detention facilities shall be identified on the Site Development Plan.
- (b) The site shall provide for the positive drainage of storm water and it shall be discharged at an adequate natural discharge point. No change in watersheds shall be permitted. The adequacy of any existing downstream storm water facilities shall be verified and upgraded if necessary as directed by the City of Chesterfield Department of Public Works. Emergency overflow drainage ways to accommodate the 100-year storm shall be provided. Off-site easements for areas inundated by headwater from on site improvements shall be provided as required by the Department of Public Works.

3. GEOTECHNICAL REPORT

Provide a geotechnical report, as directed by the City of Chesterfield, Department of Public Works, prepared by a Professional Engineer, licensed to practice in the state of Missouri. Said Report shall verify the suitability of grading and proposed improvements with soil and geologic conditions. A statement of compliance, signed and sealed by the Geotechnical Engineer preparing the report, shall be included on all Site Development Plans. This report shall address the existence of any potential sinkhole, ponds, dams, septic fields, etc., and recommendation for treatment.

4. GRADING AND IMPROVEMENT PLANS

- (a) A clearing/grading permit or improvement plan approval is required prior to any clearing or grading on the site. The Site Development Plan and Tree Preservation Plan must be approved prior to issuance of a clearing and grading permit.
- (b) Interim storm water drainage control in the form of siltation control and/or siltation basins is required. A Stormwater Pollution Prevention Plan (SWPPP) must be submitted and approved by the Department of Public Works prior to any clearing, grading, and/or improvement plan approval. The SWPPP covers required erosion control practices specific to site conditions and maintenance and implementation, management and maintenance of the Best Management Practices (BMP's) in order to reduce the amount of sediment and other pollutants in stormwater discharges associated with land disturbance activities. It shall comply with the Missouri Water Quality Standards, and ensure compliance with the terms and conditions of the NPDES.

- (c) Temporary settlement basins, as required by the City of Chesterfield Department of Public Works, shall be constructed during construction to allow for settling of sediment, prior to the discharge of storm water from this site. Erosion and siltation control shall be installed prior to any grading and be maintained throughout the project until acceptance of the work by the owner and/or controlling regulatory agency and adequate vegetative growth insures no future erosion of the soil.
- (d) When clearing and/or grading operations are completed or suspended for more than 30 days, all necessary precautions shall be taken to retain soil materials on site. The Director of Public Works/City Engineer may require protective measures, such as permanent seeding, periodic wetting or other means.
- (e) If cut and fill operations occur during a season not favorable for immediate establishment of a permanent ground cover, a fast germinating annual such as rye grasses or sudan grasses shall be utilized to retard erosion, if adequate stormwater detention and erosion control devices have not been established.
- (f) Provide adequate temporary off-street parking for construction employees and a vehicle washdown/cleaning area. Parking on non-surfaced areas is prohibited in order to eliminate the condition whereby mud from construction and employee vehicles is tracked onto the pavement causing hazardous roadway and driving conditions. The contractor shall keep the roads in the area clear of mud and debris related to his construction at all times. The streets surrounding this development and any street used for construction access thereto shall be cleaned continuously throughout each day. No construction parking shall be allowed along State right-of-way or Chesterfield Center East.
- (g) Prior to issuance of an occupancy permit, all disturbed areas shall be seeded and mulched at the minimum rates defined in Appendix "A" of the City of Chesterfield's "Model Sediment & Erosion Control Guidelines" or soded. A temporary occupancy permit may be issued by the Department of Planning in cases of undue hardship because of unfavorable ground conditions.
- (h) Prior to improvement plan approval, provide comments/approvals from the Metropolitan St. Louis Sewer District, the Chesterfield Fire Protection District and the Missouri Department of Transportation.
- (i) Prior to improvement plan approval, copies of recorded easements/rights-of-way dedications, including book and page information, for off-site work shall be provided.

## VIII. RECORDING

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Within sixty (60) days of approval of any development plan by the City of Chesterfield, the approved plan shall be recorded with the St. Louis County Recorder of Deeds. Failure to record the plan within sixty (60) days of approval shall deem the plan void.

#### **IX. VERIFICATION PRIOR TO SPECIAL USE PERMIT ISSUANCE**

Prior to Special Use Permit issuance by St. Louis County Department of Highways and Traffic, a special cash escrow must be established with this Department to guarantee completion of the required roadway improvements.

#### **X. VERIFICATION PRIOR TO IMPROVEMENT PLAN APPROVAL**

Prior to improvement plan approval, provide comments/approvals from the St. Louis County Department of Highways and Traffic, the Spirit of St. Louis Airport, MSD, the Missouri Department of Natural Resources, the Monarch-Chesterfield Levee District and the Chesterfield Fire Protection District.

#### **XI. VERIFICATION PRIOR TO FOUNDATION OR BUILDING PERMITS**

Subsequent to approval of the Site Development Plan and prior to the issuance of any foundation or building permit, the following requirements shall be met:

1. NOTIFICATION OF DEPARTMENT OF PLANNING

Prior to the issuance of foundation or building permits, all approvals from the above mentioned agencies and the City of Chesterfield Department of Public Works, as applicable, must be received by the City of Chesterfield Department of Planning.

2. NOTIFICATION OF ST. LOUIS COUNTY DEPARTMENT OF PUBLIC WORKS

Prior to issuance of foundation or building permits, all approvals from the City of Chesterfield, the Department of Highways and Traffic and the Metropolitan St. Louis Sewer District must be received by the St. Louis County Department of Public Works.

3. CERTIFICATION OF PLANS

Provide verification that construction plans are designed to conform to the requirements and conditions of the Geotechnical Report. The Geotechnical Engineer shall be required to sign and seal all plans with a certification that the proposed construction will be completed in accordance with the grading and soil requirements and conditions contained in the report.

#### **XII. OCCUPANCY PERMIT/FINAL OCCUPANCY**

1. The developer shall cause, at his expense and prior to the recording of any plat, the reestablishment, restoration or appropriate witnessing of all Corners of the United States Public Land Survey located within, or which define or lie upon, the outboundaries of the subject tract in accordance with the Missouri Minimum Standards relating to the preservation and maintenance of the U.S. Public Land Survey Corners.
2. Prior to final occupancy of any building the developer shall provide certification by a Registered Land Surveyor that no U.S. Public Land Survey Corner has been disturbed during the construction activities or that it has been corrected and the appropriate

documents filed with the Missouri Department of Natural Resources Land Survey Program.

### **XIII.FINAL RELEASE OF ESCROW**

Prior to the release of final escrow, the developer shall provide certification by a Registered Land surveyor that all monumentation depicted on the Record Plat has been installed and that the U.S. Public Land Survey Corners have not been disturbed during the construction activities or that they have been corrected and the appropriate documents filed with the Missouri Department of Natural Resources' Land Survey Program.

### **XIV. VERIFICATION PRIOR TO BUILDING PERMITS**

Subsequent to approval of the appropriate development plan and prior to issuance of any building permit, the following requirements shall be met:

1. SANITARY SEWERS

Provide verification to the St. Louis County Department of Public Works and the City of Chesterfield of provision of adequate sanitary services.

2. NOTIFICATION OF CITY OF CHESTERFIELD

Prior to issuance of zoning approvals for foundation or building permits, the City of Chesterfield must receive approvals from the St. Louis County Department of Highways and Traffic and the Metropolitan St. Louis Sewer District.

### **XV. SUPPLEMENTARY DEVELOPMENT CONDITIONS**

Supplementary development conditions relating to the operation of this development are as follows:

1. The developer shall cause, at his expense and prior to the recording of any plat, the reestablishment, restoration or appropriate witnessing of all Corners of the United States Public Land Survey located within, or which define or lie upon, the outboundaries of the subject tract in accordance with the Missouri Minimum Standards relating to the preservation and maintenance of the U.S. Public Land Survey Corners.
2. Prior to final occupancy of any building, the developer shall provide certification by a Registered Land Surveyor that no U.S. Public Land Survey Corner has been disturbed during the construction activities or that it has been corrected and the appropriate documents filed with the Missouri Department of Natural Resources' Land Survey Program.

### **XVI. GENERAL DEVELOPMENT CONDITIONS**

General development conditions relating to the operation, construction, improvement and regulatory requirements to be adhered to by the developer are as follows:

1. The developer is advised that utility companies will require compensation for relocation of their utility facilities within public road right-of-way. Utility

relocation cost shall not be considered as an allowable credit against the petitioner's traffic generation assessment contributions. The developer should be aware of extensive delays in utility company relocation and adjustments. Such delays will not constitute a cause to allow occupancy prior to completion of road improvements.

2. Failure to comply with any or all the conditions of this ordinance shall be adequate cause for revocation of permits by issuing Departments and Commissions.
3. The City of Chesterfield, Missouri shall enforce the conditions of this ordinance in accord with the Site Development Concept Plan approved by the City of Chesterfield and any Site Development Section Plans approved by the City of Chesterfield.
4. Notice requirements set forth in Section 1003.410.2 of the City of Chesterfield Zoning Ordinance shall not apply to violations pursuant to this Attachment A.