

AN ORDINANCE APPROVING THE SETTLEMENT OF THE LITIGATION BETWEEN BAXTER BEND INVESTORS, L.L.C., LAND WEST # 1, L.L.C. AND THE CITY OF CHESTERFIELD

WHEREAS, Baxter Bend Investors, L.L.C. filed suit against the City and Land West #1, L.L.C. on June 8, 2007, claiming that the City's Ordinance was invalid and the Land West #1, L.L.C. was improperly using its land; and

WHEREAS, the City and Baxter Bend and Land West 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 City Administrator of Chesterfield to enter into a Settlement Agreement similar in form that that attached;

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

Section 1. The City Administrator is hereby authorized to sign the Settlement Agreement.

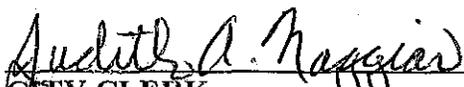
Section 2. The Mayor, City Administrator and the City Attorney are authorized to perform on behalf of the City all obligations required of the City.

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

Passed and approved this 20th day of August, 2007.


MAYOR

ATTEST:


CITY CLERK

FIRST READING HELD: _____

SETTLEMENT AND MUTUAL RELEASE AGREEMENT

This Settlement and Mutual Release Agreement (this "Settlement Agreement") is made and entered into this ____ day of August, 2007 by and among Baxter Bend Investors, L.L.C. ("Baxter Bend"), Land West #1, LLC ("Land West") and City of Chesterfield, Missouri ("Chesterfield") (collectively, the "Parties").

WITNESSETH:

WHEREAS, Baxter Bend and Land West own adjacent parcels of improved realty in Chesterfield, Missouri, near the corner of Baxter and Clayton Roads (respectively, the "Baxter Bend Property" and the "Land West Property"); and

WHEREAS, the Baxter Bend Property is improved by a single story retail facility containing shops and offices and, until approximately June 2007, the Land West Property was improved by a gas station and small building; and

WHEREAS, beginning in 2005, Land West formally sought approval from Chesterfield to redevelop the Land West Property by demolishing the existing gas station and building and constructing a convenience store, gas station and car wash (the "Redevelopment"); and

WHEREAS, on or about April 17, 2006 and November 6, 2006, Chesterfield enacted Ordinances 2255 and 2314, which changed and amended the zoning for the Land West Property, approved certain variances and approved the Redevelopment (the "Redevelopment Ordinances"); and

WHEREAS, Baxter Bend has raised various objections to the Redevelopment and the Redevelopment Ordinances, which were asserted in pleadings in Cause No. 07CC-002367, pending in the St. Louis County Circuit Court, Missouri (the "Litigation") and was in the process of filing an amended petition including claims for a prescriptive easement on the Land West Property; and

WHEREAS, any and all claims, disputes or issues by and among the Parties, whether or not asserted in the Litigation, or otherwise, that in any way directly or indirectly relate, refer to or arise out of the Redevelopment or the Redevelopment Ordinances including, without limitation, the prescriptive easement claim, shall be referred to hereinafter as the "Disputes"; and

WHEREAS, as a result of arms-length negotiations, the Parties wish to enter into this Settlement Agreement as a full, final and complete settlement of any and all claims which could have been asserted, or which otherwise may exist (whether asserted or not asserted) between the Parties, which in any fashion relate to the Disputes; and

WHEREAS, the Parties desire to settle the Disputes under the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth hereinafter, the receipt, adequacy and sufficiency of which are hereby acknowledged, it is mutually agreed by and between the Parties as follows:

1. **Redevelopment Approvals and Permits.** Baxter Bend, Land West and Chesterfield shall cooperate in obtaining any approvals or permits from Chesterfield to approve the terms of the settlement contemplated in this Settlement Agreement. It is anticipated that on August 6, 2007 Chesterfield shall preliminarily approve this Settlement Agreement, and on August 20, 2007 Chesterfield shall give final approval of this Settlement Agreement and approve all matters relevant to approve the modified development of the Land West Property described in the hereinafter defined Site Concept Plan (the "Chesterfield Approval Date"). The Parties hereby agree to the terms set forth herein subject to Chesterfield's approval on the Chesterfield Approval Date.

2. **Dismissal.** Promptly after the Chesterfield Approval Date, Baxter Bend shall dismiss the Litigation with prejudice and file a Dismissal Memorandum.

3. **Development of the Land West Property.** The Parties agree that the convenience store and other improvements and easements shall be located and constructed as depicted in the site concept plan attached hereto as Exhibit "A" and incorporated herein by reference (the "Site Concept Plan"). The parking space on the far north side of the convenience store as depicted on the Site Concept Plan shall not be used as employee parking or for any permanent parking of vehicles.

4. **Vehicular Cross-Access Easements.** Promptly after the Chesterfield Approval Date, Baxter Bend and Land West shall execute and record vehicular cross-access easements to the area along Clayton Road as depicted upon the Site Concept Plan. The vehicular cross-access easement for the Baxter Bend Property shall contain a provision for Baxter Bend to terminate such vehicular cross-access easement across its property upon construction of any improvements on the Land West Property which extend or replace existing convenience store improvements toward or closer to Clayton Road, beyond those depicted on the Site Concept Plan.

5. **Architectural, Engineering and Construction Costs.** Baxter Bend shall pay one half (1/2) of the reasonable and necessary architectural, engineering and construction costs associated and incurred in connection with the relocation, redesign and construction related to the convenience store on the Property as depicted on the Site Concept Plan upon presentation of copies of invoices for said architectural, engineering and construction costs by either Land West or the vendor/contractor. The Parties agree to provide written evidence of payments of its half of such costs in such form (such as cancelled checks). In no event shall Baxter Bend's liability under this section exceed \$37,500.00. Baxter Bend agrees to hold Land West harmless for Baxter Bend's half of

such payments and/or costs and for any liens, lawsuits or claims as a result of Baxter Bend's failure to make timely payment to the relevant vendors/contractors.

6. **Temporary Construction Easement.** Promptly after the Chesterfield Approval Date, Baxter Bend shall execute and record a temporary construction easement against its property in favor of Land West and its contractors for use of a portion of its property as shown on the Site Concept Plan for access purposes to construct the convenience store. Such temporary construction easement shall terminate upon the earlier of completion of the construction of the convenience store or August 1, 2008. The Parties acknowledge and agree that one (1) of Baxter Bend's tenants will need to access the temporary construction easement area from time to time for side door deliveries, so the easement shall not be exclusive and the Parties agree to cooperate in good faith to allow necessary use of the temporary construction easement area by Land West and Baxter Bend's tenants. Upon termination of the temporary construction easement, Land West shall clean up any debris from its activities and repair any permanent damage to the asphalt.

7. **Monument Sign Variance.** To minimize any negative visual impact to Baxter Bend's tenants, Baxter Bend intends to apply to Chesterfield for a variance and other approvals to build an improved monument sign for its tenants at the current location on the Baxter Road Property. Land West agrees not to contest a reasonable application by Baxter Bend for such a variance and Chesterfield agrees to use good faith efforts to cause such variance to be granted, subject to its ordinances and regulations.

8. **Mutual Releases.** As of the Chesterfield Approval Date, each of the Parties and each of their past, present and future officers, directors, shareholders, members, managers, agents, servants, employees, successors, representatives, assigns, heirs, beneficiaries, parent entities, subsidiary entities, former entities, predecessor entities,

successor entities, partners, attorneys, and any and all other related persons, firms, individuals, corporations, partnerships, associations, joint ventures, trusts, entities, and affiliates of whatever kind or nature (the "Releasing Parties") hereby release, acquit, and forever discharge each of the other Parties and each of their past, present and future officers, directors, shareholders, members, managers, agents, servants, employees, successors, representatives, assigns, heirs, beneficiaries, parent entities, subsidiary entities, former entities, predecessor entities, successor entities, partners, attorneys, any and all other related persons, firms, individuals, corporations, partnerships, associations, joint ventures, trusts, entities, and affiliates of whatever kind or nature (the "Released Parties") of and from any and all claims, actions, causes of action, suits, demands, rights, damages, injuries, costs, judgments, sums of money, expenses, compensation, and damages whatsoever which the Releasing Parties ever had against the Released Parties or now have, or which hereinafter accrue on account of, or in any way growing out of any and all known and unknown, foreseen and unforeseen damages, and any consequences thereof, relating in any respect to the Disputes and/or the Litigation, except the covenants and agreements expressly provided herein.

9. **No Admission of Liability.** The Parties expressly agree and understand that this Settlement Agreement is a compromise of disputed claims, and that the execution of this Settlement Agreement is not to be construed as an admission of liability on the part of any of the Parties. No party to this Settlement Agreement admits any liability to any other party hereto with respect to any claims. Moreover, each party to this Settlement Agreement specifically asserts that it is not responsible or liable to any other party, but has agreed to this settlement for purposes of resolving the Disputes.

10. **Modification of Settlement Agreement.** No modification, termination or waiver of this Settlement Agreement shall be valid unless in writing and signed by all of the Parties.

11. **Requisite Authority.** Except for the approval of Chesterfield on the Chesterfield Approval Date, the Parties hereto have the power and authority to enter into and perform this Settlement Agreement.

12. **Legal Fees.** The Parties each have the responsibility of paying all of their own legal fees, costs and expenses incurred with respect to the Disputes. No party shall have liability for such fees, costs and expenses incurred by any other party except to the extent allowed as a prevailing party in a dispute arising out of this Settlement Agreement and provided in paragraph 18 below.

13. **Representation by Counsel.** The Parties have been encouraged to seek the advice of independent legal counsel, have in fact been provided the opportunity to do so, and have relied upon the advice and representation of counsel of their selection in executing this Settlement Agreement. The Parties expressly acknowledge that they have had the free and unrestricted opportunity to consult with counsel or other advisors relative to this Settlement Agreement and that this Settlement Agreement is entered into as an act of free will and is an arm's-length transaction.

14. **Voluntary Execution.** The Parties knowingly and voluntarily execute this Settlement Agreement. The Parties have read and thoroughly reviewed this entire Settlement Agreement and fully understand it. The Parties acknowledge that they are fully cognizant of the nature and extent of the restrictions contained herein. The Parties, by signing below, accept the terms and conditions of this Settlement Agreement. The Parties acknowledge that the consideration by each of the Parties for the execution of this

Settlement Agreement by the Parties is more than sufficient to warrant strict compliance with the terms and conditions of this Settlement Agreement by each of the Parties.

15. **Binding Settlement Agreement, Succession or Assignment.** The rights and obligations created by this Settlement Agreement shall pass to and be binding upon the successors and assigns of the Parties; however, no rights shall be enlarged by reason of such succession.

16. **Joint Drafting Effort.** Each party hereto agrees that this Settlement Agreement reflects the joint drafting efforts of the Parties, and that no rule of construction or interpretation regarding any alleged ambiguities in this Settlement Agreement shall be applied against any party.

17. **Applicable Law.** This Settlement Agreement shall be construed in accordance with the laws of the State of Missouri. Any matter or dispute arising hereunder or relating to this Agreement shall be subject to the exclusive jurisdiction and venue of any state courts located in St. Louis County, State of Missouri or the United States District Court located in St. Louis City, State of Missouri. The foregoing courts shall have personal jurisdiction, and the Parties hereto hereby submit to same, over the matters arising hereunder or in connection herewith. The Parties hereby waive all rights to contest such jurisdiction and venue and waive any right to commence any action in any other jurisdiction or venue.

18. **Prevailing Party's Attorneys' Fees.** In the event that a dispute arises regarding any term, performance or enforcement of this Settlement Agreement, the prevailing party shall be entitled to an award of attorney's fees.

19. **Cooperation.** Each party warrants and agrees that they shall cooperate to do and diligently pursue all things necessary to obtain all signatures required on the Dismissal Memorandum attached hereto as Exhibit "B" and to prepare and execute any

additional documents that may be required by this Settlement Agreement or by the Court for the Court's approval thereof.

20. **Survival.** The terms and obligations set forth and incumbent herein shall survive closing of this Settlement Agreement and nothing shall be construed as a waiver or relinquishment of any party's duties, obligations or rights as described and specified herein.

21. **Validity and Severability.** If any term, part or provision of this Settlement Agreement is held by a court to be invalid, illegal or in conflict with any law, the validity of the remaining portions or provisions shall not be affected, and the rights, obligations and covenants of the undersigned parties shall be construed and enforced as if the Settlement Agreement did not contain the particular term, condition, part or provision held to be unlawful.

22. **Entire Agreement.** This Settlement Agreement sets forth the entire agreement and understanding of the parties hereto with respect to the subject matter of this Settlement Agreement and supersedes all prior agreements, if any, written or oral. There is no written or oral understanding directly or indirectly connected with this Settlement Agreement that is not incorporated herein.

23. **Authority.** Each party hereto warrants to each other party that such party has full power and authority to execute and deliver this Settlement Agreement. Further, each person executing this Settlement Agreement on behalf of any party hereto warrants that he has full power and authority to execute and deliver this Settlement Agreement.

24. **Counterparts.** This Settlement Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

25. **Captions.** The captions contained in the various sections of the Settlement Agreement are for convenience of reference only and do not in any way limit, expand or modify the terms and provisions of this Settlement Agreement.

25. **Miscellaneous.** Time is of the essence as to this Settlement Agreement as well as in the performance of the duties and obligations set forth in this Settlement Agreement.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement as of the date and year first above written.

BAXTER BEND INVESTORS, L.L.C.

By: _____
Print Name:
Title: Managing Member

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

On this ____ day of August, 2007, before me, _____, a Notary Public in and for said state, personally appeared _____, Managing Member of Baxter Bend Investors, L.L.C., known to me to be the person who executed the within document and acknowledged to me that he executed the same as his free act and deed.

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.

My Commission Expires: _____
Notary Public

LAND WEST #1, LLC

By: _____
Print Name:
Title: Managing Member

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

On this _____ day of August, 2007, before me, _____,
a Notary Public in and for said state, personally appeared _____,
Managing Member of Land West #1, LLC, known to me to be the person who executed the
within document and acknowledged to me that he executed the same as his free act and
deed.

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.

My Commission Expires:

Notary Public

CITY OF CHESTERFIELD, MISSOURI

By: _____
Print Name:
Title:

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

On this _____ day of August, 2007, before me, _____,
a Notary Public in and for said state, personally appeared _____,
_____, known to me to be the person who
executed the within document and acknowledged to me that he executed the same as his
free act and deed.

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.

My Commission Expires: _____ Notary Public

EXHIBIT "A"
SITE CONCEPT PLAN

(To be attached)

EXHIBIT "B"

**IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
TWENTY-FIRST JUDICIAL CIRCUIT
STATE OF MISSOURI**

BAXTER BEND INVESTORS, L.L.C.,)
a Missouri limited liability company,)

Plaintiff,)

vs.)

Cause No. 07CC-002367

LAND WEST #1, LLC,)
a Missouri limited liability company,)

Division No. 42

and)

CITY OF CHESTERFIELD, MISSOURI)
a municipal corporation and political)
subdivision of the State of Missouri,)

Defendants.)

DISMISSAL MEMORANDUM

Comes now Plaintiff, by and through counsel, and dismisses its Petition with prejudice. Each party shall bear their own costs.

Respectfully submitted,

JENKINS & KLING, P.C.

By: _____

Stephen L. Kling, Jr., #29520

Michael P. Stephens, #37491

Kelly E. Shamel, #56598

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St. Louis, MO 63105

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served via U.S. Mail, postage prepaid, upon:

John P. King, Esq.
Eric S. Schmitt, Esq.
Lathrop & Gage, LC
Attorneys for Defendant
Land West #1, LLC
Pierre Laclede Center
7701 Forsyth Blvd., Ste. 400
St. Louis, MO 63105

Robert M. Heggie, Esq.
Stewart, Mittleman, Heggie & Henry, LLC
Attorneys for Defendant
City of Chesterfield
222 S. Central, Ste. 501
St. Louis, MO 63105

this 31st day of July, 2007.