BILL NO. 2716 ORDINANCE NO. 2533

AN ORDINANCE PROVIDING FOR THE ACQUISITION, BY PURCHASE OR CONDEMNATION, OF A PERMANENT EASEMENT COMPRISING APPROXIMATELY 0.069 ACRES OF THE PARCEL LOCATED AT 515 N. EATHERTON ROAD, CHESTERFIELD, MISSOURI 63005 TITLED IN THE NAME OF SHAWN R. HOULIHAN FOR USE AS A PUBLIC HIKING, BIKING OR RECREATIONAL TRAIL AS PART OF A DEDICATED SYSTEM OF TRAILS.

WHEREAS, the City of Chesterfield is a political subdivision, City of the Third Class, located in St. Louis County, Missouri and duly incorporated under the Revised Statutes of Missouri; and,

WHEREAS, the City Council, having been duly elected and qualified, is empowered to, among other things, acquire and hold property within the City for, among other things, public recreational trails, public parks and other public purposes pursuant to the Revised Statutes of Missouri; and,

WHEREAS, the City, pursuant to Chapters 77, 88, 90, 258 and 523 of the Revised Statutes of Missouri has the power, authority, and privilege to acquire, by condemnation or otherwise, private property for public use; and,

WHEREAS, the City Council has determined that the City requires the acquisition of a certain easement necessary to establish and extend the Monarch Chesterfield Levee Trail, a public hiking, biking or recreational trail and to install, operate, and maintain said trail as part of a dedicated system of trails; and,

WHEREAS, the City has identified a certain permanent easement as being necessary for the establishment or extension of said trail, said easement comprised of approximately 0.069 acres of that parcel of real property commonly known and numbered as 515 N. Eatherton Road, Chesterfield, Missouri 63005, titled in the name of Shawn R. Houlihan.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHESTERFIELD, AS FOLLOWS:

Section 1. The City has determined that it is necessary and proper for the City to acquire a permanent easement containing approximately 0.069 acres on property located at 515 N. Eatherton Road, Locator No. 17X320077, legally described as set forth on Exhibit A attached hereto and incorporated herein by this reference, for the purpose of establishing, extending and maintaining a public hiking, biking or recreational trail as part of a dedicated system of trails.

Section 2. The City's Attorney(s) and/or the City Administrator on behalf of the City Council are authorized to take such action as may be necessary to acquire said easement from the current owners, Shawn R Houlihan, and any unknown heirs, beneficiaries and other persons, and legal entities claiming a legal interest in the subject property through negotiated purchase or by condemnation proceedings instituted by the City pursuant to the Revised Statutes of Missouri and Missouri Supreme Court Rule 86.

Section 3. In the event the City is unable to acquire the necessary easement through negotiated purchase, the City's Attorney(s) and/or the City Administrator on behalf of the City Council are authorized to take such action as may be necessary to institute condemnation proceedings to acquire said property pursuant to the City's eminent domain authority under the Revised Statutes of Missouri.

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

Passed and approved this 15th day of June, 2009.

MAYOR

ATTEST:

CITY CLERK

[FIRST READING HELD: _____]

PERMANENT HIKING, BIKING AND WALKING TRAIL EASEMENT AGREEMENT

THIS PERMANENT HIKING, BIKING AND WALKING TRAIL EASEMENT AGREEMENT (this "Agreement") is made and entered into as of the ____ day of _____, 2009 by and between SHAWN R. HOULIHAN, ("Grantor") and the CITY OF CHESTERFIELD, a 3rd class city organized under the Statutes of the State of Missouri with offices located at 690 West Chesterfield Parkway, Chesterfield, Missouri 63017 ("Grantee").

WITNESSETH, that Grantor for and in consideration of the sum of One and No/100 Dollar ($1.00), the mutual agreements and covenants contained herein and other valuable consideration paid by Grantee, the receipt and sufficiency of which are hereby acknowledged, does by these presents grant unto Grantee a fifteen (15) foot wide permanent, nonexclusive easement centered atop the existing Monarch-Chesterfield levee structure (the "Levee") upon the premises listed as locator #17X320077, located at 515 N. Eatherton Road in Chesterfield, Missouri 63005, and further described in the attached Exhibit A , for the limited purpose of constructing, improving, operating, maintaining, repairing and replacing a hiking, biking and walking trail atop the Levee, and incorporated herein by this reference (the "Easement Area").

TO HAVE AND TO HOLD the Easement Area unto Grantee and its assigns and successors forever; subject to the following provisions:

1. Grantee shall construct, improve, maintain, repair and replace any improvements within the Easement Area (a) at its sole cost and expense, (b) in a good and workmanlike manner, (c) in strict accordance with all applicable laws, rules and regulations, and (d) subject to all existing recorded reservations, encumbrances, easements and rights of others in and to the Easement Area.

2. Grantee, at its sole cost and expense, shall maintain in good condition and repair the Easement Area, shall remove all trash and rubbish therefrom and shall not permit any liens to attach against the Easement Area or the property of Grantor.

3. Grantee shall take reasonable measures to discourage persons utilizing the Easement Area from entering the adjacent property owned by Grantor including, at the sole and absolute discretion of Grantee, police patrols, the posting of signs and prosecution of trespassers. Grantee, at its sole costs and expense, shall promptly repair any damage to the property of Grantor or the Easement Area caused by or arising from the use thereof by Grantee, its employees, agents, licensees and invitees, and shall restore Grantor's premises to substantially the condition existing prior to such damage.

4. It is hereby stipulated that, excepting only Grantor's rights in and to the Easement Area as herein recited and the Monarch-Chesterfield Levee District's rights in and to the Easement Area, Grantee shall be conclusively deemed to be in exclusive possession and control of the Easement Area.

5. Grantor agrees not to obstruct or interfere with the normal use or maintenance of the Easement Area or appurtenances thereto and further agrees that Grantor will not place, erect, install or permit in the Easement Area any structure, fixture, improvement, or other obstruction above or below ground that will unreasonably interfere with the intended use of the Easement Area; provided, however, that Grantor reserves the right to use and enjoy the Easement Area in such manner as Grantor shall deem proper, including, but not limited to, all existing access (pedestrian and vehicular) over and across the easement area to real estate owned by Grantor on each side of the existing Monarch-Chesterfield Levee structure, to the extent that Grantor's use does not unreasonably interfere with the intended use of the Easement Area.

6. The Easement Area is, and the grant thereof by Grantor to Grantee is conditioned upon the use of the Easement Area as part of a greenway system of trails or part of a dedicated system of trails that is designed exclusively for the purposes designated in Section 258.100 of the Missouri Revised Statutes, and shall not include roads or streets, or sidewalks, walkways or paths which are intended solely to connect neighborhoods for pedestrian traffic, such as common sidewalks or walkways. In the event (a) the aforesaid trail is not completed and operating within the Easement Area by January 1, 2016; (b) it is judicially determined that the use of the Easement Area by Grantee does not comply with the aforesaid purpose; or (c) it is judicially determined that Grantee has abandoned the Easement Area, the easement granted by this Agreement shall terminate and Grantee shall execute and record in the appropriate public records such instruments as Grantor may reasonably request in confirmation thereof.

7. The presence of this Easement upon Grantor's property shall not negatively impact, affect or impair any density or green space calculations for any current or future use or development of the property owned by Grantor.

8. Nothing herein shall be deemed to waive or limit the ability of Grantor and Grantor's successors and assigns to seek all necessary governmental approvals in order to construct road or other improvements for pedestrian and vehicular access over and across the Easement Area so long as such improvements and access do not unreasonably interfere with the intended use of the Easement Area. It is not Grantee's intention to deprive Grantor or its licensees of access to the areas of Grantor's property divided by the Levee and Grantee agrees that construction of vehicular or pedestrian access across the Easement Area does not, in and of itself, unreasonably interfere with the intended use of the Easement Area.

9. This Agreement contains the entire agreement of the parties with respect to the subject matter hereof and no custom, act or forbearance at any time shall impose any additional obligation or liability upon any party or waive or release any party from any default or the performance or fulfillment of any obligation or liability, or operate as against any party as a supplement, alteration, amendment or change of any term or provision specified herein unless set forth in a written instrument duly executed by such party.

10. No person shall acquire any right, title or interest in any portion of the property of Grantor, except for such rights as are expressly created by this Agreement.

11. This Agreement shall be governed and construed in accordance with the laws of the State of Missouri.

12. The provisions contained herein shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

13. The Grantor does hereby covenant to the Grantee that it is lawfully seized and possessed of the fee ownership of the land and the real estate above described and that it has good and lawful right to convey it, or any part thereof, that it is free from all encumbrances other than those of record, and that it shall forever warrant and defend the title thereto against the lawful claims of all persons claiming by, through or under Grantor but none other.

14. In the event of litigation arising out of or relating to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement as of the day and year first above written.

GRANTOR:

SHAWN R. HOULIHAN

By:_____
Name: Shawn R. Houlihan

Date:

GRANTEE:

THE CITY OF CHESTERFIELD

By:_____
Name: Michael G. Herring
City Administrator

Date:

STATE OF MISSOURI

COUNTY OF ST. LOUIS

On this ____ day of _____, 2009 before me, the undersigned Notary Public, appeared Shawn R. Houlihan, to me personally known to be the person(s) described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

IN TESTIMONY WHEREOF, I have here unto set my hand and affixed my official seal on the day and year first above written.

_____
Notary Public

NOTARIAL SEAL

My commission expires:

STATE OF MISSOURI

COUNTY OF ST. LOUIS

On this ____ day of _____, 2009 before me, the undersigned Notary Public, appeared _____, to me personally known, who, being by me duly sworn did say that he is the City Administrator of the CITY OF CHESTERFIELD, MISSOURI, a body politic and corporate duly authorized, incorporated and existing under and by virtue of the laws of the State of Missouri, and that said instrument was signed in behalf of the City of Chesterfield by authority of its Board, and said official acknowledged said instrument was executed for the purposes therein stated and signed as a free act and deed of said City.

_____
Notary Public

NOTARIAL SEAL

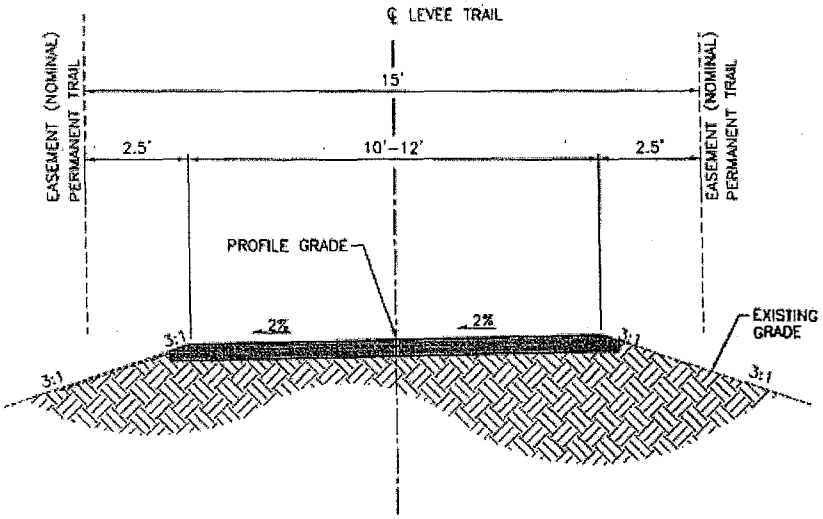
My commission expires:

EXHIBIT "A"

Legal Description

Locator #17X320077
515 N. Eatherton Road, Chesterfield, MO 63005

Lot 2 of Vanda's Acres, a subdivision in St. Louis County, Missouri, according to the plat thereof recorded in Plat Book 269 page 28 of the St. Louis County Records.



TYPICAL LEVEE TRAIL CROSS SECTION

NOTE:
PAVEMENT SECTION SHALL BE 9" (7" TYPE "K" MIX, 2" TYPE "C" MIX) AT ALL CROSSINGS.

MONARCH CHESTERFIELD LEVEE TRAIL

City of Chesterfield

KdG

TYPICAL SECTION