

BILL NO. 2752

ORDINANCE No. 2571

AN ORDINANCE AUTHORIZING THE CITY OF CHESTERFIELD TO ENTER INTO AND EXECUTE AN AGREEMENT WITH THF CHESTERFIELD DEVELOPMENT, L.L.C FOR RIGHT-OF-WAY DEDICATION AND MAINTENANCE.

WHEREAS, the City of Chesterfield (the "City") and THF Chesterfield Development, L.L.C. ("THF") entered into certain agreements in connection with the Chesterfield Valley Transportation District (the "TDD") to provide for transportation projects in the Chesterfield Valley; and

WHEREAS, the City has agreed to accept dedication of certain improvements by THF in connection with said transportation projects upon satisfactory and timely completion of said improvements; and

WHEREAS, the City Council for the City hereby finds and declares that it is desirable and in the best interest of the City that the City enter into the Agreement, as attached hereto as **Exhibit A**.

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

Section 1. The City Council hereby approves of the Agreement in the form as attached hereto and incorporated by reference herein as **Exhibit A**.

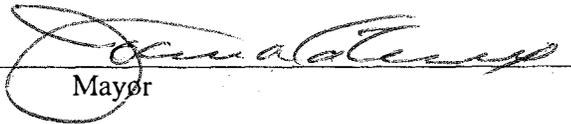
Section 2. Provided that the Director of Planning and Public Works first certifies in writing to the Chesterfield Valley Development District and City that THF has, in a timely fashion, fully and completely performed all prerequisites set forth in a certain agreement between the City and THF dated February 9, 2006, as amended, the City is hereby authorized to enter into, and the City Administrator of the City of Chesterfield and the City Clerk are hereby authorized and directed to execute, seal, attest and deliver, for and on behalf of the City, the Agreement, such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance and with the provisions of the Agreement.

Section 3. The sections, paragraphs, sentences, clauses and phrases of this Ordinance shall be severable. In the event that any such section, paragraph, sentence, clause or phrase of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining portions of this Ordinance are valid, unless the court finds the valid portions of the Ordinance are so essential to and inseparably connected with and dependent upon the void portion that it cannot be presumed that the City has enacted the valid portions without the void ones, or unless the court finds that the valid portions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

Section 4. This Ordinance shall be governed exclusively by and construed in accordance with the applicable laws of the State of Missouri.

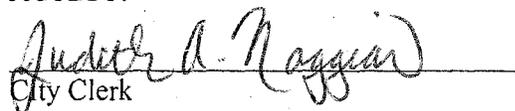
Section 5. This Ordinance shall be in full force and effect from and after its passage and approval.

Passed and approved this 19th day of OCTOBER, 2009.



Mayor

ATTEST:



City Clerk

Space Above for Recorder's Use Only

DOCUMENT COVER SHEET

TITLE OF DOCUMENT: Right of Way Dedication and Maintenance Agreement

DATE OF DOCUMENT: _____, 20____

GRANTOR: THF CHESTERFIELD DEVELOPMENT, L.L.C.

Mailing Address: 2127 Innerbelt Business Center
Suite 200
St. Louis, MO 63114

GRANTEE: CITY OF CHESTERFIELD, MISSOURI

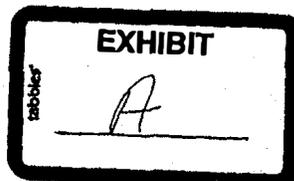
Mailing Address: 690 Chesterfield Parkway
Chesterfield, Missouri 63017-0760

LEGAL DESCRIPTION: See Description on **Exhibits A and B** of this Document

REFERENCE BOOK & PAGE: N/A

Upon Recording Return to:

James E. Mello
Armstrong Teasdale LLP
One Metropolitan Square, Suite 2600
St. Louis, MO 63102



Armstrong Teasdale LLP
Execution Copy

RIGHT OF WAY DEDICATION AND MAINTENANCE AGREEMENT

This RIGHT OF WAY DEDICATION AND MAINTENANCE AGREEMENT (this "*Agreement*") is made and entered into as of this _____ day of _____, 2009 (the "*Effective Date*") by and between THF CHESTERFIELD DEVELOPMENT, L.L.C. (collectively, "*Grantor*") and the CITY OF CHESTERFIELD, MISSOURI, a Missouri municipal corporation ("*Grantee*").

RECITALS:

A. Grantor is the owner of approximately 38 acres of real property located in the City of Chesterfield, County of St. Louis, Missouri, having a street address of 110 THF Boulevard and legally described on Exhibit A attached hereto ("*Grantor's Property*"); and

B. Grantor has constructed and will construct certain transportation related improvements, including, without limitation, roadway improvements and landscaping (the "Transportation Improvements") located on that portion of Grantor's Property legally described and depicted in the shaded areas on the map as set forth on Exhibit B attached hereto (the "*Dedication Area*"); and

C. Grantor desires to dedicate the Dedication Area and the Transportation Improvements to the Grantee for the use and benefit of the public for the period set forth herein, while reserving the right and obligation to maintain the Transportation Improvements, and the Grantee desires to accept said dedication thereof in exchange for the mutual promises and considerations provided below.

WITNESSETH:

NOW, THEREFORE, in consideration of the foregoing and the payment by Grantee to Grantor of the sum of \$10.00 and other valuable consideration, Grantor and Grantee hereby agree as follows:

1. **Easement.** Grantor hereby dedicates to the Grantee a non-exclusive easement over the Dedication Area for public use for the purposes of ingress and egress and public travel. Such easement shall terminate 30 days after the later of (i) the date upon which all TDD Obligations (as such term is defined in the Settlement Agreement (hereinafter defined) are satisfied in full or (ii) the end of the useful life of the Transportation Improvements (as initially constructed) as determined by a certified engineer as set forth in Exhibit C, attached hereto and incorporated herein.

2. **Maintenance by Grantor.** Grantor shall be solely responsible for the maintenance and replacement, if necessary, of the Dedication Area and all improvements thereon, including all road paving, repair, snow and debris removal, or other necessary maintenance to make the Transportation Improvements safe and passable. If at any time Grantor shall, in the reasonable judgment of Grantee, fail to properly perform its obligations under this Section, Grantee may, upon 30 days prior written notice to Grantor (or, if such failure cannot be cured during such 30 day period, then after expiration of such period as is reasonable and necessary to complete such cure provided Grantor has commenced and diligently pursued such cure prior to the expiration of such 30 day period), at its option and at Grantor's sole expense, arrange for the performance of such maintenance and replacement, if necessary, of the Dedication Area, including all road paving, snow and debris removal, or other necessary maintenance as Grantee deems necessary to make the Transportation Improvements safe and passable. Grantor shall promptly reimburse Grantee for all reasonable costs and expenses of such maintenance and replacement, upon receipt of an invoice for the same. Grantee's failure to perform any obligations of Grantor shall not alter the liability allocation hereunder.

3. **Indemnification.** Grantor shall indemnify, hold harmless and defend Grantee from and against any and all of the claims, actions, suits, crossclaims, counterclaims, third party actions, damages, liabilities, and expenses, including reasonable attorneys' fees, sustained by Grantee or any third persons, in connection with loss of life, personal injury, bodily injury or damage to property, arising from or out of the negligence, willful misconduct, or violation of law by Grantor and directly in connection with Grantor's breach of its obligations pursuant to this Agreement. Grantee shall indemnify, hold harmless and defend Grantor from and against any and all of the claims, actions, suits, crossclaims, counterclaims, third party actions, damages, liabilities and expenses, including reasonable attorneys' fees, sustained by Grantor or any third persons in connection with loss of life, personal injury, bodily injury or damage to property arising from or out of the negligence, willful misconduct of Grantee, its agents or contractors only as it relates to activities in the Dedication Area for purposes of maintenance by Grantee as may occur under Section 2 of this Agreement.

4. **Estoppel.** If requested by Grantor or Grantee, the Grantor and Grantee will, within ten days of such request, provide a written statement for the benefit of the requesting party and its assignee or lender stating that the Settlement and Mutual Release dated as of February 9, 2006, between Grantor and Grantee (the "Settlement Agreement"), and as the same may be further amended from time to time, is in full force and effect without modification or default, if the same be true, and such other reasonable provisions as may be requested.

5. **Police Powers.** All laws of the State of Missouri and all ordinances, regulations and procedures of the Grantee relating to maintaining, signing, damaging and obstructing of streets or roadways shall apply to the Transportation Improvements. All portions of the Transportation Improvements shall be treated as streets, roads or improvements within the City of Chesterfield for purposes of the city's police powers with respect to such improvements.

6. **Notices.** All notices, consents, approvals and other communications which may be or are required to be given by Grantor or Grantee under this Easement shall be properly given only if made in writing and sent by (i) hand delivery, (ii) U.S. Certified Mail, Return Receipt Requested, (iii) a nationally recognized overnight delivery service (such as Federal Express, UPS Next Day Air, Purolator Courier or Airborne Express), or (iv) by facsimile, with all delivery charges paid by the sender and addressed to the Grantor or Grantee, as applicable, as follows, or at such other address as each may request in writing. Such notices shall be deemed received, (1) if delivered by hand or overnight delivery service, or U.S. Certified Mail, on the date of delivery and (2) if sent by electronic transfer, on the date of transmission. The refusal to accept delivery shall constitute acceptance and, in such event, the date of delivery shall be the date on which delivery was refused. Said addresses for notices are to be as follows:

If to Grantor: THF Chesterfield Development, L.L.C.
2127 Innerbelt Business Center Drive, Suite 200
St. Louis, MO 63114
Attention: Michael Staenberg
Fax: 314-429-0999
With a copy to:

Attorney for Grantor
THF Chesterfield Development, L.L.C.
2127 Innerbelt Business Center Drive, Suite 200
St. Louis, MO 63114
Attention: General Counsel
Fax: 314-429-0999

With a copy to:

If to Grantee: The City of Chesterfield
690 Chesterfield Parkway West
Chesterfield, Missouri 63107
Attn: City Manager
Fax: (636) 537-4798

With a copy to:

Armstrong Teasdale LLP
One Metropolitan Square, Suite 2600
St. Louis, Missouri 63102
Attention: James Mello
Fax: (314) 612-2271

7. **Attorneys' Fees.** If either party brings an action against the other based upon this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees, costs of litigation and court costs from the other party.

8. **Entire Agreement; Successor and Assigns.** This Agreement and any instruments to be delivered by the parties pursuant to the provisions hereof constitute the entire Agreement between the parties with respect to the subject matter hereof and shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and permitted assigns. This Agreement shall run with and bind Grantor's Property and shall run with and benefit the Dedication Area and the Transportation Improvements thereon as an appurtenance thereto.

9. **Modification; Waiver.** This Agreement shall not be modified or amended except pursuant to an instrument in writing executed and delivered on behalf of each of the parties hereto. The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver thereof or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

10. **Authorization.** The parties hereto represent and warrant that they have the authority and power to enter into this Agreement and to consummate the transaction provided for herein. This Agreement constitutes a legal binding, valid and enforceable obligation of the parties, and there are no claims or defenses, personal or otherwise, or offsets whatsoever to the enforceability or validity of this Agreement.

11. **Execution.** This Agreement may be executed by telefax and in more than one counterpart, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Easement as of the date and year first above written.

GRANTEE:

CITY OF CHESTERFIELD, MISSOURI

By: _____
Michael G. Herring, City Administrator

ATTEST:

City Clerk

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

On this _____ day of _____, 20____, before me personally appeared _____, the City Administrator of the Chesterfield Missouri, known to me to be the person who executed the within Agreement, and did state that the said instrument was signed and sealed in behalf of said municipal corporation by authority of the city council, and acknowledged to me that he executed the same for the purposes therein stated.

IN WITNESS 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 A

Legal Description of Grantor's Property

Lot 8 of "Chesterfield Commons", a subdivision according to plat thereof recorded in Plat Book 348
Pages 554 through 564 of the St. Louis County Records.

EXHIBIT B

Legal Description and Map of Dedication Area

(Attached hereto.)

September 16, 2009

EJK

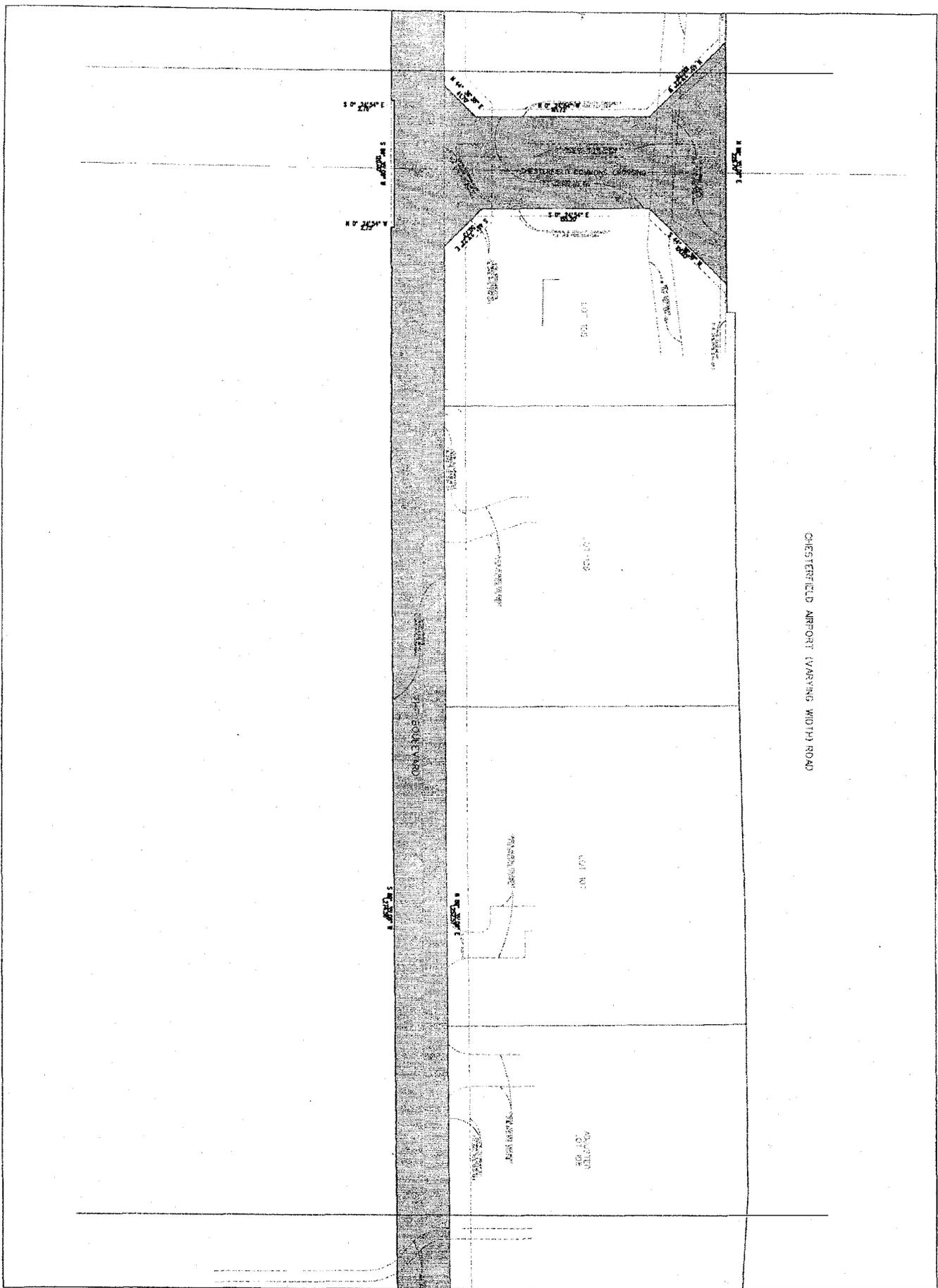
Re: THF Blvd.
5259-126

A tract of land being part of Lot 8 of "Chesterfield Commons" a subdivision according to the plat thereof recorded in Plat Book 348 pages 554 through 564 of the St. Louis County Records, in U.S. Survey 125, Township 45 North - Range 4 East, City of Chesterfield, St. Louis County, Missouri and being more particularly described as follows:

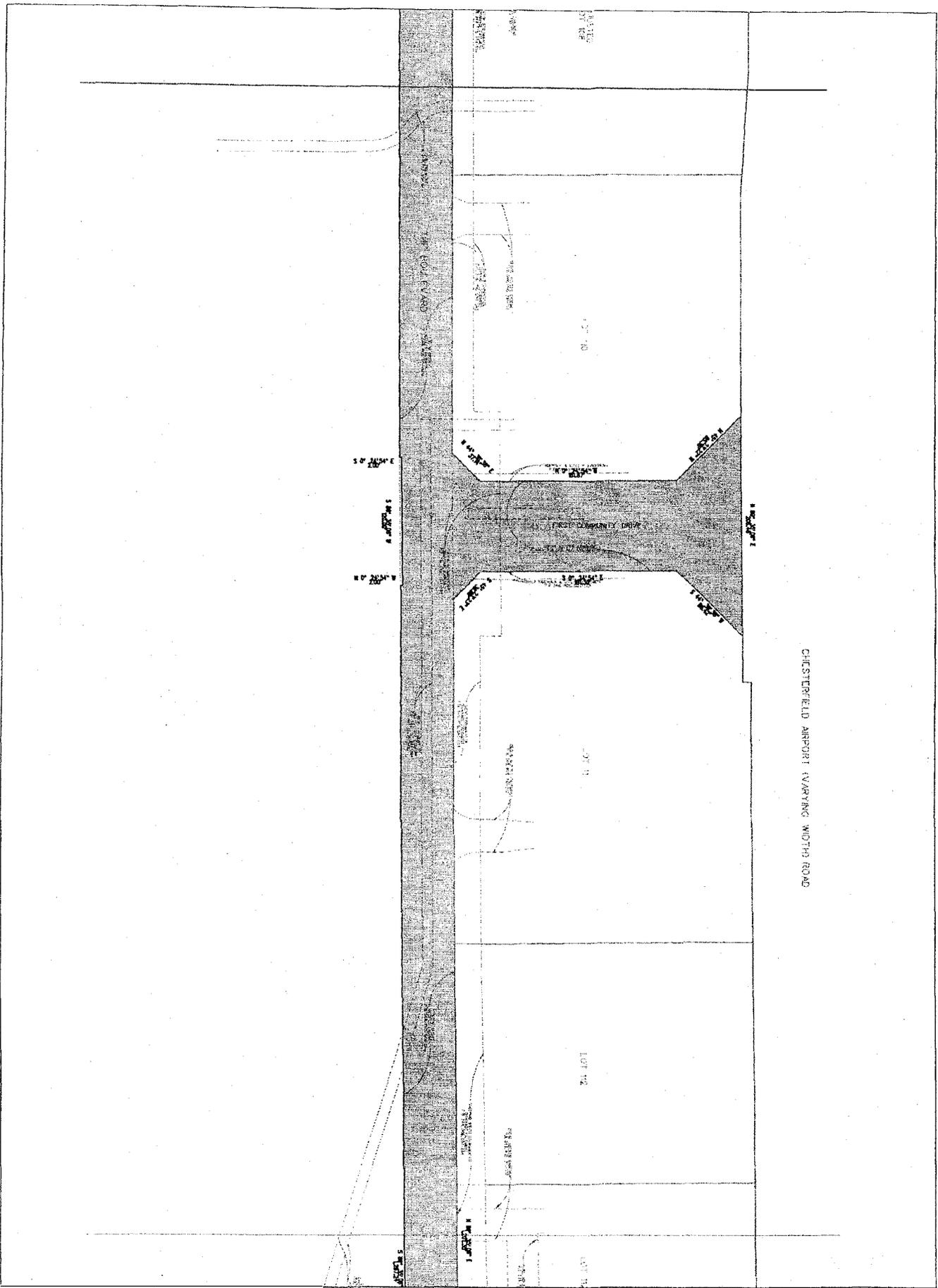
Beginning at the intersection of the North line of said Lot 8 with the East line of RHL Drive, varying width; thence Eastwardly along said North line of Lot 8, the following courses and distances: South 43 degrees 26 minutes 17 seconds East 27.21 feet, North 89 degrees 35 minutes 06 seconds East 789.65 feet, North 44 degrees 36 minutes 38 seconds East 41.70 feet, North 00 degrees 24 minutes 54 seconds West 161.73 feet, North 45 degrees 23 minutes 22 seconds West 100.78 feet to the South right-of-way line of Chesterfield Airport Road, varying width; thence Eastwardly along said South line of Chesterfield Airport Road, varying width, North 89 degrees 35 minutes 06 seconds East 229.70 feet to an East line of said Lot 8; thence Southwardly and Eastwardly along an East line and North line of said Lot 8 the following courses and distances: South 44 degrees 36 minutes 38 seconds West 101.03 feet, South 00 degrees 24 minutes 54 seconds East 155.20 feet, South 45 degrees 23 minutes 22 seconds East 50.73 feet, North 89 degrees 35 minutes 06 seconds East 1,252.51 feet, North 44 degrees 36 minutes 38 seconds East 37.14 feet, North 00 degrees 24 minutes 54 seconds West 181.87 feet and North 45 degrees 23 minutes 22 seconds West 85.35 feet to the South right-of-way line of Chesterfield Airport Road, varying width; thence Eastwardly along said South line of Chesterfield Airport Road, varying width, North 89 degrees 35 minutes 06 seconds East 206.46 feet to an East line of said Lot 8; thence Southwardly and Eastwardly along an East and North line of said Lot 8, the following courses and distances: South 44 degrees 36 minutes 38 seconds West 86.42 feet, South 00 degrees 24 minutes 54 seconds East 181.32 feet, South 45 degrees 23 minutes 23 seconds East 36.89 feet, North 89 degrees 35 minutes 06 seconds East 1,201.35 feet and North 53 degrees 30 minutes 42 seconds East 59.03 feet to the West line of Chesterfield Commons Drive, varying width; thence Southwardly along said West line, South 16 degrees 43 minutes 11 seconds East 88.31 feet to the South line of a 50 foot wide cross access easement as shown on Plat Book 348 pages 554 through 564 of the St. Louis County Records; thence Westwardly along said South line South 89 degrees 35 minutes 06 seconds West 1,287.24 feet to a point; thence leaving said South line, North 00 degrees 24 minutes 54 seconds West 2.00 feet to a point; thence South 89 degrees 35 minutes 06 seconds West 120.00 feet to a point; thence South 00 degrees 24 minutes 54 seconds East 2.00 feet to said South line of the 50 foot wide cross access easement; thence along said South line South 89 degrees 35 minutes 06 seconds West 1,274.56 feet to a point; thence leaving said South line North 00 degrees 24 minutes 54 seconds West 2.75 feet to a point; thence South 89 degrees 35 minutes 06 seconds West 120.00 feet to a point; thence South 00 degrees 24 minutes 54 seconds East 2.75 feet to said South line of the 50 foot wide cross access easement; thence Westwardly along said South line South 89 degrees 35 minutes 06 seconds West 804.59 feet, and South 57 degrees 07 minutes 21 seconds West 24.12 feet to the East line of RHL Drive, varying width; thence Northwardly along said East line North 01 degree 17 minutes 09 seconds East 82.87 feet to the point of beginning and containing 5.461 acres according to calculations by Volz Inc. during September 2009.



Eric J. Kirby, P.L.S.
Professional Land Surveyor
Mo. P.L.S. #2005000074



CHESTERFIELD AIRPORT (VARIABLE WIDTH) ROAD



CHESTERFIELD AIRPORT (VARYING WIDTH) ROAD

CHESTERFIELD AIRPORT (VARYING WIDTH) ROAD

LOT 102A

LOT 113

LOT 114

LOT 115

THE SOLE CLASH

CHESTERFIELD COMMONS
(60' W.D. DRIVE)

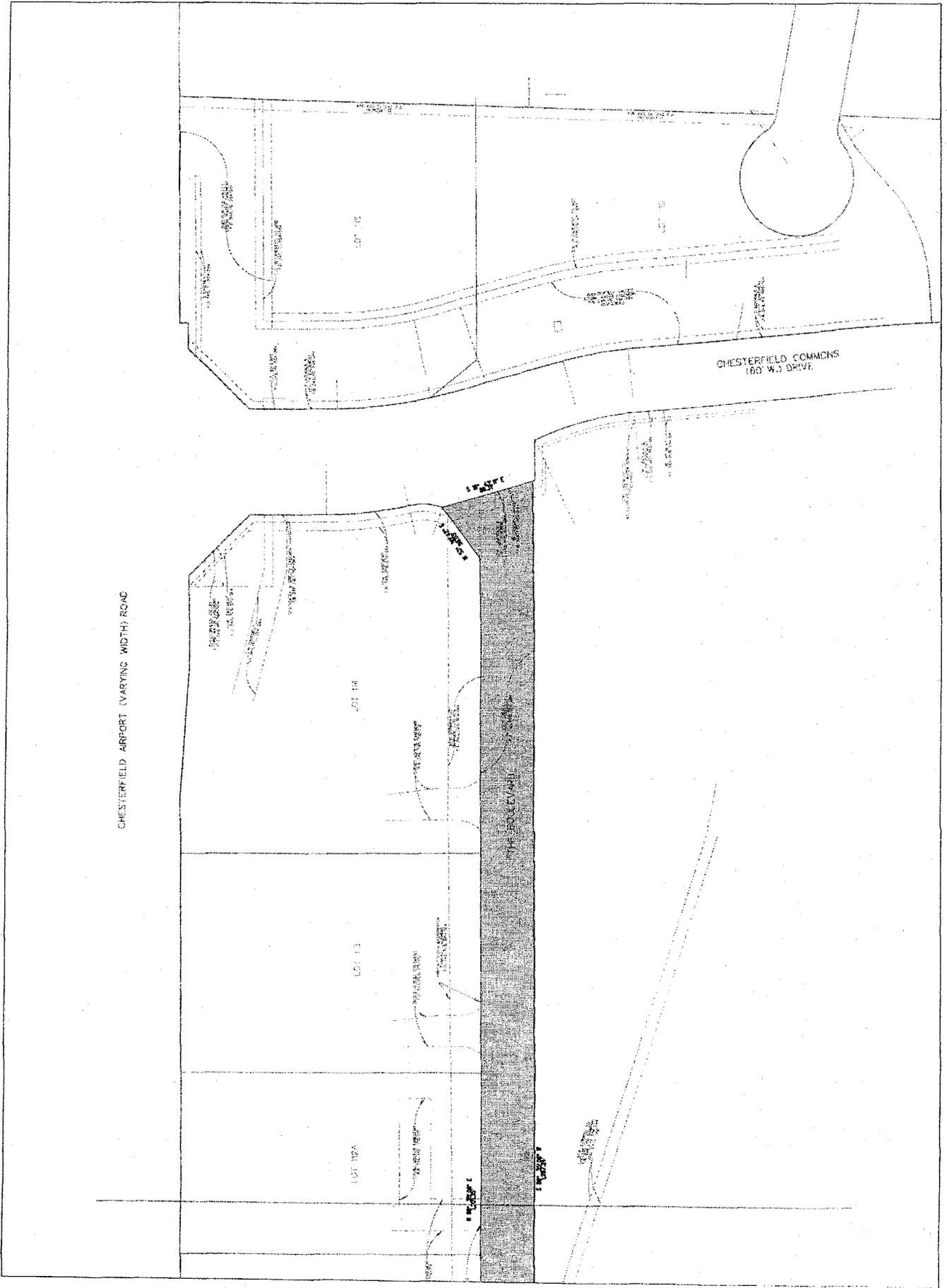


EXHIBIT C

Certification of Useful Life of Improvements by Certified Engineer

(Attached hereto.)

CERTIFICATE OF PROJECT ENGINEER

Relating to the

Chesterfield Valley Transportation Development District's

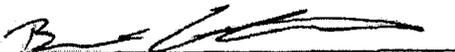
THF Boulevard Project

In connection with the reimbursement of THF Chesterfield Development, L.L.C. for the cost of completing the THF Boulevard Project pursuant to the Intergovernmental Cooperation Agreement dated October 1, 2006 among the City of Chesterfield, Missouri, St. Louis County, Missouri and the Chesterfield Valley TDD and the Settlement and Mutual Release dated February 9, 2006 between THF Realty, Inc. and the City of Chesterfield, Missouri, the undersigned hereby certifies as follows:

1. I am the engineer of record and am familiar with the THF Boulevard Project undertaken by the Chesterfield Valley Transportation Development District, through THF Chesterfield Development, L.L.C.
2. The economic useful life of the improvements which constitute the THF Boulevard Project is estimated at 15 years.

DATED this 16 day of September, 2009.

Crawford, Bunte and Brammeier

By: 
Name: Brian E. Courtwright, P.E.
Title: Project Engineer III

