

BILL NO. 2753

ORDINANCE NO. 2572

AN ORDINANCE APPROVING A LICENSE AGREEMENT WITH THF CHESTERFIELD DEVELOPMENT, L.L.C. FOR THE PLACEMENT OF PUBLIC ART ON CITY PROPERTY

WHEREAS, the City of Chesterfield, Missouri (the “City”) has adopted a Policy For The Acceptance of Public Art (the “Policy”); and

WHEREAS, the Policy provides guidelines for the consideration of proposals for public artwork, including, but not limited to, lasting artistic quality and breadth of appeal, structural integrity and resistance to vandalism and weathering, meaningful and complimentary impact to specific site and the community, and absence of legal or financial burden upon the City; and

WHEREAS, the Policy also provides guidelines for the consideration of proposed display site or placement of public artwork, including, but not limited to, the City’s Parks Master Plan, visibility and safety, impacts upon traffic, future development, and City operations, site design, and compatibility with the uses of the site; and

WHEREAS, on July 29, 2009, THF Chesterfield Development, L.L.C., submitted a proposal for the placement of public artwork in the storm water detention basin (located behind Lowes) for the placement of five additional sculptures; and

WHEREAS, on September 23, 2009, the Finance and Administration Committee completed its review of the proposal and has recommended that the City Council accept the proposed public artwork; and

WHEREAS, additionally, due to the proposed display site of the artwork being on City-owned property, a License Agreement will be required for the legal placement of the artwork; and

WHEREAS, the City Council has long encouraged the placement of public art in the City; and

WHEREAS, the City wishes to enter into a license agreement with THF Chesterfield Development, L.L.C. to allow for the placement of public art on City property; and

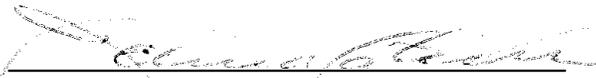
WHEREAS, the City Council has determined that it is in best interest of the City and its citizens that the City enter into a license agreement with THF Chesterfield Development, L.L.C. to provide for the placement of public art on land owned by the City.

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 of the City of Chesterfield is hereby authorized to sign a license agreement, in a form substantially similar to that attached hereto marked Exhibit 1.

Section 2. 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

FIRST READING HELD: 10/5/09

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this "Agreement") dated as of _____, 2009 (the "Effective Date"), is made and entered into by and between THE CITY OF CHESTERFIELD, MISSOURI, a city of the third class of the state of Missouri (the "Licensor"), and THF CHESTERFIELD DEVELOPMENT, L.L.C., a limited liability company duly formed and existing under the laws of the state of Missouri (the Licensee").

RECITALS

WHEREAS, Licensor is the fee simple owner of certain real property located in St. Louis County, Missouri, and more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (the "Licensor's Property"); and

WHEREAS, Licensee desires to install certain art in the form of four large metal horses and a sculpture called "Sequence" (the "Art Exhibit") within Licensor's Property.

NOW, THEREFORE, in consideration of the foregoing, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Licensor and Licensee agree as follows:

1. **GRANT OF LICENSE:** Licensor hereby grants to Licensee a non-exclusive license, subject to revocation and termination as further provided in this Agreement, to use the Licensor's Property solely for the purposes described in Section 2 below. This License is not appurtenant and shall not run with the land. This License shall constitute a permission to Licensee to use Licensor's Property for the Term and subject to the Uses and Agreements as provided for herein.

2. **USES AND AGREEMENTS OF THE LICENSEE RELATING TO THE SAME:** Licensee shall have the permission of Licensor to use Licensor's Property, subject to the terms and conditions of this Agreement, for the installation of the Art Exhibit. Licensee covenants and agrees as follows:

(a) The Art Exhibit may be installed by Licensee only in accordance with the plans, specifications and requirements approved by Licensor (the "Plans") attached hereto as **Exhibit B** and incorporated herein by this reference.

(b) Installation of the Art Exhibit shall comply with all state laws, regulations and local ordinances, as applicable;

(c) Licensee will not use Licensor's Property in any way which interferes with the use, operation, maintenance and repair by Licensor of Licensor's Property;

(d) Licensee shall be responsible for the maintenance, repair and up-keep of the Art Exhibit as required by the Plans and by Licensor; Licensee shall also maintain that portion of Licensor's Property containing the Art Exhibit in good repair and condition, including but not limited to, repairing and restoring the access points and areas that may be damaged by motor vehicle or equipment operation upon Licensor's Property as a part of Licensee's installation, maintenance, repair and up-keep of the Art Exhibit.

(e) Except for the installation of the Art Exhibit, Licensee will not modify, expand, contract, enlarge or otherwise alter the Licensor's Property or make or erect any improvements (including, but not limited to, any signs, lights, buildings, paving, curbing, sidewalks, striping or any other installation, modification or change of any kind) on Licensor's Property without the prior written consent of the Licensor, which Licensor may withhold in its reasonable discretion.

(f) Licensor shall have, and Licensee hereby grants, the unrestricted right to photograph, portray, distribute, publish and republish, use and reuse, and to post on the Licensor's internet web page such photographs and images of the Art Exhibit as Licensor desires and without charge.

(g) Licensee will keep Licensor's Property free from any liens of any kind, including, but not limited to mechanic's liens and judgment liens, asserted against Licensor's Property incurred by or for the Licensee or any person or entity claiming through or under Licensee in connection with the installation, maintenance, repair and up-keep of the Art Exhibit. If any such lien shall at any time be filed against the Licensor's Property, the Licensee shall promptly contest the lien or the validity of the basis thereof, in good faith, including but not limited to, challenging the same by a legal proceeding or other legal action (whether an action is filed or not), and, if requested to do so by the Licensor at any time, post, promptly and in no event longer than thirty (30) days after such request, a bond or other suitable security sufficient to discharge the amount of such lien if Licensee is unable to defeat or discharge such lien claim through its good faith actions. In the event that Licensee shall not promptly contest the lien or the validity of the basis thereof, in good faith or fail to otherwise act in accordance with this Section 2(g) Licensor shall have, in addition to all other remedies at law or in equity, the right, but not the obligation, to cause such lien to be released by such means as Licensor deems proper including, but not limited to, payment of the claim giving rise to such lien. All such sums paid and all expenses incurred by Licensor, including reasonable attorney's fees, in connection therewith shall be due and payable to Licensor by Licensee promptly on demand.

(h) Licensee shall indemnify and hold harmless Licensor from and against any and all loss, damage, claim, demand or expense incurred or sustained by Licensor as a result of or in connection with any breach by the Licensee of the obligations under this Agreement. The Licensee shall indemnify and hold Licensor harmless from and against any and all loss, damage, claim, demand or expense incurred or sustained by Licensor or its successors, employees, invitees or agents in or on the Licensor's Property or to the

Licensor's Property as a result of any action or deed by the Licensee or its successors, employees, invitees or agents in connection with the Art Exhibit.

(i) Licensee shall, at its sole cost and expense, obtain and maintain in full force and effect at all times so long as this Agreement remains in effect commercial general liability insurance (including contractual liability coverage) against any and all liability for bodily injury to or death of a person or persons, and for damage to or destruction of property, occurring on, or in or about the Licensor's Property in connection with the Art Exhibit, with commercially reasonable limits but at least a minimum combined single limit coverage of \$2,000,000 per occurrence. Licensee's insurance policy shall name the Licensor as an additional insured. Licensee shall provide the Licensor with a certificate of the insurance required of Licensee hereunder. Said certificate shall evidence that the above insurance is in full force and shall state that such policy or policies have been endorsed to provide that they will not be canceled or materially altered except after 30 days' written notice to the Licensor. All insurance required to be obtained pursuant to this section shall be issued by insurance companies that are financially reputable and authorized to conduct business in the State of Missouri.

3. **LICENSOR'S PROPERTY NOT OPEN TO USE FOR GENERAL INGRESS AND EGRESS.** Nothing in this Agreement shall be construed or interpreted to obligate the Licensor to open up and/or use Licensor's Property for the purposes of general ingress and egress for Licensee or the general public. The determination to open up and/or use the Licensor's Property for the purposes of general ingress and egress shall be at the sole judgment and determination of the Licensor.

4. **TERM; REVOCATION AND TERMINATION; REMOVAL OF ART EXHIBIT:** This Agreement shall continue for a term commencing upon the Effective Date and terminating as of the date revoked or terminated by Licensor provided, however, that notwithstanding anything to the contrary contained herein, Licensor shall not revoke this Agreement prior to the tenth (10th) anniversary of the Effective Date. If the Art Exhibit interferes, in Licensor's reasonable discretion, with the use, operation, maintenance and repair by Licensor of Licensor's Property, or is causing a documented safety hazard, Licensor shall have the right to revoke and terminate the license granted herein at any time after the Licensor has given the Licensee thirty (30) days' prior written notice that the license will terminate and be revoked. Upon termination or revocation of this Agreement by Licensor, the Art Exhibit and any and all materials placed upon Licensor's Property associated with the installation of the Art Exhibit shall be removed by Licensee. Licensee shall restore Licensor's Property to its condition prior to the installation of the Art Exhibit, including, but not limited to, filling with top soil and seeding and straw of excavated areas, as well as restoration of access areas and damage as may have occurred due to motor vehicle and equipment operation upon Licensor's Property.

5. **REMEDIES IN CASE OF DEFAULT; ATTORNEYS FEES:** The failure of either party to perform the terms of this Agreement shall constitute a default hereunder for which the non-defaulting party shall have any and all remedies available at

law or equity; provided, however, that before the non-defaulting party may proceed with any such remedies, such party shall deliver to the defaulting party written notice of the failure, and the defaulting party shall have thirty (30) days from the receipt of such notice within which to cure the failure. In the event of any dispute regarding the rights and liabilities of the parties hereunder, the prevailing party shall be entitled to recover from the non-prevailing party its reasonable attorneys' fees incurred in connection with such matter.

6. **NOTICES:** All notices, consents, approvals and other communications which may be or are required to be given by either Licensor or Licensee under this Agreement shall be properly given only if made in writing and sent by (i) hand delivery, (ii) U.S. Certified Mail, Return Receipt Requested, or (iii) a nationally recognized overnight delivery service (such as Federal Express, UPS or DHL), with all delivery charges paid by the sender and addressed to the Licensor or Licensee, as applicable, as follows, or at such other address as each may request in writing. Such notices shall be deemed received if delivered by hand or overnight delivery service, or U.S. Certified Mail, on the date of delivery. 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 address for notices are to be as follows:

If to Licensee:	THF Chesterfield Development, L.L.C. 2127 Innerbelt Business Center Drive, Suite 200 St. Louis, MO 63114 Attention: Michael H. Staenberg
With a copy to:	Bradley A. Winters, Esq. Sonnenschein, Nath & Rosenthal, LLP One Metropolitan Square, Suite 3000 St. Louis, MO 63102
And a copy to:	THF Realty, Inc. 2127 Innerbelt Business Center Drive, Suite 200 St. Louis, MO 63114 Attention: General Counsel
If to Licensor:	City of Chesterfield, Missouri 690 Chesterfield Parkway West Chesterfield, MO 63017-0760 Attention: City Administrator
With a copy to:	Robert M. Heggie, Esq. Stewart, Mittleman, Heggie & Henry, LLC 222 South Central Avenue, Suite 501 St. Louis, MO 63105

And a copy to:

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

7. **ENTIRE AGREEMENT; SUCCESSORS 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 relating to the subject matter hereof and shall be binding upon and inure to the benefit of the parties hereto. This Agreement is not assignable by Licensee without the prior written consent of Licensor, which consent may be withheld by Licensor in Licensor's sole discretion.

8. **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.

9. **DATES:** If the date for the performance of any act hereunder falls on a Saturday, Sunday or a legal holiday, then the time for performance thereof shall be deemed extended to the next successive business day.

10. **AUTHORIZATION:** 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. **NO RIGHTS IN LICENSEE; RELEASE:** This Agreement is not intended to create any rights to Licensor's Property to the benefit of Licensee except as expressly provided in this non-exclusive License Agreement. Licensee shall not record this Agreement without the prior written consent of Licensor, which consent Licensor may withhold in Licensor's sole discretion.

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

LICENSOR:
CITY OF CHESTERFIELD, MISSOURI

By: _____

Printed Name: _____

Title: _____

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

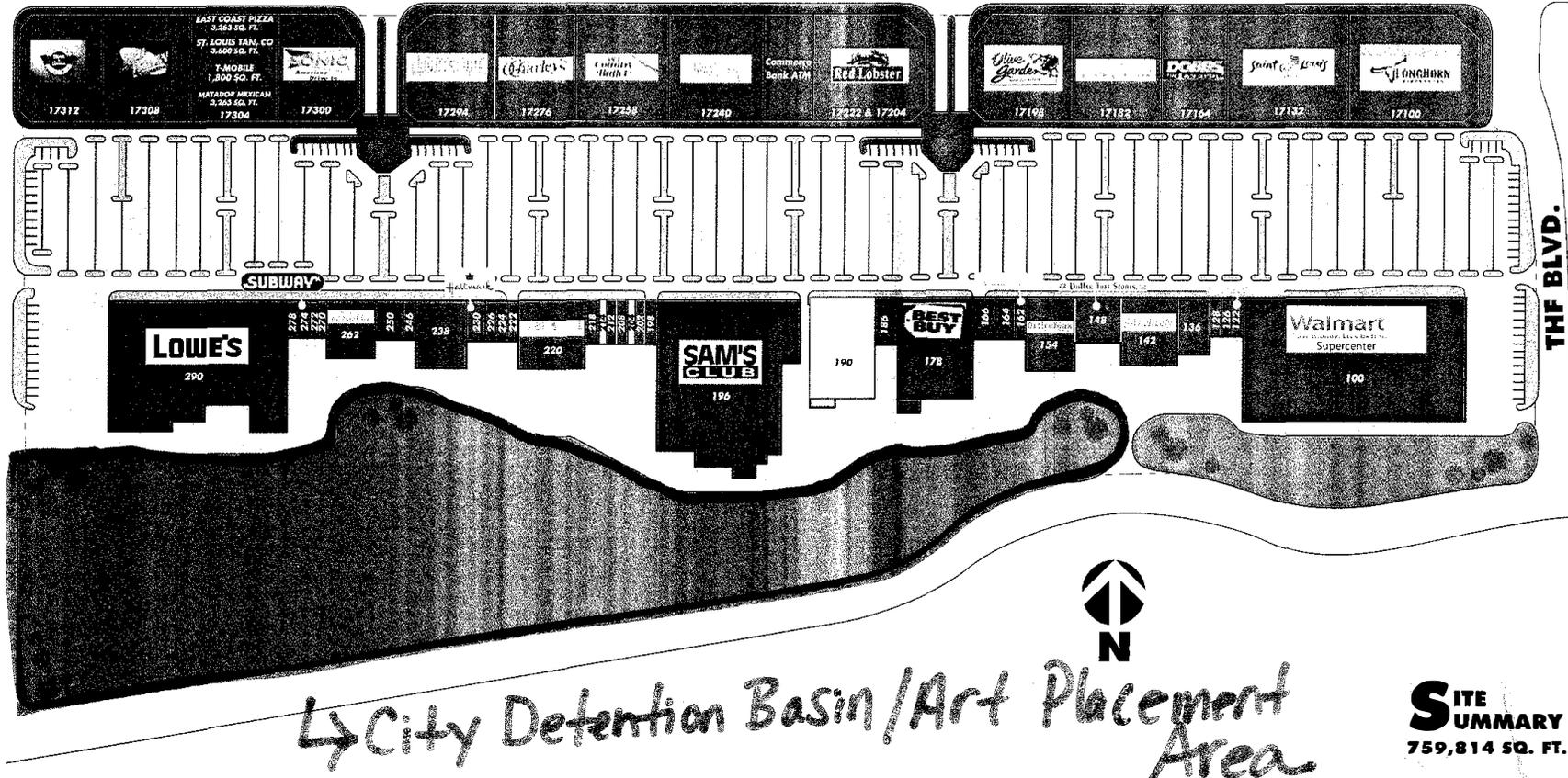
By: _____

Michael H. Staenberg
Manager

CHESTERFIELD AIRPORT ROAD

CHESTERFIELD COMMONS

Chesterfield, Missouri



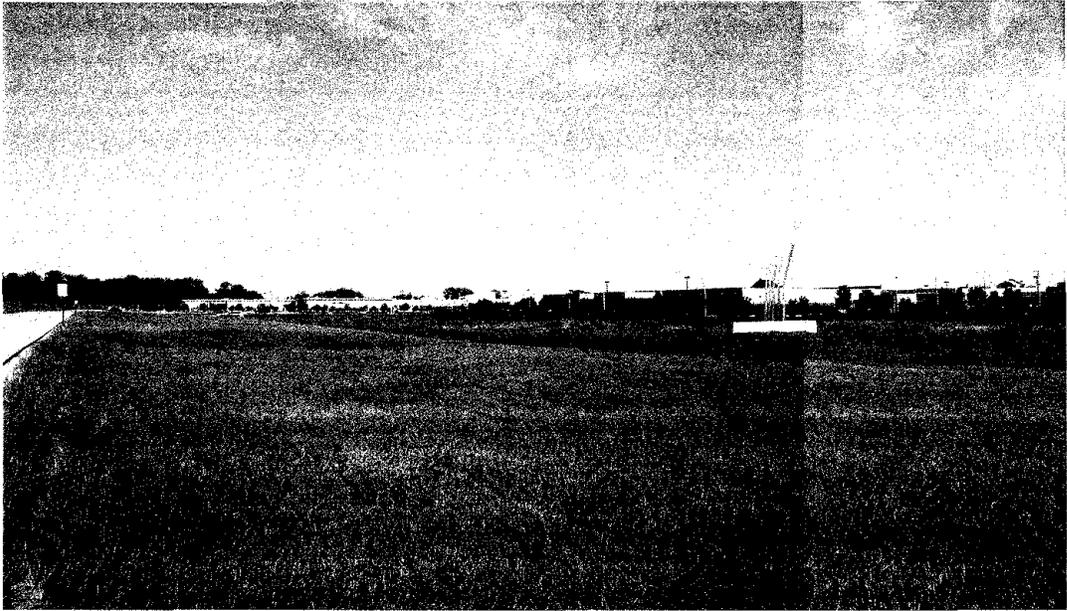
SITE SUMMARY
759,814 SQ. FT.

290 Lowe's Home Improvement	135,197 SQ. FT.	212 Bella Gente Salon	2,500 SQ. FT.	128 Verizon Wireless	2,000 SQ. FT.
278 Fleet Feet	3,500 SQ. FT.	208 Hong's Trading Co.	3,500 SQ. FT.	126 Bath & Body Works	3,000 SQ. FT.
274 Subway	3,500 SQ. FT.	204 Available	1,500 SQ. FT.	122 Sally Beauty	2,100 SQ. FT.
272 Fantastic Sam's	1,500 SQ. FT.	202 Sport Clips	2,050 SQ. FT.	116 Walmart Supercenter	190,617 SQ. FT.
270 Oreck Vacuum	1,500 SQ. FT.	198 A.E. Schmidt Billiards	4,000 SQ. FT.	304A East Coast Pizza	3,263 SQ. FT.
262 PetsMart	19,455 SQ. FT.	196 Sam's Wholesale Club	128,218 SQ. FT.	304F St. Louis Tan	3,600 SQ. FT.
250 Total Hockey	7,000 SQ. FT.	190 Available	37,500 SQ. FT.	304G T-Mobile	1,800 SQ. FT.
246 Beauty First	3,000 SQ. FT.	186 True Advantage Fitness	2,700 SQ. FT.	304H Matador Mexican	3,263 SQ. FT.
238 World Market	18,300 SQ. FT.	178 Best Buy	45,654 SQ. FT.		
230 Hallmark	5,000 SQ. FT.	166 Catherine's	4,000 SQ. FT.		
226 Pak Mail	1,500 SQ. FT.	164 Mattress Firm	4,000 SQ. FT.		
224 American Nails	1,500 SQ. FT.	162 Radio Shack	2,000 SQ. FT.		
222 AT&T Cingular	2,000 SQ. FT.	154 OfficeMax	23,500 SQ. FT.		
220 Babies R Us	30,606 SQ. FT.	148 Dollar Tree	12,000 SQ. FT.		
218 Ballet Center of St. Louis	5,500 SQ. FT.	142 Michael's Arts & Crafts	23,991 SQ. FT.		
214 Available	2,000 SQ. FT.	136 Dress Barn	12,000 SQ. FT.		

KEY

- AVAILABLE
- ANCHOR
- LEASED

Exhibit B



Approved placement by City, Chesterfield Arts & Levee District

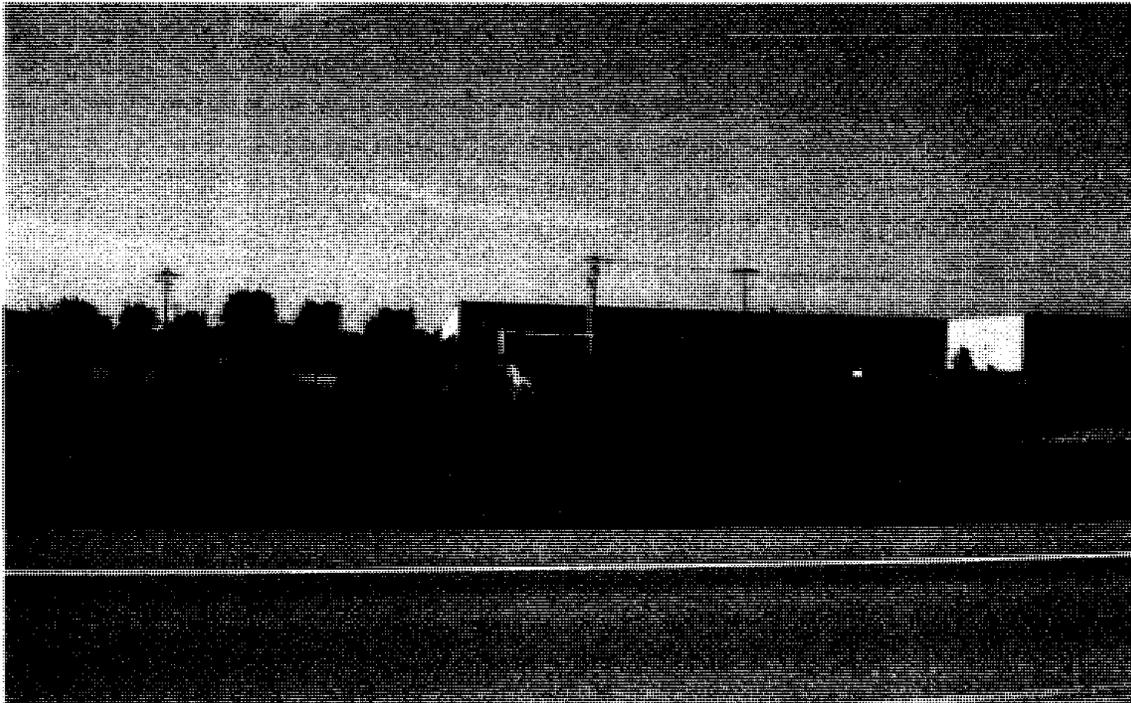
“Sequence”





 PRESCOTT HORSE OPTION 5 

Approved placement by City, Chesterfield Arts & Levee District



 PRESCOTT HORSE OPTION 8 

Behind Sam's--Approved placement by City, Chesterfield Arts & Levee District