

Bill No. 1817

Ordinance No. 1635

**AN ORDINANCE RATIFYING THE AGREEMENT TO PURCHASE REAL PROPERTY FOR THE CHESTERFIELD VALLEY ATHLETIC COMPLEX AND THE DECLARATION AND COVENANTS THEREIN.**

**WHEREAS** the City has entered into an agreement to purchase approximately 25 acres (more or less) from Chesterfield Community Association ("CCA"); and

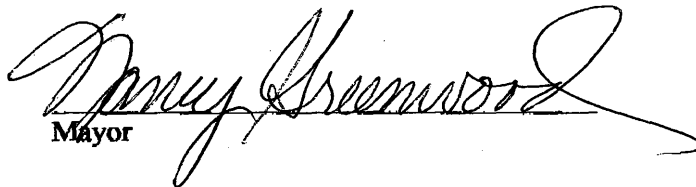
**WHEREAS** the parties, after modification as to form, have finalized the terms and conditions of the purchase along with the Declaration and Covenants therewith, and wish to restate their intentions:

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

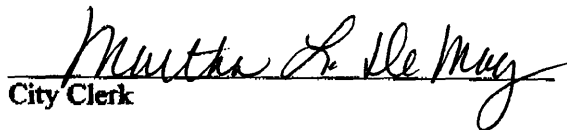
**Section 1.** The City Council hereby ratifies the Agreement to purchase the real property from CCA under the terms of the Purchase Contract attached hereto and marked Exhibit "A" and the Declarations and Covenants relating to the ongoing use of the property between the City and CCA, attached hereto and marked Exhibit "C".

**Section 2.** This ordinance shall be in full force and effect from and after its passage and approval.

Passed and approved this 15<sup>TH</sup> day of May, 2000.

  
Mayor

ATTEST:

  
City Clerk

**EXHIBIT A**  
**LEGAL DESCRIPTION**

A tract of land in U.S. Surveys 102, 150, Township 45 North, Range 3 East, in the City of Chesterfield, St. Louis County, Missouri and being further described as follows:

Beginning at a point on the North line of Missouri State Highway 40TR as established by Cause #290860 of the Circuit Court for St. Louis County, recorded in Deed Book 6343, page 824 of the St. Louis County Records, said point being the Southeast corner of a tract of land conveyed to William Ash, Trustee, by deed recorded in Book 8782, page 658 of the St. Louis County Records; thence along the North line of said Highway 40TR, North 84 degrees 08 minutes 11 seconds West, 709.02 feet to the Southwest corner thereof; thence North 11 degrees 56 minutes 00 seconds West, 1,716.11 feet to Northwest corner thereof; thence North 83 degrees 35 minutes 11 seconds East, 678.23 feet to the Northeast corner thereof, thence South 11 degrees 56 minutes 00 seconds East, 1,867.58 feet to the point of beginning and containing 27.77 acres more or less according to survey executed by The Clayton Engineering Company July, 1996.

**DECLARATIONS AND COVENANTS  
RELATING TO A COOPERATIVE AGREEMENT BETWEEN  
THE CITY OF CHESTERFIELD AND  
THE CHESTERFIELD COMMUNITY ASSOCIATION**

This agreement, made and entered this 27th day of April, 2000 by and between the City of Chesterfield, Missouri (hereinafter referred to as "City") and the Chesterfield Community Association, a Missouri Not-for-profit Corporation (hereinafter referred to as "CCA").

*agree that upon transfer of title of the ("land") To*  
The City and the CCA on or about the 27th day of November, 1996, entered into a Cooperative and Maintenance Agreement ("Cooperative Agreement") The City and CCA hereby terminate the Cooperative Agreement and enter into a new agreement ("New Cooperative Agreement") as herein stated.

The City's present complex is known as the Chesterfield Valley Athletic Complex (CVAC);

The City and CCA entered into a Real Estate Contract dated April 27, 2000 ("Contract") pursuant to which CCA has agreed to sell and City has agreed to purchase land described on Exhibit A hereto ("Land"). The Land consists of approximately 25.77 acres.

The Land, once acquired by the City, shall become a part of the CVAC.

Section 5 (ii) of The Contract requires that, prior to closing on the Contract, the City and CCA to enter into the New Cooperative Agreement , and that the New Cooperative Agreement be recorded against the Land at closing. This New Cooperative Agreement, once agreed to and recorded shall be considered to meet the requirements of Section 5(ii) of the Contract .

NOW THEREFORE, in consideration of the promises, agreements, covenants set further herein, the parties agree as follows:

**1. PRIORITY SCHEDULING:**

The CCA shall be granted first priority scheduling for the use of the CVAC, the for the purposes of conducting adult and/or youth baseball, softball and soccer programs ("Priority Scheduling"). Said Priority Scheduling is conditioned upon

CCA being comprised of 51% fifty one percent Chesterfield residents. Upon request by City, CCA shall provide to City proof of being comprised of 51% Chesterfield residents by submitting its roster for its Fall and Spring Programs, as defined below.

In order to enjoy its Priority Scheduling, CCA shall submit all scheduling requests to the City in the following manner:

**SPRING PROGRAMS:** For all of CCA's spring and summer programs, ("Spring Programs") CCA shall submit schedules as follows:

Preliminary Schedules shall be submitted by November 15 of each year or, if not so submitted, CCA's previous year's actual schedule for the Spring Programs shall be deemed as the submitted Preliminary Schedule.

Final Reservation Schedules shall be submitted by February 1 of each year. Fifty percent (50%) of rental fee is due and payable.

Final Financial Commitment Schedule shall be submitted, along with the payment for such scheduled games, by April 7 of each year.

CCA shall be permitted in all of the schedules to submit intermittent dates for make-up games due to Rainouts as defined in Paragraph 5 below, CCA shall not be required to remit payment to City for such dates, as same may not be utilized.

**FALL PROGRAMS:** For all of CCA's fall and winter programs, ("Fall Programs"), CCA shall submit schedules as follows:

Preliminary Schedules shall be submitted by March 15 of each year or, if not so submitted, CCA's previous year's actual schedule for the Fall Programs shall be deemed as the submitted Preliminary Schedule.

Final Reservation Schedules shall be submitted by July 1 of each year. Fifty percent (50%) of rental fee is due and payable.

Final Financial Commitment Schedule shall be submitted, along with the payment for such scheduled games, by September 1 of each year.

CCA shall be permitted in all of the schedules to submit intermittent dates for make-up games due to Rainouts as defined in Paragraph 5 below, CCA shall

not be required to remit payment to City for such dates, as same may not be utilized.

~~Priority Scheduling shall be enjoyed by CCA in perpetuity as herein provided.~~

The City shall make every reasonable effort to accommodate those changes or additions to the schedule that occur between the time that the Preliminary Schedules and are the Final Schedules are submitted. However, the City does not guarantee to accommodate any such changes, and CCA recognizes that City shall be scheduling events around the CCA schedules.

## 2. FACILITIES:

CCA shall be entitled to the use of all portions of the CVAC, all soccer fields, parking lot, restrooms, and pavilions and shall abide by the CVAC Rules and Responsibilities ("Exhibit B") and Park Rules and Regulations ("Exhibit C"), both of which may be revised and published by City from time to time. The New Cooperative Agreement shall be read in conjunction with Exhibit B and Exhibit C and to the extent that this is a conflict the provisions the New Cooperative Agreement will control.

## 3. TERM:

CCA shall have the non-exclusive right to bring baseball/softball and soccer to the CVAC, for the use of current equity members of the CCA (CAA and Ascension ).

The Term of CCA's Discount (as defined below) is up to and including 2019 unless extended as herein provided.

The term of CCA's Priority Scheduling shall run with CCA's discount period. It is the intent of both parties that this relationship shall continue following the discount period, however, it will require mutual consent of both parties.

## 4. RENTAL RATES AND DISCOUNT:

CCA, having 51% Chesterfield residents, as discussed in Paragraph 1, above, shall be entitled to use the CVAC at the Residential Rental Rates except as herein provided otherwise.

The City shall provide to CCA, as an Addendum to this New Cooperative Agreement, the current field rental rates and prices for the year 2000. The parties agree that, as to CCA, these rates shall be frozen, i.e. not increase, for five (5) years. Therefore, starting in year 2005, the parties agree that the City shall thereafter set its field rental rates to be competitive in the market.

Further, the City agrees to provide to no other user of the CVAC a rental rate, inclusive of any type of discount or credit, lower than CCA's established rental rate with or without The Discount (defined below) calculated in. If such rate is so provided to another user, then CCA shall also receive the benefit thereof prior to The Discount (defined below) being calculated in.

Starting in the year 2000, CCA shall receive a discount from the Residential or other applicable Rental Rates for CCA's usage of the CVAC. The discount to the applicable Rental Rates shall be \$100,000.00 per year up to and including 2019, unless otherwise extended as herein provided. ("The Discount").

Except as otherwise herein provided, CCA shall receive The Discount from the City in a manner of a credit from any rental rate payments due the City from CCA in any given year of the Term as defined in Paragraph 3, above.

After the full amount of The Discount is received by CCA in a given year, then CCA shall remit the appropriate Rental Payments to the City for the continued usage of the CVAC in that year.

If CCA does not schedule the use of the fields in any given year enough to warrant the receipt of The Discount, i.e. over \$100,000 of rental revenue, then CCA shall lose any portion of the discount not so utilized, and same shall not be able to be recouped in any subsequent year.

The timing of CCA's receipt of The Discount or credit shall be at CCA's election. Thereafter, for any scheduled events by CCA, after having been given the discount of One Hundred Thousand Dollars (\$100,000.00) toward its fee usage, CCA shall remit the full amount due and payable for usage of the complex as would any other user in that year.

The City, however, specifically exempts from any rental rate schedules, upon which CCA applicable rental rates or upon which market rates are determined, any events that the City sponsors or partners in. This shall include, but is not limited to, tournaments that the City sponsors directly or partners in with CCA

or others, as a program where the City may use its fields as its in-kind contribution.

No outside agency, individual or entity, can use CCA to obtain CCA rates. CCA shall be the only entity entitled to CCA rates and shall not transfer and/or submit the facilities or allow outside agencies to use CCA as any kind of straw party or agent.

CCA agrees that this Agreement shall not be assigned by CCA, without City's written agreement and any attempt of assignment by CCA shall be null and void.

However, the parties acknowledge that CCA is made up of two (2) equity members, CAA and Ascension. These entities are beneficiaries of this contract and their participation in CCA and their use of the CVAC shall not be considered to be a prohibited assignment hereunder.

If CCA dissolves, then CAA and Ascension as they are currently constituted, may use the CVAC in the stead of CCA and in accordance with the terms of this agreement. CCA and its equity partners may change the way that they are constituted from time to time and City will not unreasonably refuse to recognize said changes for purposes of the equity members use if CCA dissolves.

In the event that CCA dissolves or becomes defunct for whatever reason, the benefit of this Declaration or any of the field discounts (the One Hundred Thousand Dollar annual discount) or the right to compensation under the Contract or this Agreement are not assignable except as herein provided. For the purposes of this Agreement if CCA dissolves and CAA and Ascension also dissolve, the City shall have no further obligation to CCA or its two equity members named above. The proposed field discount is not to be considered as having any cash value and is only an obligation under the terms of this Agreement.

## 5. RAINOUTS:

The parties understand and acknowledge that from time to time it will be necessary to shut down the athletic fields for use. The parties agree that rainouts will be considered those times which the fields are closed when City, as owner, prohibits the use of the fields because of rain and rainouts shall not be considered shut down periods when a league or CCA "elects" not to play. To the extent possible, rainouts will be used as times for which the fields will

be considered at rest, when possible, on the schedule.

**6. INSURANCE:**

CCA shall maintain, during the term of this Agreement, at its own expense, insurance as follows: A comprehensive general liability insurance to include premises/operations, products, personal injury, completed operations, incidental malpractice and contractual coverages and liquor liability coverage with a minimum limit of Two Million Dollars (\$2,000,000.00) combined for any single occurrence and Three Hundred Thousand Dollars (\$300,000.00) for any single person per occurrence and for property damage. The above coverages must be written by an insurer having an AM Best and Company Rating of at least A+. Said liability and insurance must cover the premises herein named and all of the activities pertaining to CCA.

Certificates of insurance shall be filed with the City prior to commencement of this Agreement and provided annually hereafter and CCA shall submit, during the course of this Agreement, at least fifteen (15) days prior to the expiration of any insurance policy, a certificate indicating and evidencing either a renewal or a new policy. City shall be named as an additional insured and it shall provide that the insurer shall, at least thirty (30) days prior to the expiration, amendment, or cancellation of any such policy, give the City notice in writing of such expiration, amendment, or cancellation.

**7. INDEMNIFICATION:**

CCA shall, at its sole cost and expense, indemnify, hold harmless and protect the City, including its officers and employees, from and against any and all claims, damages, costs or expenses, including court costs and reasonable attorney's fees, for any claims arising out of CCA's use and activities under this Agreement. This indemnification is not applicable to challenges to the City's authority to enter in this Agreement or its terms.

**8. ROUTINE OPERATIONS AND MAINTENANCE:**

It is understood and agreed that City shall pay for all salaries, equipment, materials, and supplies necessary for the operation of the CVAC. CCA shall not be required to expend any monies whatsoever for nominal costs of operating the facility. Chesterfield shall operate and maintain the facilities and the complex in accordance with the rules and regulations established by the St. Louis County Health Department and shall comply with all applicable



government requirements. The City shall keep the premises in a clean and orderly condition and shall see to the proper collection of waste, garbage, and other debris.

**9. DISORDERLY CONDUCT:**

CCA agrees that it will, to the extent possible, take every action necessary to prevent any and all disorderly or boisterous conduct or immoral practices of any kind and/or about the premises by its members or those associated with CCA.

**10. CONTINUOUS USE:**

City agrees to continue to use the CVAC as a sports complex for use by CCA in accordance with the terms set out herein until 2019 or as extended hereunder .

If City fails to continue the use of the CVAC for any reason, other than a sale or lease of the CVAC (in whole or part), then the City is obligated to extend the Term of the Discount as defined in Paragraph 3 above beyond 2019 for each season or year that the CVAC is not able to be used by CCA and CCA was therefore unable to receive The Discount.

However, upon the sale or lease of the CVAC (in whole or part), to an alternative user, then the City shall remit the remaining amount of The Discount due to CCA on an annual basis (not to exceed \$100,000 per year). The maximum payments due will be for the remaining number of years to the original term as defined in Paragraph 3 above. However, if there is a sale or lease for an alternate use that prohibits CCA its use under this Agreement and to the extent the City receives compensation therefore CCA will receive its remaining discount at the time of sale or lease. Both parties acknowledge that the City Council must appropriate any amounts due under this provision.

If at any time after the Term as defined in Paragraph 3 above, City desires not to use the CVAC as a sports complex, then neither party shall have any obligations to the other under this Agreement except as recorded documents reflect.

**11. BINDING EFFECT:**

This Agreement shall be binding upon and inure to the benefit of the parties

hereto and their respective legal representatives, successors and assignors. In addition, the parties expressly agree that the covenants and obligations imposed with respect to the use of the land under this Agreement shall run with the Land for the term set out herein.

## 12. NOTICES:

All notices and other communications required, permitted or desired to be given hereunder shall be in writing and shall be mailed by registered or certified mail, postage pre-paid, return receipt requested, or delivered by hand-delivery against receipt, or delivered by overnight delivery service to the following addresses:

If to CCA:                    Michael Hejna, President, CCA  
2458 Old Dorsett Road, Suite 110  
St. Louis, Missouri 63043

With a copy to:            Tracy Gilroy  
Attorney at Law  
1610 Des Peres Road, Suite 300  
St. Louis, MO 63131

If to City:                    City of Chesterfield, Missouri  
16052 Swingley Ridge Road  
Chesterfield, Missouri 63017.  
Attention: Michael G. Herring, City Administrator

With a copy to:            Douglas R. Beach  
Attorney at Law  
222 S. Central Ave., Suite 900  
St. Louis, Missouri 63105

## 13. GENERAL PROVISIONS:

- (a) In the event any provision or portion of this Agreement is held by any court of competent jurisdiction to be invalid or unenforceable, such holding will not affect the remainder hereof, and the remaining provisions shall continue in full force and effect to the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

- (b) This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri.
- (c) CCA and the City agree that this Agreement may be recorded in the Office of the Recorder of Deeds for St. Louis County, Missouri.
- (d) The section headings or captions appearing in this Agreement are for convenience of reference only, are not a part of this Declaration and are not to be considered in interpreting this Agreement.
- (e) This Agreement may not be amended, modified, altered or changed in any respect whatsoever, except by a further agreement in writing signed by the parties hereto.
- (f) This Agreement may be executed in any number of counterparts, each of which will, for all purposes, be deemed to be an original, and all of which are identical.

IN WITNESS WHEREOF, City of Chesterfield and CCA have executed this Agreement by their respective duly authorized representative effective as of the day and year first above-written.

**Chesterfield Community  
Association (CCA)**

By:   
Michael J. Henna, President

**City of Chesterfield, Missouri  
(A Third-Class City Organized  
Under the laws of Missouri)**

By:   
Its City Administrator

**REAL ESTATE CONTRACT AND WORKING AGREEMENT BETWEEN  
THE CITY OF CHESTERFIELD AND  
THE CHESTERFIELD COMMUNITY ASSOCIATION**

This Real Estate Contract and Working Agreement ("Contract"), made and entered into on this 27th day of April, 2000, by and between the City of Chesterfield (hereinafter referred to as "City") and the Chesterfield Community Association, a Missouri Not-for-Profit Corporation (hereinafter referred to as "CCA").

The City, by and through its City Council, enters into this agreement with the CCA, for the purpose of purchasing approximately 25.77 more or less acres of real property, which is currently an athletic facility immediately adjacent to the City of Chesterfield athletic facility located in North Outer 40 in the Chesterfield Valley, to provide adult and/or youth baseball, softball, and soccer programs and related events under the terms and conditions described herein.

NOW THEREFORE in consideration of the promises, agreements, covenants, and warranties set forth herein, the parties hereto agree as follows:

**SECTION 1. LAND.:** CCA owns approximately 25.77 acres of real property in the City of Chesterfield, County of St. Louis, State of Missouri, upon which is situated CCA's athletic complex consisting of ball fields, concession stand building, dugouts, baseball fields, field lights, backstops, and other improvements, all set out within the athletic complex.

- (a) For the price and subject to the provisions herein, CCA agrees to sell and convey to the City, and City agrees to purchase from CCA, the parcel of land described on Exhibit A attached hereto (the "Land"); which Land is (i) located in the Chesterfield Valley on the north side of Highway 40/64 and consists of approximately 25.77 more or less acres, and (ii) currently forms the CCA's athletic complex.
- (b) City acknowledges that it is purchasing the Land to continue to operate an athletic facility and to make the CCA athletic facility part of the City athletic fields.
- (c) CCA is required to supervise CCA's contractor's completion of the construction of their complex in accordance with plan specifications (pathways, concessions building, dugouts, electric, water, sewer, irrigation, irrigation pump-well house, lights, fencing, etc.) and obtaining all

appropriate lien waivers. The parties agree to meet prior to closing to create a punch list of items to be completed after closing. Subsequent to the completion of the punch list, the City shall waive its rights against CCA under this provision. Conditioned upon Gundaker Commercial Group's acceptance of an assignment to the City of Chesterfield right to enforce the construction agreement between CCA and Gundaker Commercial Group.

**SECTION 2. EQUIPMENT.:** CCA owns, free and clear, all of the equipment identified on Exhibit B attached hereto ("Equipment") and will transfer same "as is" to City herewith all right, title, and interest therein. CCA will retain the right to use the tractor for a period of time not to exceed June 30, 2000.

**SECTION 3. PURCHASE PRICE.:** The ("Purchase Price") for the Land shall be a payment of Four Hundred Thousand Dollars (\$400,000.00) as a cash payment payable at closing plus the City agrees to offset rental charges to be paid by CCA for the use of the City's Athletic Complex (CVAC) at the rate of One Hundred Thousand Dollars (\$100,000.00) per year, in accordance with the terms contained in the Declaration and Cooperative Agreement marked Exhibit C and attached hereto ("Agreement").

**SECTION 4. TITLE, SURVEY, AND DEED.:**

- (a) Promptly following the effective date, (defined as the date this contract is executed by the last of the CCA, City) City shall, at its sole cost and expense, (i) order from the Title Company a commitment to ensure the title to the Land, and (ii) order from a surveyor licensed in Missouri a survey of the Land. City shall cause a copy of the commitment and survey to be delivered to CCA and Chesterfield promptly upon their respective completion within ten (10) days following the City's receipt of the last of the commitment and survey, City shall notify seller of any title matters shown on the Commitment or the Survey to which it objects. City shall not be entitled to object to any general real estate taxes on the Land constituting a lien but not yet due and payable. Within ten (10) days of CCA's receipt of such notice, CCA may elect, by notice to City, to undertake to eliminate some or all of the objections prior to closing, prior to that CCA shall be obligated (without the necessity of notice from Chesterfield) to a) cause all deeds of trust and other financial encumbrances on the Land to be paid and discharged or released by the closing and b) provide the affidavits regarding mechanic's liens and parties in possession as set out below. If CCA elects not to eliminate all of the objections, the City shall have ten (10) days from the date of the City's receipt of notice from the CCA indicating CCA's

refusal to eliminate all of the objections or to terminate this contract, in which event, neither party shall have any liability to the other. If City does not terminate this contract as aforesaid, then all title matters of record and all matters disclosed in the survey, other than those objections that seller has agreed to eliminate by the date of closing, shall be deemed waived; provided that City's waiver of any title matters pursuant to the foregoing shall, in no way, be deemed to be a waiver by City of any other defects in title discovered that arise after the issue in said appointment or the said preparation of the survey.

- (b) If this transaction shall close, CCA shall sell and convey to City the land by special warranty deed, subject to the permitted exceptions.

#### **SECTION 5. CONDITIONS PRECEDENT.:**

- (a) City's and CCA's obligations to "close" this transaction shall be subject to and contingent upon fulfillment of the following conditions precedent;

- (i) Within five (5) days following the effective date, the City shall have received a Phase I Environmental Study of the Land performed by Midwest Testing, Inc. and shall have determined that the results of such study are satisfactory to City. City shall provide CCA with a copy of such study upon its completion. City agrees to keep confidential prior to closing any results of its inspections or tests, except to the extent required to disclose such results by law. If City is required to disclose such results by law, City shall give CCA advanced written notice of such results and shall cooperate with CCA in making all legal required disclosures.

- (ii) Prior to closing, the parties shall have entered into a Declaration and Cooperative Agreement between each other, related to the use of the CVAC fields, which is marked Exhibit C, that shall be recorded against the Land at closing ("Agreement"). The Agreement shall include the terms under which the City shall have an ongoing agreement and arrangement with CCA for CCA's use of the ball fields and athletic complex relating, but not limited to, terms of compensation; scheduling; annual field credits; CCA's transfer of all equipment; CCA's completion of current construction; and other appropriate matters as agreed by the parties.

- (iii) CCA has advised the City that it is currently engaged in legal action instituted by the St. Charles Water District challenging the condemnation award paid by the St. Charles Water Company to CCA for the acquisition of

certain easement rights along the frontage of the CCA properties. City shall be provided by CCA all information with regards to the said litigation and the status thereof and this agreement is contingent upon the City's acceptance of the ongoing litigation of the and the responsibility for ongoing litigation and the City's determination that this litigation is such that the City shall be prepared to assume consequences therein. Said determination shall be in the sole discretion of City. If City pursues said litigation, City shall receive any added compensation paid for the right of way after costs and attorney's fees, if any.

(iv) If and when each of the conditions precedent listed above are satisfied or waived by both parties, the parties shall acknowledge such satisfaction, a waiver in a writing signed by both parties. If such a written acknowledgment is not signed by both parties by any applicable date, then either may thereafter terminate this contract by written notice given to the other provided, however, that such right of termination shall be deemed to be waived to the respect of any such unsatisfactory condition precedent if, after the applicable date for such condition precedent, the parties sign an acknowledgment that such a condition precedent has been satisfied and waived.

(v) In addition to the provisions set out above, the City's obligation to close on the sale of the land and to perform its other obligations hereunder shall be subject and contingent upon all representations and warranties of CCA set forth herein being true and correct through the closing and CCA having complied with its covenants hereunder.

(vi) In addition to the provisions set out above, CCA's obligation to close on the sale of the Land and to perform its obligations hereunder shall be subject and contingent upon all representations and warranties of City set forth herein being true and correct through the closing and by having complied with its covenants herein.

(vii) This Contract shall be terminated by either party pursuant to any of the sections above, and neither party shall have any liability to the other under this contract.

**SECTION 6. CONDEMNATION.:** If prior to the closing date, all or any part of the Land shall be taken in any proceedings by public authority (other than by City and other than by St. Charles Water Company as set out above) or any other body vested with the power of eminent domain, by condemnation or otherwise or

shall be acquired for public or quasi-public purposes or condemnation proceedings therefore shall be instituted, then and in such event, City shall have the right and option of terminating this Contract, said election to be exercised by City by giving CCA notice to such effect prior to the closing. In the event that the City shall so elect to terminate this Contract, both parties shall be relieved and released of any and all further actions related to the purchase of this property. Unless the Contract is terminated, it shall remain in full force and effect without any reduction in the purchase price and CCA shall assign, transfer and set over to City all of its right, title, and interest in and to any awards that may be made for such taking, and at the closing of this Contract, CCA shall convey to City such portion of the land as shall not have been so taken. City covenants that it will not take any action to acquire the Land or any portion thereof pursuant to City's power of eminent domain.

## SECTION 7. CLOSING.:

- (a) This transaction shall close on or before the date ("closing date") that is not more than ten (10) business days following the date upon which all conditions precedent set forth in Section 5 have been satisfied or waived pursuant to Section 5.
- (b) Provided that all conditions precedent subject as set out in Section 5 hereof have been satisfied or waived, the following documents and or funds shall be executed and acknowledged and or deposited with the Title Company by the closing date:
  - (i) CCA shall execute and acknowledge and/or deposit the following:
    - a. The Deed; an affidavit to enable the Title Company to remove from City's title policy for the Land, the exceptions for unfilled mechanic's liens and rights of the parties in possession; evidence of record to release any deed of trust or encumbrance on the land or any other instrument which encumbers the land and which secures financing obtained by CCA or CCA's agents; the Agreement; any agreed upon conditions to include a bill of sale for all equipment being acquired by the City as identified on Exhibit B;
    - b. City shall execute and acknowledge and/or deposit a bank cashier's check and/or at the City's option, a wired transfer of funds in the amount of the purchase price payable to the order of the Title Company, as escrow agent; the Agreement executed by the City.



- c. At closing the Management Agreement entered into the City and CCA dated the 26th day of April, 1996 shall terminate.

**SECTION 8. POSSESSION; INSPECTIONS.:** Possession of the Land shall be delivered to City as of the closing date; provided, however, that City, its agents, employees, and contractors shall have the right after the effective date, upon at least twenty four (24) hours advanced written notice to CCA to enter upon the Land for the purposes of making such tests, surveys, inquiries, and examinations of the Land as City deems necessary. To the extent that the City damages the Land in performing any activities related to this transaction, City shall repair the damage to substantially the same condition that existed prior to the occurrence of such damage. City shall indemnify CCA and hold CCA harmless with respect to any loss, costs, damages, or expenses, including unreasonable attorney's fees, resulting from or in connection with any damage to person or property, or any claim of damage to person or property relating to the City's activities on the Land.

**SECTION 9. REPRESENTATIONS AND WARRANTIES.:** In order to induce City to purchase the land, CCA makes the following representations and warranties:

- (a) CCA is a not-for-profit corporation, duly organized, validly existing and in good standing under the laws of the State of Missouri, CCA has all necessary power and authority to own and transfer its property, including this property, and to transact the business in which it is engaged; CCA has full power and authority to enter into this contract, to execute and deliver the documents required of CCA herein, and to perform these obligations hereunder.

- (b) To the knowledge of CCA, no hazardous substances (as hereinafter defined) have been placed or stored on the Land by CCA or its agents, or affiliates of CCA; CCA has not received any notice from any governmental authorities of the existence of hazardous substances on or beneath the surface of the Land, and CCA has no knowledge of any hazardous substances having been placed or stored on the Land by any previous owner of the Land unaffiliated with CCA. For the purposes of this Section, the terms "hazardous substances" shall mean any substance, the presence of which requires investigation or remediation under any applicable statutes, regulations, rules or ordinances of any governmental bodies, agencies, boards, or instrumentalities relating to the protection of health and the environment or that it is categorized as a hazardous waste, hazardous substance or hazardous constituent, solid waste or toxic substance or term

of similar import under any such environmental laws and regulations.

**SECTION 10. BUYER'S REPRESENTATIONS AND WARRANTIES.:**

In order to induce CCA to sell the Land, City represents and warrants that City is a Third Class City, duly organized and validly existing and in good standing under the laws of the State of Missouri; City has all requisite power, authority, and legal capacity and legal rights to acquire, own, and hold the Land pursuant to this contract, and to execute, deliver and perform the terms of this contract and all other agreements; all actions on the party of City requisite for the execution, delivery and performance of this contract and the other agreements has been duly taken; the execution, delivery and performance of this contract and other agreements by City will not violate, be in conflict with, result in a breach of, or constitute a default under the Constitution and laws of Missouri or any debt limitation of or imposed upon the City or any ordinance of City.

**SECTION 11. WAIVERS.:** A waiver by either of the parties hereto of any of the covenants, conditions, or agreements hereto to be performed by the other party shall not be effective unless in writing signed by the waiving party and shall not be considered to be a waiver of any subsequent breach thereof or of any other covenant, condition, or agreement herein contained.

**SECTION 12. NOTICES.:** All notices and other communications required, permitted, or desired to be given hereunder shall be in writing and shall be mailed by registered or certified mail, postage pre-paid, return receipt requested, or delivered by hand-delivery against receipt, or delivered by overnight delivery service to the following addresses:

If to CCA:                      Michael Hejna, President CCA  
   2458 Old Dorsett Road, Suite 110  
   St. Louis, Missouri 63043

With a copy to:                Tracy Gilroy  
   Attorney at Law  
   1610 Des Peres Road, Suite 300  
   St. Louis, MO 63131

If to City:                        Michael G. Herring, City Administrator  
   City of Chesterfield, Missouri  
   16052 Swingley Ridge Road  
   Chesterfield, Missouri 63017.

With a copy to: Douglas R. Beach  
Attorney at Law  
222 S. Central Ave., Suite 900  
St. Louis, Missouri 63005

Any notice give by registered or certified mail or by overnight delivery service shall be deemed to have given on the date of the registration or certification thereof, or on the date deposited with the applicable overnight delivery service as the case may be, and any notice delivered by hand-delivery shall be deemed to have been given when actually delivered to the applicable address.

**SECTION 13. BROKERS.:** Each party represents and warrants to the other that it has had no dealings with any broker or agent in connection with this Contract. Each party agrees to indemnify and save the other harmless from all claims, liabilities, and expense, including reasonable attorney's fees, as a consequence as a breach of this representation.

**SECTION 14. ENTIRE AGREEMENT.:** This Contract contains the entire agreement between CCA and City and there are no other terms, conditions, promises, understandings, statements of representations, express or implied concerning the sale contemplated hereunder. Any amendment, alteration, change, or modification hereof, shall not be effective unless set forth in a written instrument executed by CCA and City.

**SECTION 15. SUCCESSORS.:** This Contract shall inure to the benefit of and bind the parties hereto and their legal representatives, successors, and assigns. CCA hereby agrees that this Contract will not be assigned by CCA, except as set out herein, and any attempt of assignment by CCA shall be null and void.

**SECTION 16. REMEDIES CUMULATIVE.:** All rights, privileges, and remedies afforded either party by this Contract shall be deemed cumulative and the exercise of one of such remedy shall not be deemed to be a waiver of any other right, remedy, or privilege provided for herein.

**SECTION 17. SURVIVAL OF THE WARRANTIES, COVENANTS, AND AGREEMENTS.:** All warranties, covenants, and agreements contained in this Contract shall survive the closing and delivery of the deed.

**SECTION 18. APPLICABLE LAW.:** This Contract shall be governed by, and construed in accordance with the laws of the State of Missouri.

**SECTION 19. PARTIAL INVALIDITY.:** If any provisions of this Contract or the application thereof of any party or circumstances shall, to any extent, be invalid or unenforceable, the remaining of this Contract shall not be affected thereby and each provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.

**SECTION 20. WEEKENDS AND HOLLIDAYS.:** Notwithstanding any provision in this Contract to the contrary, if the deadline for the performance of any obligation by a party occurs on a Saturday, Sunday, or legal holiday recognized by the US Government or the State of Missouri, then such deadline shall automatically be extended to the first business day immediately following such Saturday, Sunday, or legal holiday.

**SECTION 21.:** CCA agrees to reimburse the City for maintenance conducted by the City during the Contract period should this Contract fail to close.

IN WITNESS WHEREOF, the undersigned have executed this Contract as of the date of first above written.

Chesterfield Community  
Association (CCA)

By:   
Michael J. Hejna, President

City of Chesterfield, Missouri  
(A Third-Class City Organized  
Under the laws of Missouri)

By:   
It's City Administrator