

**AN ORDINANCE APPROVING THE PURCHASE OF APPROXIMATELY TWENTY-SIX (26) ACRES OF LAND LOCATED AT 18750, 18770, AND 18774 OLIVE STREET ROAD, CHESTERFIELD, MISSOURI**

**WHEREAS**, the City of Chesterfield, pursuant to its stormwater responsibility, is interested in purchasing land, on behalf of the City, for retention of stormwater in the western portions of the Chesterfield Valley; and

**WHEREAS**, the City of Chesterfield, by and through its Public Works Department, has negotiated for the purchase of approximately twenty-six (26) acres of land located in the west end of the Valley for said purpose; and

**WHEREAS**, the utilization of TIF Funds are available for this purchase and for which the land may ultimately be purchased from the City by the Corps of Engineers; and

**WHEREAS**, the City of Chesterfield met in Executive Session on September 8, 2004 and authorized the negotiation and purchase of the approximate twenty-six (26) acres at One and 5/100 Dollars (\$1.05) per square-foot of the utilization of TIF financing; and

**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 conclude the acquisition and purchase of approximately twenty-six (26) acres of land pursuant to the Commercial Sale Contract, which is attached hereto marked Exhibit 1 and made a part hereof as if fully set out herein.

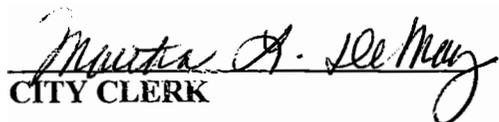
**Section 2.** The City having previously authorized the purchase at its Executive Session on September 8, 2004 ratifies the actions of the City Administrator in executing and concluding the purchase of said tract.

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

Passed and approved this 1<sup>st</sup> day of November, 2004.

  
MAYOR

ATTEST:

  
CITY CLERK

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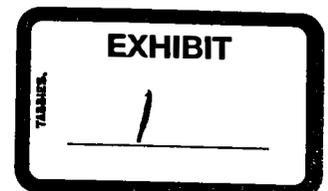
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**COMMERCIAL SALE CONTRACT  
LAND**

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**COMMERCIAL SALE CONTRACT  
LAND**

**1. PARTIES AND PROPERTY.**

City of Chesterfield	("Buyer") agrees to purchase from
Enid J. Brasher Trust	("Seller") and Seller agrees to sell

to Buyer the property ("Property") located in the:

County of:	St. Louis
City of (if any):	Chesterfield
Address of:	18750, 18770 and 18774 Olive Street Road, Chesterfield, MO 63005

**2. INCLUSIONS AND EXCLUSIONS.**

The Property includes all right, title and interest of Seller in any and all existing improvements, air rights, water rights, mineral rights, crops, trees, shrubbery, rents, profits, royalties, tolls, earnings, leases, tenements, inherited rights, appurtenances, security deposits, easements and rights-of-way as well as all assignable agreements, licenses and permits pertaining to the Property, whether now or hereafter placed or installed on the Property or used in connection with the operation of the Property.

The following additional items are included in the sale: N/A Land Only
The following items are excluded from the sale: N/A

**3. PURCHASE PRICE.** Buyer shall pay for the Property as follows:

**A. EARNEST MONEY**

Twenty five thousand dollars	Dollars	\$25,000.00
------------------------------	---------	-------------

**B. ADDITIONAL EARNEST MONEY (if any)**

N/A	Dollars	
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Additional Earnest Money (if any) shall be payable upon waiver or expiration of Buyer's Due Diligence Period or as further specified herein:

**C. CASH DUE AT CLOSING**

One Hundred Eighty Eight Dollars

One Million, One Hundred Sixty Four Thousand	Dollars	\$1,164,188.00
--	---------	----------------

Amount to be paid at Closing ("Cash Due at Closing") (subject to adjustments described herein) in United States funds payable and delivered to Escrow Agent

**D. PURCHASE PRICE**

One Hundred Eighty Eight Dollars

One Million, One hundred Eighty Nine Thousand	Dollars	\$1,189,188.00
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Total of A, B and C is D the Purchase Price:

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**3. PURCHASE PRICE (Continued)**

Earnest money ("Earnest Money") in the amount set forth herein, shall be tendered by Buyer with this Contract in the form of good, United States funds, payable and delivered to the herein identified Escrow Agent:

To be agreed upon by Buyer & Seller

(NOTE: This Commercial Sale Contract assumes that "Escrow Agent" is a title insurance company or agency.)

If any Earnest Money check tendered by Buyer is returned for insufficient funds, or otherwise, Seller may promptly terminate this Contract by written notice to Buyer. Escrow Agent shall deposit the Earnest Money promptly upon acceptance of this Contract in an  non-interest bearing or  interest bearing (select ONLY one) account (if interest bearing the account will be insured by the Federal Deposit Insurance Corporation). Interest (if any) shall accrue to the benefit of Buyer.

The Purchase Price shall be adjusted (increased or decreased accordingly) at Closing by  the Purchase Price per square foot or  the Purchase Price per acre (select ONLY one) as referenced herein times the actual square footage or actual acreage as determined by Survey:

Purchase price to be determined by \$1.05/sf

**4. CLOSING AND CONVEYANCE OF TITLE.**

The closing of this sale ("Closing") shall take place 15 calendar days after waiver or expiration of Buyer's Due Diligence Period, no later than 5:00 p.m. or on any other date and time that both parties agree to in writing, at the office of Escrow Agent.

(NOTE: Item 8. BUYERS DUE DILIGENCE PERIOD, Paragraph: (n) Extension of Closing Date.)

**5. SELLER'S OBLIGATIONS.**

(a) Seller shall promptly execute and/or promptly deliver the following to Escrow Agent or Buyer at the Closing for recording or delivery to Buyer as appropriate: (1) ~~General~~ <sup>Special</sup> Warranty Deed to the Property constituting realty in recordable form; (2) A General Warranty Bill of Sale to those items of the Property constituting personalty, if any, in a form reasonably acceptable to Buyer; (3) Originals, or photocopies if originals are not available, of all warranties, certificates of occupancy, licenses, permits, authorizations and approvals issued by all governmental authorities having jurisdiction over the Property, in Seller's possession; (4) Evidence of Seller's good standing, authority, related customary documents and instruments as may be reasonably required by the Escrow Agent; (5) A Certification of Nonforeign Status under penalty of perjury, including Seller's United States Taxpayer Identification Number, stating that Seller is not a foreign person; (6) Affidavits, as to rights of parties in possession, mechanics' liens and claims, as may be reasonably required by the Escrow Agent in order to issue Buyer's Owner's Policy of Title Insurance with Mechanic's Lien coverage; (7) The Closing Statement; (8) Applications, surveys, plats, et cetera (at Buyer's sole expense); (9) Any other documents reasonably necessary to consummate the transaction contemplated by this Contract; and (10) Deliver possession of the Property as of Closing.

(b) Buyer shall not be obligated to close hereunder unless: (1) Seller delivers, pays and executes all monies, items and other instruments required to be delivered, paid and/or executed by Seller herein no later than Closing; (2) Seller's Covenants, Representations and Warranties (defined below) are true and correct as of Closing; (3) If improvements or repairs have been performed within six (6) months prior to Closing, Seller shall, furnish reasonable security against mechanic's liens or evidence of payment of bills satisfactory to Escrow Agent to issue mechanics lien coverage to Buyer; (4) Buyer can obtain from Escrow Agent at Closing an Owner's Policy of Title Insurance insuring fee simple title to and ownership of the Property in Buyer in the amount of the Purchase Price on ALTA Form B with exceptions on Schedule B thereof only for the Permitted Exceptions (defined herein) and with the standard exceptions as to rights of parties in possession (except tenants under leases) and mechanics liens deleted ("Buyer's Owners Policy of Title Insurance"); and (5) Seller delivers possession of the Property as of Closing.

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**6. BUYER'S OBLIGATIONS.**

(a) Buyer shall execute and/or deliver the following to Escrow Agent at the Closing for recording or delivery to Seller as appropriate: (1) Cash Due at Closing; (2) Buyer's share of the Closing costs, prorations and any other expenses provided to be paid by Buyer by this Contract; (3) The Closing Statement; (4) The General Warranty Deed (in the City of St. Louis); (5) A Real Property Certificate of Value, as may be required in the city or county in which the Property is located; and (6) Any other documents reasonably necessary to consummate the transaction contemplated by this Contract.

(b) Seller shall not be obligated to close hereunder unless: (1) Buyer delivers, pays and executes all monies, items, and any other instruments required to be delivered, paid and/or executed by Buyer herein no later than Closing; and (2) Buyer's Covenants, Representations and Warranties (defined below) are true and correct as of Closing; and (3) Seller's residual property (if any) is recognized by the appropriate legal authority as a legal lot.

**7. CLOSING COSTS AND PRORATIONS.**

Closing costs and prorations are agreed to be paid by the parties as follows:

(a) Seller shall pay for (where applicable): (1) title company charges (including closing, releasing and escrow fees) and other charges customarily paid by a seller of real estate in the county where the Property is located; (2) existing liens (recorded or unrecorded) and existing loans on the Property; (3) all security deposits or prepaid rent and expenses held by Seller at Closing; (4) municipal or conservation district inspection fee; (5) special taxes and assessments levied before Closing; and (6) Broker's commission or fee as specifically agreed to herein or by prior written agreement.

(b) Buyer shall pay for (where applicable): (1) title company charges (including closing, recording and escrow fees) and other charges customarily paid by a buyer of real estate in the county where Property is located; (2) title insurance premium for both the Owner's Policy of Title Insurance and Lender's Policy of Title Insurance (if any); (3) hazard insurance premium on the Property from and after Closing; (4) flood insurance premium on the Property from and after Closing, if any; (5) any fees for appraisals or surveys ordered by or for Buyer; (6) any fees for building or environmental studies ordered by or for Buyer; (7) special taxes and assessments levied after Closing; (8) municipal occupancy permit; (9) special taxes and assessments levied as a direct result of Buyer's rezoning, resubdivision, or change of use of the Property; and (10) Broker's commission or fee as specifically agreed to herein or by prior written agreement.

(c) Buyer and Seller shall prorate and adjust between them on the basis of the actual number of days in the year, with Seller to pay expenses and to receive income until midnight the day of Closing, the following: (1) general taxes (based on assessment and rate for current year, if both are available; otherwise based on previous year); (2) subdivision assessments, if any; (3) utility charges which are capable of becoming a lien against the Property; (4) rents, profits, royalties, tolls or earnings arising out of or in connection with the Property ("Income"), provided that no proration shall be made to any Income of which any portion is more than thirty (30) calendar days past due. Buyer shall, upon receipt, turn over to Seller any Income received by Buyer after Closing pertaining to any time period prior to Closing and for which no adjustment has been made, after deducting and crediting any amounts due to Buyer for any time period after Closing.

All of the above Closing costs and prorations shall be itemized on a closing statement prepared by Escrow Agent and executed by Buyer and Seller at or prior to Closing ("Closing Statement").

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**8. BUYER'S DUE DILIGENCE PERIOD.**

This Contract and Buyer's obligations hereunder are specifically made contingent upon Buyer's satisfaction of the following items on or before the date indicated:

(a) **Title and Survey Inspection.** Approval by Buyer by 5:00 p.m. 45 calendar days after the Effective Date. If Seller already has a survey of the Property in Seller's possession, Seller shall promptly after the Effective Date deliver a copy to Buyer. Buyer, at its option and expense, may obtain a survey of the Property ("Survey") and a title examination of the Property ("Title Report"). If Buyer obtains a Survey and/or Title Report, then within the time period stated herein, Buyer may notify Seller in writing of any matters shown by the Survey and/or Title Report that are unacceptable to Buyer ("Buyer's Title Objections"). If Buyer notifies Seller of any Buyer's Title Objections, Buyer must also deliver a copy of the Survey and/or Title Report to Seller with such objections. Failure by Buyer to notify Seller of Buyer's Title Objections within the stated time period will constitute a waiver by Buyer of any objections to the Survey or Title Report and to matters which could have been shown by a Survey or Title Report. Seller shall be responsible for removing any exceptions to title which arise between the Effective Date and Closing unless created by or with the written consent of Buyer. Any item shown on the Title Report for which Buyer does not deliver Buyer's Title Objections within the stated time period or for which Buyer agrees to waive Buyer's Title Objections will be deemed approved by Buyer and are called "Permitted Exceptions".

(b) **Property and Records Inspection.** Approval of the physical condition and records inspection by Buyer by 5:00 p.m. 45 calendar days after the Effective Date. During the stated time period, Buyer and Buyer's representatives may, at Buyer's option, expense and sole liability conduct such examinations, tests, inspections, structural and systems reports, environmental studies and other studies of the Property as Buyer shall deem desirable, and obtain copies of such books, computer records, records, reports, leases, agreements, contracts, rent rolls, financial records, permits, licenses, approvals and such other records necessary and appropriate for the use and occupancy of the Property or reflecting the income or expenses of the Property ("Buyer's Property and Records Inspection"). Seller agrees to permit Buyer or its representatives to enter the Property for such purposes during reasonable business hours and upon reasonable notice to Seller and to allow Buyer access to such books, computer records, records, reports, leases, agreements, contracts, rent rolls, financial records, permits, licenses, approvals and other records, provided that such investigations do not unreasonably disrupt the operation of Seller's business and do not cause any damage to the Property and that any such damage is immediately repaired by Buyer. Buyer shall be liable to Seller for the acts of any representative, contractor, or consultant that Buyer may engage, and Buyer shall cause each to maintain adequate insurance at all times while performing any property inspection. Buyer agrees that the results of any inspection or test and the reports or conclusions of Buyer and Buyer's representatives shall be kept confidential (except as required by law) by Buyer and Buyer's representatives; provided that Buyer may disclose such items to Buyer's attorney, accountants, lenders and other parties reasonably necessary to enable Buyer to purchase the Property. During the stated time period, Buyer may notify Seller in writing of any matters pertaining to Buyer's Property and Records Inspection Contingency that are unacceptable to Buyer ("Buyer's Property and Records Objections"). Failure by Buyer to notify Seller of Buyer's Property and Records Objections within the time period stated herein shall constitute a waiver by Buyer of any objections thereto or any right not to close by reason thereof.

(c) **Construction Loan.** Receipt by Buyer by 5:00 p.m. N/A calendar days after the Effective Date of a written commitment for a construction loan. The Loan shall bear interest at the prevailing market rate, but not exceed the interest rate per annum set forth herein. Buyer shall use reasonable diligence to obtain such a loan.

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**8. BUYER'S DUE DILIGENCE PERIOD (Continued).**

**(c) Construction Loan (Continued).**

Loan Amount (Percent of Purchase Price or Dollar Amount):	N/A
Interest Rate Per Annum (Percent):	
Loan Points and/or Application Fees:	
Buyer shall apply for a loan within calendar days of:	

(d) **Permanent Loan.** Receipt by Buyer by 5:00 p.m. N/A calendar days after the Effective Date of a written commitment for a conventional loan to be secured by a first deed of trust on the Property, repayable in equal monthly installments of principal and interest. The Loan shall bear interest at the prevailing market rate, but not exceed the interest rate per annum set forth herein. Buyer shall use reasonable diligence to obtain such a loan.

Loan Amount (Percent of Purchase Price or Dollar Amount):	N/A
Interest Rate Per Annum (Percent):	
Amortization Period (Number of Years):	
Term of Loan (Number of Years to Balloon Payment):	
Loan Points and/or Application Fees:	
Buyer shall apply for a loan within calendar days of:	

(e) **Access and Utilities.** Buyer obtaining at Buyer's sole cost and expense by 5:00 p.m. N/A calendar days after the Effective Date evidence satisfactory to Buyer concerning access to public roads and the availability of all utilities (water, sewer, natural gas and electricity) to the Property in sufficient size and capacity for Buyer's proposed use and the availability to connect to such utilities at a cost satisfactory to Buyer.

(f) **Engineering.** Buyer obtaining at Buyer's sole cost and expense by 5:00 p.m. N/A calendar days after the Effective Date satisfactory soil and subsoil testing reports, land planning and engineering feasibility studies regarding the Property and Buyer's contemplated improvements.

(g) **Economic Feasibility.** Buyer obtaining at Buyer's sole cost and expense by 5:00 p.m. N/A calendar days after the Effective Date evidence satisfactory to Buyer concerning the economic feasibility of constructing, developing and operating Buyer's contemplated improvements on the Property.

(h) ~~**Governmental Approval.** Buyer obtaining at Buyer's sole cost and expense by 5:00 p.m. 45 calendar days after the Effective Date approval of Buyer's plans and specifications for its proposed improvements to be constructed on the Property by all governmental agencies having jurisdiction to allow the issuance of an unqualified building permit for such improvements upon Buyer's request. Buyer shall use reasonable diligence to promptly apply for and obtain all such approvals.~~

(i) **Zoning.** Buyer obtaining at Buyer's sole cost and expense by 5:00 p.m. N/A calendar days after the Effective Date evidence satisfactory to Buyer that the current zoning classification of the Property will permit the construction of Buyer's contemplated improvements.

(i) (2) **Necessary Approvals.** Buyer obtaining at Buyer's sole cost and expense by 5:00 pm 15 calendar days after the Effective Date approval of Buyer's purchase of the property pursuant to this contract by a majority vote of the City Council of Buyer.

(h) (2) This contract is contingent upon the Buyer obtaining conceptual approval from governmental agencies as it relates to the future use of this property for stormwater reservoir purposes within 45 calendar days of the Effective Date.

9/9/04  
9/9/04  
9/9/04  
9-9-04

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**8. BUYER'S DUE DILIGENCE PERIOD (Continued).**

(j) **Rezoning Approval.** Buyer obtaining at Buyer's sole cost and expense by 5:00 p.m. N/A calendar days after the Effective Date satisfactory rezoning or special use permits for the Property by the governing or judicial authorities to permit the construction and operation of Buyer's contemplated improvements on terms and conditions acceptable to Buyer. In the event rezoning or special use permits are required, Seller hereby appoints Buyer as Seller's agent (to serve without fee) for the purpose of executing and processing before the appropriate governmental authorities, an application or petition for such rezoning or special use permits. In the event such application for rezoning or special use permits has not been finally acted upon by the appropriate governmental or judicial authorities at the time within which this contingency must be satisfied or waived by the Buyer, the date for satisfaction or waiver of this contingency shall be automatically extended to that date which is thirty (30) days following a final decision approving or denying such rezoning application, but in no event shall it extend later than 5:00 p.m. N/A calendar days after the Effective Date.

(k) **Satisfaction/Waiver of Contingencies.** Each of the above contingencies is for the sole benefit of Buyer. Subject to subparagraphs (l) and (m) below, if Buyer notifies, in writing, Seller that it has not satisfied or waived each of the above contingencies by 5:00 p.m. on or before the date specified for each, this Contract shall, at the close of business on the applicable date, terminate without further action of the parties, and in such event, all Earnest Money and interest thereon, shall be promptly returned to Buyer. If Buyer fails to notify Seller in writing within the applicable stated period that any contingency has not been satisfied or waived, such contingency shall be deemed satisfied.

(l) **Seller's Time to Respond.** If Buyer does timely notify Seller (within the stated time periods) in writing of Buyer's Title Objections and/or Buyer's Property and Records Objections, Seller has five (5) calendar days from receipt of said notice to either: (a) agree in writing to correct Buyer's Title Objections, and/or Buyer's Property and Records Objections, at Seller's expense, on or before Closing; or (b) refuse to correct some or all of Buyer's Title Objections, and/or Buyer's Property and Records Objections. Failure by Seller to respond in writing within the stated time period shall constitute a refusal to correct all objections of Buyer.

(m) **Buyer's Time to Respond.** In the event Seller refuses to correct any or all of permitted objections of Buyer, Buyer has ten (10) calendar days from the expiration date of the applicable contingency to either: (i) waive Buyer's objections and proceed to Closing hereunder; or (ii) terminate this Contract, whereupon all Earnest Money and interest thereon shall be promptly returned to Buyer.

(n) **Extension of Closing Date.** If Buyer's or Seller's time to respond extends beyond the date set for Closing, the Closing shall be automatically extended to the date by which the response must be received by the other party.

(o) **Buyer's Due Diligence Period.** The period from the Effective Date until the end of the longest contingency period described above is referred to in this Contract as the "Buyer's Due Diligence Period".

**9. SELLER'S COVENANTS, REPRESENTATIONS AND WARRANTIES.**

Seller covenants, represents and warrants to Buyer as follows ("Seller's Covenants, Representations and Warranties") which covenants, representations and warranties shall be considered made as of the Effective Date and again as of Closing except to the extent that Seller obtains knowledge or notice after the date Seller executes this Contract of any fact or facts which would make any covenant, representation or warranty untrue or misleading in any material respect and discloses such fact or facts to Buyer in writing prior to Closing, in which case Buyer shall not be obligated to close hereunder:

**9. SELLER'S COVENANTS, REPRESENTATIONS AND WARRANTIES (Continued).**

(a) From the Effective Date until Closing, Seller shall not execute any leases or contracts affecting the Property which shall be binding on the Property or Buyer after Closing without the prior written consent of Buyer; (b) From the Effective Date until Closing, Seller shall maintain the Property in the same condition existing as of the Effective Date; ordinary wear and tear and casualty excepted. Seller shall pay on a timely basis all bills and discharge all of Seller's obligations arising from ownership, operation, management, repair and maintenance of the Property as payments become due; (c) Seller is the owner in fee simple of the Property; (d) Seller has the authority and capacity to enter into and perform this Contract, and the person who executes this Contract on behalf of Seller represents and warrants such person has been authorized to do so; (e) Seller is not bankrupt or insolvent; (f) To the best of Seller's knowledge and without any independent inquiry or investigation, Seller knows of no violations or alleged violations of any federal, state or local law that affect the Property, and Seller has not received notice of and is not aware of any pending or threatened litigation, suit, proceeding or eminent domain action affecting the Property; (g) There shall be no tenancies or occupancies affecting the Property as of Closing except as Seller has disclosed to Buyer in writing and the Rent Roll is true, accurate and complete; (h) As of Closing there shall be no service, supply, maintenance or management contracts or agreements affecting the Property which will be binding on the Property or Buyer after Closing except as disclosed by Seller to Buyer in writing; (i) There are, and as of Closing there shall be, no recorded or unrecorded contracts and/or options to which Seller is a party pertaining to or affecting title to or the sale of the Property, or any part thereof; (j) To the best of Seller's knowledge without independent inquiry or investigation, and except as disclosed to Buyer in writing, there are and have been no hazardous or toxic substances or materials, including without limitation, oil, PCB's, urea formaldehyde foam insulation, asbestos or underground storage tanks of any kind, as those terms are used in any applicable federal, state and/or local environmental laws, which regulate such substances or materials or tanks, brought or placed on the Property; and (k) Seller shall deliver possession of the property as of Closing.

Seller's Covenants, Representations and Warranties and Seller's liability for breach thereof shall survive Closing and shall not be merged into any deed or other document given at Closing.

**10. BUYER'S COVENANTS, REPRESENTATIONS AND WARRANTIES.**

Buyer covenants, represents and warrants to Seller as follows ("Buyer's Covenants, Representations and Warranties") which covenants, representations and warranties shall be considered made as of the Effective Date and again as of Closing except to the extent that Buyer obtains knowledge or notice after the date Buyer executes this Contract of any fact or facts which would make any covenant, representation or warranty untrue or misleading in any material respect and discloses such fact or facts to Seller in writing prior to Closing in which case Seller shall not be obligated to close hereunder:

(a) Except as specifically set forth in Seller's Covenants, Representations and Warranties, Buyer is relying on its own investigation and inspection of the Property, Title Report, Survey, Buyer's Property and Records Inspection or any other permitted contingencies, all to the extent conducted by Buyer in Buyer's judgment, and Buyer will take title to the Property in its AS IS, WHERE IS condition based solely on such investigation and inspection. Buyer acknowledges and agrees that Seller and its representative(s) have not made any warranty or representation, express or implied, written or oral concerning the Property except as set forth in Seller's Covenants, Representations and Warranties; (b) Buyer has the authority and capacity to enter into and perform this Contract, and the person who executes this Contract on behalf of Buyer represents and warrants that such person has been authorized to do so; (c) Buyer is not bankrupt or insolvent; and (d) Buyer shall neither encumber nor cause any liens to be created against the Property in any way, nor record this Contract or a memorandum hereof, prior to Closing.

Buyer's Covenants, Representations and Warranties and Buyer's liability for breach thereof shall survive Closing and shall not be merged into any deed or other document given at Closing.

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**11. AGENCY DISCLOSURE AND BROKERAGE COMMISSION.**

Buyer and Seller by signature to this Commercial Sale Contract acknowledge and consent to the representations and payment of commission(s) or fee(s) disclosed herein. Prior written Agreement to control, if different.

Seller shall pay Seller's Broker a commission or fee of:

2.5% of Purchase Price
<input checked="" type="checkbox"/> "Seller" OR <input type="checkbox"/> "Buyer" (select ONLY one) shall pay Buyer's Broker a commission or fee of:

SELLER'S Broker: CB Richard Ellis

--

and SELLER'S Broker's Agent/Licensee:

John Langa
------------

BUYER'S Broker

N/A
-----

and BUYER'S Broker's Agent/Licensee:

N/A
-----

Broker(s) and affiliated licensee(s) duties and responsibilities are governed by the selection below (check appropriate category):

	SELLER'S BROKER and Agent/Licensee(s)		BUYER'S BROKER and Agent/Licensee(s)
<input type="checkbox"/>	SELLER NOT REPRESENTED	<input checked="" type="checkbox"/>	BUYER NOT REPRESENTED
<input checked="" type="checkbox"/>	Seller's Limited Agent	<input type="checkbox"/>	Buyer's Limited Agent
<input type="checkbox"/>	Sub-Agent	<input type="checkbox"/>	Sub-Agent
<input type="checkbox"/>	Disclosed Dual Agent	<input type="checkbox"/>	Disclosed Dual Agent
<input type="checkbox"/>	Transaction Broker	<input type="checkbox"/>	Transaction Broker

**Disclosure.** Buyer and Seller both acknowledge that they have been informed orally and by written disclosure that the Broker(s) and their Agent/Licensee(s) duties and responsibilities, which are governed by the selection above, have been disclosed.

**No Other Brokers.** Buyer and Seller warrant and represent that no Broker or other person other than Broker or Broker(s) named herein are entitled to a commission or fee, finder's fee or other compensation in connection with this Commercial Sale Contract, and Buyer and/or Seller shall indemnify and hold harmless the other party from any and all claims, liabilities, losses, damages, costs and expenses arising from the claim of any other Broker, finder or other person for such compensation arising by, under or through the indemnifying party.

**Commission Payable to Brokers Upon Default.** (1) Upon Seller's failure to close due to Seller's default, Seller shall immediately pay in full the commissions or fee due Broker(s) by Seller, as set forth above. (2) Upon Buyer's failure to close due to Buyer's default, the Escrow Agent is authorized to release one-half (1/2) of the Earnest Money and interest thereon to the Broker(s), not to exceed the total commissions or fee due as set forth above, with the remaining balance released to Seller. (3) Upon Buyer's failure to close due to Buyer's default, Buyer shall immediately pay in full the commissions or fee due Buyer's Broker, as set forth above.

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**12. REMEDIES UPON DEFAULT.**

If either party defaults in the performance of any obligation of this Contract, the party claiming default shall notify the other party in writing of the nature of the default. In the event of litigation (including mediation/arbitration, if applicable) between the parties, the prevailing party shall recover, in addition to damages or equitable relief, the cost of litigation including reasonable attorney's fees. This provision shall survive Closing.

(a) If Buyer defaults, Seller may either accept the Earnest Money and interest thereon as liquidated damages and release Buyer from the Contract (in lieu of making any claim in court), or Seller may pursue any remedy at law or in equity.

(b) If Seller defaults, Buyer may either release Seller from liability upon Seller's release of the Earnest Money (including interest) and reimbursement to Buyer for all direct costs and expenses, as specified in Buyer's notice of default (in lieu of making any claim in court), or Buyer may pursue any remedy at law or in equity, including enforcement of sale.

**13. CASUALTY AND EMINENT DOMAIN.**

(a) **Casualty.** Risk of loss to the improvements on the Property shall be borne by Seller until Closing. If the Property is damaged or destroyed by earthquake, flood, stormwater, sinkhole formation or other such disaster, after the Effective Date and prior to Closing, Seller shall immediately notify Buyer in writing of the damage or destruction and the amount and terms of insurance proceeds available, if any. Buyer may either (i) proceed with the Closing and be entitled to all insurance proceeds, if any, payable to Seller under all policies insuring the property; or (ii) terminate this Contract, whereupon all Earnest Money shall be returned promptly to Buyer. Buyer shall give written notice of its election to Seller within five (5) calendar days after Buyer has received Seller's written notice of such damage or destruction and the amount of insurance proceeds available, and Closing will be extended accordingly, if required to permit such notices to be given. Failure by Buyer to so notify Seller in writing shall constitute an election to close. A termination hereunder does not constitute a default by Seller or Buyer.

SEE BELOW

~~(b) **Eminent Domain.** In the event that prior to Closing, any portion of the Property is taken by eminent domain, or becomes the subject of eminent domain proceedings threatened or commenced, Seller shall immediately notify Buyer in writing thereof, and provide Buyer with copies of any written communication from any condemning authority. If any of said events shall occur, Buyer may terminate this Contract by written notice to Seller within five (5) calendar days after Buyer has received Seller's written notice, in which event the Earnest Money shall be returned to Buyer. If Buyer elects to close, then: (i) if the transfer to the condemning authority takes place prior to Closing hereunder, the remainder of the Property shall be conveyed to Buyer at Closing hereunder; (ii) if the transfer to the condemning authority has not taken place prior to Closing, the entire Property shall be conveyed to Buyer at Closing hereunder; (iii) if Seller has received payment for such condemnation or taking prior to the Closing hereunder, the amount of such payment shall be a credit against the Purchase Price payable by Buyer hereunder; and (iv) if Seller has not received such payment at the time of Closing, Seller shall assign to Buyer all claims and rights to or arising out of such taking, including the right to conduct any litigation in respect of such condemnation.~~

(c) **Land Dedications.** Any land dedication or land grant by or required of Buyer acting as Owner Under Contract for streets, curb cuts, utilities, or similar purpose as a condition of a rezoning, resubdivision, building plan or other governmental approval requested by Buyer shall not constitute a taking by eminent domain. As a result of any land dedication or land grant, Buyer shall have no cause to seek any adjustment in the Purchase Price or to terminate this Contract.

(b) Eminent Domain. Buyer hereby acknowledges and represents that the Property is being sold by Seller under the threat of eminent domain.

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**14. NOTICES.**

Any and all notices required or permitted hereunder shall be in writing and shall be deemed given upon receipt and shall be delivered by: (i) personal delivery; (ii) United States registered or certified mail, return receipt requested; or (iii) overnight commercial package courier or local delivery service, or (iv) facsimile transmission, in all events prepaid and addressed:

In the case of Seller to (Attention):	Don Brasher
Company:	Co-Trustee
Mailing Address:	18575 Olive Street Road Chesterfield MO 63005
Fax Number:	

With copy to (Attention):	David Human
Company Name:	Husch & Eppenberger, LLC
Mailing Address:	190 Carondelet Plaza, Ste. 600 Clayton, MO 63105
Fax Number:	314-480-1505

In the case of Buyer to (Attention):	Mike Giesel
Company Name:	Director, Public Works
Mailing Address:	City of Chesterfield 690 Chesterfield Parkway West Chesterfield, MO 63017-0670
Fax Number:	636-537-4798

With copy to (Attention):	
Company Name:	
Mailing Address:	
Fax Number:	

Each party shall have the right to change its foregoing address by written notice to the other party.

**15. ASSIGNABILITY OF CONTRACT.**

Buyer shall have the right to assign its rights under this Contract provided that Seller consents to such assignment, which consent shall not be unreasonably withheld or delayed. Upon Buyer's assignment of this Contract, such assignee shall be deemed substituted, for the named Buyer, and such assignee shall be deemed to have assumed Buyer's obligations hereunder, without any release of Buyer unless Seller releases Buyer in writing.

**16. TIME IS OF THE ESSENCE.**

Time is of the essence in the performance of the obligations of the parties under this Contract.

**17. BINDING EFFECT.**

This Contract shall be binding on and for the benefit of the parties and their respective heirs, personal representatives, executors, administrators, successors and assigns.

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**18. GOVERNING LAW.**

This Contract shall be considered a Contract for the sale of real property and shall be construed in accordance with the laws of the State of Missouri.

**19. ENTIRE AGREEMENT.**

This Contract and any riders, addenda and exhibits attached hereto constitute the entire agreement between the parties hereto and there are no other understandings, written or oral, relating to the subject matter hereof. This Contract may not be changed, modified or amended, in whole or in part, except in writing signed by both Buyer and Seller.

**20. CONSTRUCTION.**

Words and phrases shall be construed as in the singular or plural number, and as masculine, feminine or neuter in gender, according to the context.

**21. SATURDAYS, SUNDAYS AND HOLIDAYS.**

If any date for the occurrence of an event or act under this Contract falls on a Saturday, Sunday or legal holiday in the State of Missouri, then the time for the occurrence of such event or act shall be extended to the next succeeding business day.

**22. EFFECTIVE DATE.**

The "Effective Date" of this Contract is the date of the last of Buyer or Seller to execute this Contract as an accepted Contract. Facsimile transmission of the Contract and Riders shall constitute one acceptable method to provide notice of acceptance ("Effective Date") between Buyer and Seller, and each agree to deliver executed originals of Contracts and Riders promptly thereafter.

~~**23. SELLER'S STREET AND FLOOD PLAIN DISCLOSURE.**~~

~~(a) Seller warrants and represents the street or road providing access to the Property  "is" OR  "is not" (select ONLY one) accepted for maintenance by any governing authority.~~

~~(Note: Buyer acknowledges if the street or road providing access to the Property is not accepted for maintenance by any governing authority, Buyer may be responsible for private maintenance hereafter.)~~

~~(b) Seller warrants and represents the following flood-plain disclosure (CHECK IF CORRECT)~~

- |                          |   |
|--------------------------|---|
| <input type="checkbox"/> | Any elevation of the street or road providing access to the property is less than or equal to the 100-year flood plain elevation. |
| <input type="checkbox"/> | Any elevation of the street or road providing access to the property is less than or equal to the 500-year flood plain elevation. |
| <input type="checkbox"/> | Any elevation of the property is less than or equal to the 100-year flood plain elevation.  |
| <input type="checkbox"/> | Any elevation of the property is less than or equal to the 500-year flood plain elevation.  |

~~(Note: Buyer acknowledges if the street or road providing access to the Property or any elevation of the Property is less than or equal to the 100 year or 500 year flood plain elevation(s), Buyer may be required to purchase flood plain insurance.)~~

**24. RIDERS.**

The following riders or supplements are attached hereto and incorporated herein as part of this Contract:

Tenant Estoppel,  Like Kind Exchange,  Mediation/Arbitration

Other Riders:

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**OFFER BY BUYER.**

Buyer Executes Offer:	<i>Michael Herring</i>	Date	9/9/04	Time	9AM
Buyer's Executed Offer Shall Be Revoked:			9/16/04		9AM

BUYER:	City of Chesterfield
Signature:	X <i>Michael Herring</i>
Title:	City Administrator
Print Full Name:	Michael Herring
Tax Identification Number(s):	

**ACCEPTANCE OR COUNTER-OFFER BY SELLER.**

Seller Accepts Offer:	9/9/04	
	OR	
Seller Executes 1 <sup>st</sup> Counter-Offer:		
Seller's 1 <sup>st</sup> Counter-Offer Shall Be Revoked:		

SELLER:	Enid J. Brasher Trust
Signature:	X <i>Donald Brasher</i> X <i>Barbara Maloney</i>
Title:	Co-Trustees
Print Full Name:	Donald Brasher and Barbara Maloney
Tax Identification Number(s):	

**ACCEPTANCE OR COUNTER-OFFER BY BUYER.**

Buyer Accepts 1 <sup>st</sup> Counter-Offer:		
	OR	
Buyer Executes 2 <sup>nd</sup> Counter-Offer:		
Buyer's Executed 2 <sup>nd</sup> Counter-Offer Shall Be		

BUYER:	
Signature:	

**ACCEPTANCE OR COUNTER-OFFER BY SELLER.**

Seller Accepts 2 <sup>nd</sup> Counter-Offer:		
	OR	
Seller Executes 3 <sup>rd</sup> Counter-Offer:		
Seller's Executed 3 <sup>rd</sup> Counter-Offer Shall Be		

SELLER:	
Signature:	

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**ACCEPTANCE OR COUNTER-OFFER BY BUYER.**

Buyer Accepts 3 <sup>rd</sup> Counter-Offer:	Date	Time
	OR	
Buyer Executes 4 <sup>th</sup> Counter-Offer:		
Buyer's Executed 4 <sup>th</sup> Counter-Offer Shall Be		

BUYER: \_\_\_\_\_

Signature: \_\_\_\_\_

**ACCEPTANCE OR COUNTER-OFFER BY SELLER.**

Seller Accepts 4 <sup>th</sup> Counter-Offer:		
	OR	
Seller Executes 5 <sup>th</sup> Counter-Offer:		
Seller's Executed 5 <sup>th</sup> Counter Offer Shall Be		

SELLER: \_\_\_\_\_

Signature: \_\_\_\_\_

**ACCEPTANCE OR COUNTER-OFFER BY BUYER.**

Buyer Accepts 5 <sup>th</sup> Counter-Offer:		
	OR	
Buyer Executes 6 <sup>th</sup> Counter-Offer:		
Buyer's Executed 6 <sup>th</sup> Counter-Offer Shall Be		

BUYER: \_\_\_\_\_

Signature: \_\_\_\_\_

**ACCEPTANCE OR COUNTER-OFFER BY SELLER.**

Seller Accepts 6 <sup>th</sup> Counter-Offer:		
	OR	
Seller Executes 7 <sup>th</sup> Counter-Offer:		
Seller's Executed 7 <sup>th</sup> Counter-Offer Shall Be		

SELLER: \_\_\_\_\_

Signature: \_\_\_\_\_

U.S. TITLE GUARANTY COMPANY  
8135 FORSYTH BOULEVARD  
ST. LOUIS, MISSOURI 63105  
PHONE: 314-727-2900; FAX: 314-727-9763

September 10, 2004

City of Chesterfield  
690 Chesterfield Parkway West  
Chesterfield, Missouri 63005

RECEIVED OF: City of Chesterfield

- ( ) Cash in the amount of \$ \_\_\_\_\_
- ( X ) Check No. 1366 in the amount of \$25,000.00
- ( ) Wire Transfer in the amount of \$ \_\_\_\_\_

When cashed said amount will represent an escrow deposit concerning a certain sale contract dated September 9, 2004 for the property known and numbered as 18750, 18770 and 18774 Olive Street Road, Chesterfield, Missouri 63005. By and between City of Chesterfield (Buyer) and Enid J. Brasher Trust (Seller).

U.S. TITLE GUARANTY COMPANY



Deborah K. Griffin  
Escrow Officer

**Special Allocation/ TIF Fund**

ACCOUNT NO.		VENDOR		USTI00	U.S. TITLE		CHECK NO.	0000001366	CHECK DATE	09/09/04
VOUCHER	INVOICE NO.	DATE	REFERENCE	INVOICE AMT	AMOUNT PAID	DISCOUNT	NET AMOUNT			
57655	STMWTR RESVR	09/09/04	PURCHASE OF LAND FOR STOR	25,000.00	25,000.00	.00	25,000.00			

CHECK TOTAL 25,000.00

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER



**Special Allocation/ TIF Fund**  
 690 Chesterfield Parkway West  
 Chesterfield, MO 63017

First National Bank  
 7707 Forsyth Boulevard  
 Clayton, MO 63106

80-460/810

CHECK NO.	CHECK DATE	VENDOR NO.
0000001366	09/09/04	USTI00

PAY TWENTY-FIVE THOUSAND AND 00/100 DOLLARS\*\*\*\*\*

CHECK AMOUNT
\$*****25,000.00

TO THE ORDER OF U.S. TITLE

*Michael Hoffman*  
 \_\_\_\_\_  
*Janet King*  
 \_\_\_\_\_

THE BACK OF THIS DOCUMENT CONTAINS AN ARTIFICIAL WATERMARK—HOLD AT AN ANGLE TO VIEW

⑈0000001366⑈ ⑆081004601⑆ ⑈0163801⑈