

BILL NO. 2697

ORDINANCE NO. 2513

AN ORDINANCE TO ACCEPT ASSIGNMENT OF A LEASE FOR A 1.4 ACRE TRACT OF LAND LOCATED AT 16659 OLD CHESTERFIELD ROAD CURRENTLY OWNED BY DOORACK BRICK CONTRACTING CO. AND LEASED TO CHESTERFIELD VILLAGE, INC.

WHEREAS, the City of Chesterfield has been offered an assignment of a lease between Doorack Brick Contracting Co. and Chesterfield Village, Inc.; and

WHEREAS, the City needs the 1.4 acre tract for construction of a trailhead and transportation hub within the City; and

WHEREAS, the City, under the terms of the lease assignment can purchase the 1.4 acre tract for \$ 1,000,000.00 beginning in 2016.

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 authorized to accept assignment, in a form similar to that attached, of the lease for the 1.4 acre tract at 16659 Old Chesterfield Road at monthly rental rate of \$ 6,500.00 per month and to continue the month to month sublease at a rental rate of \$ 4,000.00 per month and to sign all such agreements and other documents as are reasonably necessary to complete the assignment of lease and subsequent sublease.

Section 2. Said Agreement shall be in full force and effect from and after its passage and approval.

Passed and approved this 16th day of March, 2009.


MAYOR

ATTEST:

Judith A. Naggian
CITY CLERK

FIRST READING HELD: 3/16/09

AGREEMENT FOR ASSIGNMENT AND ASSUMPTION OF LEASE

This Agreement for Assignment and Assumption of Lease ("Agreement") is made as of the 1st day of April, 2009 (the "Effective Date"), by and between **Chesterfield Village, Inc.**, a Missouri corporation ("CVI"), and the **City of Chesterfield, Missouri**, a Missouri municipal corporation ("Chesterfield").

RECITALS:

A. CVI and Doorack Brick Contracting Co. entered into that certain Ground Lease and Purchase Option dated December 10, 2008 (the "Lease"), a true and correct copy of which is attached hereto as Exhibit A, for lease of certain real property described in the Lease (the "Property").

B. CVI wishes to assign, transfer and convey, and Chesterfield has agreed to acquire and accept all right, title and interest of CVI under the Lease subject to the terms of this Agreement.

NOW, THEREFORE, with reference to the foregoing recitals, which are incorporated herein by this reference, and for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Assignment of the Lease. CVI hereby grants, sells, assigns, transfers, conveys and delivers to Chesterfield all of its right, title and interest in and to the Lease, to have and to hold the same from and after the Effective Date for the remainder of the term of the Lease.
2. Assumption of Lease. Effective on, from and after the Effective Date, Chesterfield accepts the foregoing assignment and hereby assumes and agrees to perform any and all obligations of CVI required to be performed under the Lease.
3. Development Restrictions. CVI shall have the ongoing right to review all architectural, site improvement, and landscaping plans for the Property prior to their final passage and implementation, and to evaluate such plans and require reasonable changes. Any increased cost resulting from any enhancements or additional improvements that CVI requires will be paid by CVI.
4. Re-assignment for Failure to Exercise Purchase Option. If Chesterfield is unable or otherwise fails to exercise the purchase option granted under the Lease and close on the purchase of the Property prior to expiration of the Lease term, then Chesterfield shall, at least ninety (90) days prior to expiration of the Lease term, give CVI written notice of such failure and CVI shall have the right to require Chesterfield to assign the Lease back to CVI. In such event, Chesterfield shall, upon CVI's request, immediately assign the Lease back to CVI so that CVI shall have the option to purchase the Property under the same terms as currently stated in the Lease.
5. Re-assignment Prior to Lease Termination for Tenant Default. If Chesterfield fails to appropriate funds for rent in a given year or otherwise fulfill the Tenant obligations under the Lease giving rise to a Tenant default, Chesterfield will give CVI sufficient advance notice to allow CVI a reasonable period of time to take the Lease back over prior to its termination due to such a default. In such event, Chesterfield shall, upon CVI's request, immediately assign the Lease back to CVI so that CVI shall have the right (but not the obligation) to cure any Tenant defaults and to preserve the option to purchase the Property under the same terms as currently stated in the Lease. If Chesterfield fails or refuses to so assign the Lease back to CVI, then the Lease shall revert to CVI ipso facto and

by its execution and consent hereof, Doorack Brick Contracting Co. agrees in such event to thereafter recognize CVI as the Tenant under the Lease.

6. Right of First Refusal. After Chesterfield exercises the purchase option under the Lease and takes title to the Property, CVI shall have a right of first refusal to purchase the Property from Chesterfield for a period of twenty (20) years from the date Chesterfield takes title to the Property (the "ROFR Period"). If at any time during the ROFR Period, Chesterfield receives one or more bona fide offers from third parties to purchase all or any part of the Property, and if any such offer is acceptable to Chesterfield, then Chesterfield shall promptly notify CVI in writing (the "Offer Notice"), giving the name and address of the offeror, and the price, terms, and conditions of such offer, and CVI shall have fifteen (15) days from and after the receipt of the Offer Notice in which to elect to purchase the Property for the same consideration and on the same terms and conditions contained in the bona fide offer. If CVI does not elect to purchase the Property: (a) CVI shall be deemed to have irrevocably waived all further rights under this Section 6, and Chesterfield shall be free to sell the Property to any purchaser on the same or better terms than those set forth in the Offer Notice; and (b) any purchaser shall take the property free and clear of CVI's right of first refusal after the change of ownership.

7. Annual Allocation of Funds. Chesterfield represents and warrants to CVI that Chesterfield has sufficient reserves of funds to cover all of the payments required of the Tenant under the Lease and that this Agreement and Chesterfield's assumption of the Tenant obligations in the Lease constitute legally enforceable and valid obligations of the City of Chesterfield.

8. Indemnification.

(a) CVI hereby agrees to indemnify, save, and hold harmless Chesterfield from any and all liability, loss, damage, claim, cost or expense, including reasonable attorneys' fees, which Chesterfield may suffer or incur by reason of any act or cause of action occurring or accruing prior to the Effective Date and arising out of or relating to CVI's failure to perform any of the obligations of CVI under the Lease.

(b) Chesterfield hereby agrees to indemnify, save, and hold harmless CVI from any and all liability, loss, damage, claim, cost or expense, including reasonable attorneys' fees, which CVI may suffer or incur by reason of any act or cause of action occurring or accruing on or after the Effective Date and arising out of or relating to Chesterfield's failure to perform any of the obligations of Chesterfield under the Lease.

9. Further Action. CVI and Chesterfield agree that each shall execute and deliver or cause to be executed and delivered from time to time such instruments, documents, agreements, consents and assurances and shall take such other action as Chesterfield or CVI reasonably may require more effectively to sell, assign, transfer, and convey to and vest in Chesterfield all right, title and interest in and to the Lease, and evidence the assumption by Chesterfield of all obligations under the Lease arising from and after the Effective Date. CVI will promptly remit and send to Chesterfield any and all payments, funds, assets, notices, reports and other documents and information received by CVI or its agents or representatives after the Effective Date that relate to the Lease.

10. Memorandum. The parties shall execute a recordable memorandum of this Agreement in mutually agreeable form, which memorandum shall be recorded by CVI at CVI's

expense: Such memorandum shall, among other things, specifically describe CVI's right of first refusal set forth in Section 6, the development restrictions and approval rights set forth in Section 3, and Chesterfield's obligation to assign the Lease back to CVI in the event of a default or failure to exercise the purchase option set forth in Sections 4 and 5.

11. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall together constitute one agreement which is binding upon all the parties hereto, notwithstanding that all parties are not signatories to the same counterpart.

12. Remedies. If Chesterfield breaches any provision of this Agreement, CVI shall have all remedies available to it at law or in equity, including the right to injunction.

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

CVI:

Chesterfield Village, Inc.,
a Missouri corporation

By: Kathleen Higgins
Name: KATHLEEN HIGGINS
Title: VP

Chesterfield:

City of Chesterfield, Missouri,
a Missouri municipal corporation

Witness: Robert M. J. Hegge
Print Name: Robert Hegge

By: Michael W. Berry
Name: Michael W. Berry
Title: City Administrator

LANDLORD CONSENT

Doorack Brick Contracting Co. hereby consents to the foregoing Agreement for Assignment and Assumption of Lease and releases Chesterfield Village, Inc. from any further obligations under the Lease accruing after the Effective Date.

Doorack Brick Contracting Co.

By: Marilyn B. Doorack
Name: MARILYN B. DOORACK
Title: Secretary

Exhibit A

The Lease

[Attached]

GROUND LEASE AND PURCHASE OPTION

between

DOORACK BRICK CONTRACTING CO.

and

CHESTERFIELD VILLAGE, INC.

Dated December 10, 2008

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Schedule A - Description of the Property

GROUND LEASE AND PURCHASE OPTION

DEC.

This GROUND LEASE AND PURCHASE OPTION, dated ~~November~~ 10, 2008 (this "Lease"), is by and between DOORACK BRICK CONTRACTING CO., a Missouri corporation ("Landlord") and CHESTERFIELD VILLAGE, INC., a Missouri corporation ("Tenant").

1. Lease of Property. In consideration of the rents and covenants herein stipulated to be paid and performed by Tenant and upon the terms and conditions as are herein specified, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the real property generally described and depicted on Schedule A attached hereto (the "Property").

2. Use of the Property. Tenant shall have the right to demolish any existing improvements and to remodel, reconstruct, and construct buildings and other improvements and to otherwise use and operate the Property, or cause the Property to be used and operated, in compliance with all Legal Requirements ("Tenant's Use"). Tenant shall not suffer or permit any mechanic's liens to be filed against Landlord's interest in the Property. Tenant shall also have the right to rezone the Property to accommodate Tenant's Use. Landlord shall cooperate with Tenant and assist Tenant with any such rezoning and construction, at no cost to Landlord, and shall execute such applications, permits, easements and other documents as Tenant may reasonably request in order to efficiently carry out Tenant's Use.

3. Environmental Conditions.

(A) Landlord hereby represents and warrants to Tenant that, to the best of Landlord's knowledge, there are no Hazardous Materials present in, on, under or around the Property. Landlord and Tenant shall promptly notify the other party of: (i) any enforcement, cleanup or other regulatory action taken or threatened by any governmental or regulatory authority with respect to the presence of any Hazardous Material on the Property or the migration thereof from or to other property, (ii) any demands or claims made or threatened by any party relating to any loss or injury resulting from any Hazardous Material on the Property, (iii) any release, discharge or non-routine, improper or unlawful disposal or transportation of any Hazardous Material on or from the Property or in violation of this Article, and (iv) any matters where either party is required by law to give a notice to any governmental or regulatory authority respecting any Hazardous Material on the Property. The term "Hazardous Material" for purposes hereof shall mean any chemical, substance, material or waste or component thereof which is now or hereafter listed, defined or regulated as a hazardous or toxic chemical, substance, material or waste or component thereof by any federal, state or local governing or regulatory body having jurisdiction, or which would trigger any employee or community "right-to-know" requirements adopted by any such body, or for which any such body has adopted any requirements for the preparation or distribution of a material safety data sheet.

(B) If any Hazardous Material is released, discharged or disposed of by Tenant or any other occupant of the Property, or their employees, agents or contractors, on or about the Property in violation of the foregoing provisions, Tenant shall remediate or cause the remediation of the same in accordance with applicable law. If any Hazardous Material is

released, discharged, disposed of, or discovered on or about the Property and such release, discharge or disposal is not caused by Tenant or other occupants of the Property, or their employees, agents or contractors, such release, discharge or disposal shall be promptly remediated by Landlord in accordance with applicable law.

(C) If subsequent to the date Tenant accepts possession of the Premises it is determined that there are any asbestos-containing materials or other Hazardous Materials in the Property which were installed prior to Landlord's delivery of the Property to Tenant, and such Hazardous Materials are required by applicable law to be removed, encapsulated or otherwise treated, Landlord, at Landlord's expense, shall as soon as practicable after notice thereof from Tenant, remediate said Hazardous Materials in accordance with applicable law.

4. Term; Due Diligence.

(A) The term of this Lease shall be for a period of ten (10) years, commencing on the expiration of Tenant's Due Diligence Period (the "Term"), unless and until this Lease shall be otherwise terminated as provided herein.

(B) For a period of sixty (60) days after the date first set forth above ("Tenant's Due Diligence Period"), Tenant shall have the right to investigate, conduct, obtain and review, as applicable, at its sole cost and expense: (i) the Property; (ii) a land survey; (iii) all governmental and quasi-governmental approvals necessary or desirable for Tenant's Use; (iv) a title commitment and policy insuring Tenant's leasehold interest; (v) an environmental site assessment; and (vi) any other matters with respect to the Property. Tenant agrees to indemnify and hold Landlord harmless from and against all loss, cost, liability and expense suffered by Landlord as a result of damage to persons or property arising from Tenant's activities on the Property pursuant to this subparagraph. Tenant shall repair all damage to the Property arising out of or due to Tenant's investigations and reviews on the Property pursuant to this subparagraph. In the event that Tenant, in its sole discretion, is not satisfied for any reason with the results of its due diligence provided for hereunder, Tenant shall have the right, on or before the last day of Tenant's Due Diligence Period, to terminate this Lease by delivering written notice to Landlord of Tenant's election to terminate.

5. Surrender Upon the expiration or sooner termination of this Lease, Tenant shall quit and surrender the Property to Landlord in its as-is condition and repair (subject to and in compliance with Paragraph 22 hereof), free and clear of all liens, and security interests. Tenant shall have the right, but shall not be obligated, to remove any fixtures and improvements and its personal property and signage; provided that Tenant shall repair all damage caused by the removal of its fixtures, improvements, personal property and signage. Any fixtures, improvements and personal property not removed by Tenant shall be deemed abandoned and become the property of Landlord.

6. Rent. Tenant agrees, upon the expiration of Tenant's Due Diligence Period (provided Tenant does not terminate the Lease during Tenant's Due Diligence Period), to commence payments of base rent (the "Rent") to Landlord in monthly installments as follows:

Lease Year	Monthly Rent	Annual Rent
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1-10	\$6,500	\$78,000
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Rent shall be payable in advance on the first (1st) day of each calendar month after expiration of Tenant's Due Diligence Period without set-off, abatement or deduction of any kind. If the expiration of Tenant's Due Diligence Period occurs on a date that is other than the first (1st) day of a calendar month, then Rent for such month shall be prorated for the remaining number of days in such month.

7. Utilities. All utilities and utility services used by Tenant in, on or about the Property, including, without limitation, electricity, gas, water, trash pick-up, sewer and telephone, shall be paid for by Tenant and shall be contracted for by Tenant in its own name, and Tenant shall, at its sole cost and expense, procure any and all permits, licenses or authorizations necessary in connection therewith.

8. Taxes and Assessments. Tenant shall pay or cause to be paid all taxes, assessments and levies imposed on or assessed against the Property or arising out of the ownership or leasing thereof before any fine, penalty, interest or cost may be added or any default may be claimed or any termination or foreclosure or forfeiture procedures for nonpayment may be commenced. Tenant shall pay personal property taxes and any taxes, assessments and levies on utilities consumed by Tenant.

9. Insurance; Indemnification.

(A) Tenant shall throughout the Term, at its sole cost and expense, maintain such policies of property and liability insurance as Tenant deems necessary in its sole discretion. Provided, however, Tenant shall maintain a policy of commercial general liability insurance in which the limits of liability shall not be less than \$1,000,000 per occurrence with \$2,000,000 combined single limits. The policy of such insurance shall be with a company licensed to do business in the State of Missouri and with a Best's rating of at least A-, Class VIII. The policy shall name Landlord as an additional insured and shall provide that the insurer shall not cancel, change or amend such insurance without first giving Landlord at least thirty (30) days prior written notice.

(B) Landlord and Tenant hereby mutually waive any and all rights of recovery against one another based upon the negligence of either Landlord or Tenant or the agents or employees of Landlord or Tenant for real or personal property loss or damage occurring to the Property or any part thereof or any personal property located therein, but only to the extent that such loss or damage is covered or required to be covered by insurance. Each party shall inform its respective insurance carriers of this waiver in the manner required with respect to policies issued by such carriers, or otherwise arrange to the extent necessary, so the coverage afforded thereby is not adversely affected.

10. Option to Purchase.

(A) In consideration of the mutual covenants and agreements herein set forth, Landlord hereby conveys and grants to Tenant commencing on February 1, 2016, the exclusive option to purchase the Property and all improvements thereon, and all of Landlord's right title and interest in and to all public and private rights of way, easements, privileges, and

appurtenances belonging or appertaining thereto for the purchase price of One Million Dollars (\$1,000,000.00) plus the remaining Rent that is unpaid for the remaining life of the Lease as of the closing of Tenant's purchase. At the closing, the accelerated Rent shall become a part of the purchase price and shall no longer be deemed "rent." Tenant's purchase option will be exercisable by Tenant giving written notice to Landlord of its election to exercise the option (the "Option Notice"), provided Tenant is not in default under the terms of the Lease and the Lease is still in full force and effect at the time the Option Notice is received by Landlord (the "Option Period"). If Tenant elects to exercise the purchase option during the Option Period:

(i) The Option Notice shall specify a location and date for closing (which date shall be at least thirty (30) days after delivery of the Option Notice and no sooner than February 1, 2016 nor more than one hundred eighty (180) days after the date of the Option Notice), and the parties shall proceed to closing as herein set forth. In the event the closing date set forth in the Option Notice is after expiration of the Term of this Lease, then the Term shall be extended and the Monthly Rent paid until such closing date.

(ii) At the closing Landlord shall deliver to Tenant:

(a) a special warranty deed in recordable form approved by Tenant, conveying to Tenant marketable and insurable fee simple title, free and clear of all liens and encumbrances, subject only to real estate taxes for the current year which are a lien on the Property, but which are not yet due and payable, zoning regulations, and easements and restrictions that are of record on the date of this Lease or approved in writing by Tenant; and

(b) such other usual and customary documents reasonably required by Tenant's title company.

(iii) At the closing, Tenant shall deliver to Landlord:

(a) the purchase price; and

(b) such other usual and customary documents reasonably required by Tenant's title company.

11. Assignment; Mortgages.

(A) Tenant shall have the right to assign this Lease (including the Option) and to sublease the Property with the consent of Landlord which will not be unreasonably withheld. Notwithstanding the foregoing, a sublease or assignment to the City of Chesterfield shall be permitted and not require Landlord's approval, provided that Tenant gives Landlord prompt notice of any such assignment or sublease. In the case of an assignment of this Lease or sublease of the Property, the use thereof by such assignee or sublessee shall be consistent with Tenant's Use and the assignee or sublessee agrees in writing to be bound by all the terms, covenants and obligations of a tenant under this Lease.

(B) Tenant shall further have the right to grant liens upon, pledge or mortgage its interest in this Lease and Tenant's Improvements on the Property without the necessity of obtaining Landlord's consent, provided (i) that Tenant promptly gives Landlord notice of such lien, pledge or mortgage, and (ii) that any such lien or mortgage is released prior to expiration of this Lease if Tenant is not exercising the Option. Tenant shall have no right to mortgage, pledge or otherwise encumber all or any portion of the land underlying the Property without Landlord's prior written consent. Any such mortgage, deed of trust, lien or pledge executed by Tenant shall at all times be subordinate to Landlord's fee interest in the Property and any deed of trust, lien or other security granted by Landlord thereon.

(C) Upon request of the holder of any mortgage that may affect the land underlying the Property, Tenant will subordinate its rights under this Lease to the lien thereof and to all advances made or hereafter to be made upon the security thereof, and Tenant shall execute, acknowledge and deliver an instrument effecting such subordination in a commercially reasonable form within thirty (30) days after written request; provided, however, that Tenant's obligation to execute and deliver such subordination shall be conditioned upon Landlord obtaining and delivering to Tenant, in recordable form, from the holder of any mortgage to which this Lease is to become subordinate a non-disturbance agreement containing a covenant binding upon the holder thereof to the effect that as long as Tenant is not in default under this Lease, or if Tenant is in default hereunder, as long as Tenant's time to cure such default has not yet expired, this Lease shall not be terminated or modified in any respect whatsoever, nor shall the rights of Tenant hereunder or its occupancy of the Property be affected in any way by reason of such mortgage or any foreclosure action or other proceeding that may be instituted in connection therewith, and that, except to the extent that the holder of such mortgage is required to do so to effectively foreclose such mortgage, Tenant shall not be named as a defendant in any such foreclosure action or other proceeding.

(D) Within thirty (30) days after Tenant's written request therefor, Landlord shall deliver to Tenant or to any prospective transferee of this Lease or any leasehold mortgagee a written statement certifying (if such is the case) that this Lease is in full force and effect and has not been assigned, modified, supplemented or amended; that all covenants, conditions and agreements on the part of Tenant hereunder have been performed; the date to which Rent and any other charges have been paid; and whether Landlord knows of any default on the part of Tenant or has any claim against Tenant and, if so, specifying the nature of such default or claim.

12. Condemnation.

(A) Tenant or Landlord, as the case may be, shall promptly notify the other party in the event it has knowledge or receives notice of any pending or proposed condemnation affecting all or any portion of the Property. If all of the Property shall be acquired by the right of condemnation or eminent domain for any public or quasi-public use or purpose, or sold to a condemning authority under threat of condemnation in lieu thereof, then this Lease shall cease and terminate as of the date of title vesting in such proceeding (or sale).

(B) In the event of a partial taking or condemnation of the Property, Tenant (i) may elect to terminate this Lease, in which case the condemnation award or settlement shall be paid according to subparagraph 12(C) below, or (ii) may elect to continue this Lease, in which case

the condemnation award or settlement shall be paid according to subparagraph 12(C) below and the Rent shall be reduced proportionate to the square footage of the Property so taken or sold.

(C) In the event of any condemnation, taking, or sale as aforesaid (whether whole or partial), Landlord shall be entitled to receive and retain a portion of the condemnation award or settlement for its fee simple interest in and to the Property, and Tenant shall be entitled to receive a portion of the award or settlement and recover from the condemning authority the amount to compensate Tenant for the taking of Tenant's buildings, improvements, fixtures and equipment, loss of use, and leasehold interest. Termination of this Lease shall not affect the right of the respective parties to such awards or settlements.

13. Default and Remedies.

(A) If Tenant fails to pay Rent or any other sum that it is required to pay hereunder and such failure continues for five (5) days after written notice to Tenant of such failure, then such failure shall constitute an Event of Default under this Lease. If Tenant fails to perform any other obligation required hereunder within sixty (60) days after written notice from Landlord (or if more than sixty (60) days shall be reasonably required because of the nature of the defaults, if Tenant fails to promptly commence and diligently proceed to cure such defaults after such notice), such failure shall constitute an Event of Default under this Lease.

(B) Subject to the terms of this Lease, Landlord shall have all rights available at law or in equity for a Tenant Event of Default hereunder, including, without limitation, termination of the Lease and of Tenant's right of possession of the Property, or, without terminating this Lease, to re-enter the Property and endeavor to re-let the Property at Tenant's expense. In lieu of termination of this Lease, Landlord shall have the right, but not the obligation, to protect and enforce the rights of Landlord or obligations of Tenant hereunder, whether by action, suit or proceeding at law or in equity (for the specific performance of any covenant, condition or agreement contained in this Lease, injunctive relief in case of the violation or attempted or threatened violation of any of the provisions hereof, a decree compelling performance of any of the provisions hereof, or in aid of the execution of any power herein granted, or for the enforcement of any other appropriate legal or equitable remedy) or otherwise as Landlord shall reasonably deem necessary or advisable to protect and enforce any of its rights or the obligations of Tenant hereunder.

(C) If Landlord neglects or fails to perform or observe any of the covenants, terms, provisions or conditions on its part to be performed or observed under this Lease within sixty (60) days after notice of default (or if more than sixty (60) days shall be reasonably required because of the nature of the default, if Landlord fails to promptly commence and diligently proceed to cure such default after such notice), then Tenant may immediately or at any time thereafter, in addition to any other rights and remedies as may otherwise be provided in this Lease for a Landlord default, pursue all rights and remedies it may have at law and equity generally.

14. Additional Rights. Failure to insist upon the strict performance of any provision hereof or to exercise any option, right, power or remedy contained herein shall not constitute a waiver or relinquishment thereof for the future.

15. Estoppel. Tenant shall execute, acknowledge, and deliver to Landlord or its designees, within thirty (30) days after requested by Landlord or its designees, a statement in writing certifying, if such is the case, that this Lease is unmodified and in full force and effect (or if there have been modifications that the same is in full force and effect as modified); the date of commencement of this Lease; the dates for which the Rent and other charges have been paid; any alleged defaults and claims against Landlord, and providing such other information as shall be reasonably requested.

16. Notices. All notices, requests, demands and other communications hereunder shall be given (a) by personal delivery (with a written confirmation by the person making such delivery), (b) by certified or registered mail with postage prepaid, return receipt requested, or (c) by nationally-recognized overnight courier as follows:

If to Landlord:

Doorack Brick Contracting Co.
Attention: Bea Doorack
12232 Hadley Hills Road
Sunset Hills, Missouri 63127

With a copy to:

C. Michael Bakewell
Barken & Bakewell, LLP
500 N. Broadway, Suite 2000
St. Louis, Missouri 63102

If to Tenant:

Chesterfield Village, Inc.
c/o Sachs Properties, Inc.
Attention: President
400 Chesterfield Center, Suite 600
Chesterfield, Missouri 63017

With a copy to:

Stinson Morrison Hecker LLP
Attention: John Blumenfeld
168 North Meramec, Suite 400
St. Louis, Missouri 63105

or to such other addresses as either party may provide to the other by written notice as provided hereinabove.

17. Separability; Binding Effect; Governing Law; Memorandum of Lease.

(A) If any provision hereof or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remaining provisions hereof, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and enforceable to the extent permitted by law. All provisions contained in this Lease shall be binding upon, inure to the benefit of, and be enforceable by, Landlord and Tenant and their successors and assigns to the same extent as if each successor and assignee were named as a party hereto. This Lease may not be amended, changed or modified except by a writing signed by Landlord and Tenant. Any amendment, change or modification made otherwise than as

expressly permitted by this section shall be void. This Lease shall be governed by and interpreted in accordance with the laws of the state of Missouri.

(B) Landlord and Tenant shall enter into a short form memorandum of this Lease in form mutually satisfactory to both parties, suitable for recording under the laws of the State of Missouri. Such memorandum may be recorded in the St. Louis County at Tenant's sole cost and expense.

18. Headings and Table of Contents. The table of contents and the headings of the various paragraphs and schedules of this Lease have been inserted for reference only and shall not to any extent have the effect of modifying, amending or changing the expressed terms and provisions of this Lease.

19. Attorneys' Fees. If either party retains an attorney to enforce or interpret this Lease, the prevailing party shall be entitled to recover, in addition to all other items of recovery permitted by law, reasonable attorneys' fees and costs incurred through litigation, bankruptcy proceedings, and all appeals.

20. Limitation of Liability. Notwithstanding any contrary provision of this Lease, Under no circumstances whatsoever shall Landlord or Tenant ever be liable hereunder for consequential damages or special damages. The term "Landlord" shall mean only the owner, at the applicable point in time, of the Property, and in the event of the transfer by such owner of its interest in the Property, such owner shall thereupon be released and discharged from all covenants and obligations of Landlord thereafter accruing, but such covenants and obligations shall be binding during the lease Term upon each new owner for the duration of such owner's ownership. The term "Tenant" shall mean only the ground lessee, at the applicable point in time, of the Property, and in the event of the transfer by such lessee of its leasehold interest in the Property.

21. Patriot Act Certification. Tenant and Landlord each certify to the other that (i) it is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, group, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control; and (ii) it is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity or nation. In addition, Tenant and Landlord hereby agree to defend, indemnify, and hold harmless the other party from and against any and all claims, damages, losses, risks, liabilities, and expenses (including attorneys' fees) and costs arising from or related to any breach of the foregoing certification.

22. Maintenance. Tenant covenants and agrees to keep the Property and all Tenant's construction and improvements thereon in good order, maintenance and repair (reasonable wear and tear excepted), and will keep the Property and all improvements and sidewalks thereon in a neat, clean, and safe condition.

23. Access. Landlord reserves and retains the right to access all portions of the Property during normal business hours upon at least three (3) business days advance notice to Tenant.

24. Net Lease. Landlord and Tenant covenant and agree that it is their intent that this Lease is a net lease to Landlord. Upon commencement of the Term of this Lease, the Rent shall be net to Landlord and all costs, expenses and obligations of every kind related to the Property (with the exception of those mortgages, liens and encumbrances executed by Landlord as Landlord's obligation) shall be paid by Tenant, and Landlord shall be indemnified and held harmless by Tenant from and against the payment of the same.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed as of the date first above written.

LANDLORD:

DOORACK BRICK CONTRACTING CO.

By: William G. Doorack
Name: William G. Doorack
Title: President

TENANT:

CHESTERFIELD VILLAGE, INC.

By: Kathleen Higgins
Name: KATHLEEN HIGGINS
Title: VP

SCHEDULE A

Legal Description of the Property

Property with an address of 16659 Chesterfield Airport Road, Chesterfield, Missouri 63017, situated in the County of St. Louis, State of Missouri, to-wit:

PARCEL NO. 1: A tract of land in U. S. Survey 2031, Township 45 North Range 4 East, and described as follows: Beginning at the intersection of the East line of Olive Street Road, with the South line of the Right of Way of Rock Island Railroad Company thence East along said South line, 120 feet to a point; thence South and parallel with the East line of Olive Street Road, 93 feet to a point; thence Southwest to a point in the East line of Olive Street Road; 136 feet South of the point of beginning (measured along the East line of Olive Street Road), thence Northwardly along said East line, 136 feet to the point of beginning.

PARCEL 2: A tract of land in U. S. Survey 2031, Township 45 North, Range 4 East, in St. Louis County, Missouri, and bounded as follows: South, Southwest and West by the North, Northeast and East line of Olive Street Road; East by the West line of property conveyed to Raymond A. Glaser and wife, by deed recorded in Book 1755 page 276 of the St. Louis County Records; North by the South line of the Rights of Way of Rock Island Railroad Company, EXCEPTING THEREFROM a tract of land described as follows: Beginning at the intersection of the East line of Olive Street Road with the South line of the Right of Way of Rock Island Railroad Company; thence along the South line of said Right of Way, 120 feet to a point; thence South and parallel with the East line of Olive Street Road, 93 feet to a point, thence Southwestwardly to a point in the East line of Olive Street Road, distant 136 feet South of the South line of said Right of Way (as measured along the East line of Olive Street Road); thence Northwardly along the East line of Olive Street Road, 136 feet to the point of beginning. ALSO EXCEPTING THEREFROM that part thereof conveyed to Rachel O. Breckenridge by deed recorded in Book 3654 page 435 of the St. Louis County Records.

PARCEL 3: A tract of land in U. S. Survey 2031, Township 45 North, Range 4 East, in St. Louis County, Missouri, and described as: Beginning at an iron pipe in the North line of Olive Street Road, 60 feet wide, at the Southwest corner of property conveyed to Roy A. Glaser and wife by deed recorded in Book 1755 page 276 of the St. Louis County Records; thence along the West line of Glaser's property, North 19 degrees 13 minutes East 244.07 feet to an iron pipe in the South line of the right of way of the Rock Island Railroad; thence Westwardly, along the South line of said right of way on a curve to the left, the chord of which bears North 78 degrees 41 minutes West 222.88 feet to an iron pipe at the Northeast corner of property conveyed to Clarence Wardenburg by Deed recorded in Book 3171 page 593 of the St. Louis County Records; thence along Wardenburg's East line and the direct prolongation thereof, South 4 degrees 57

minutes East 109.46 feet to an iron pipe; thence South 72 degrees 04 minutes East 19.85 feet to an iron pipe; thence South 17 degrees 47 minutes West 103.00 feet to an iron pipe in the North line of Olive Street Road, 60 feet wide; thence along the North line of said Road, South 63 degrees 57 minutes East 92.88 feet to an iron pipe and South 70 degrees 47 minutes East 61.31 feet to the point of beginning, according to a survey thereof executed by Steele Surveying Company on August 10 and 11, 1956.

Excepting the right-of-way granted to St. Louis County, Missouri by Warranty Deed dated April 1, 1996.

Legal Description provided by Title Company to govern.

ASSIGNMENT AND ASSUMPTION OF PARKING LEASE

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THIS ASSIGNMENT, is made as of this 1 day of April, 2009, by and between Chesterfield Village, Inc., a Missouri corporation ("Assignor") and City of Chesterfield, Missouri, a Missouri municipal corporation ("Assignee").

RECITALS:

WHEREAS, Doorack Brick Contracting Co. ("Doorack") and Henkels & McCoy, Inc. ("H&M") entered into that certain Parking Lease Agreement dated December 10, 2008, a copy of which is attached hereto as Exhibit A (the "Parking Lease"); and

WHEREAS, Doorack and Assignor entered into that certain Ground Lease and Purchase Option dated December 10, 2008 (the "Ground Lease"), and, concurrently therewith, Doorack assigned the Parking Lease to Assignor; and

WHEREAS, Assignor subsequently assigned the Ground Lease to Assignee; and

WHEREAS, Assignor wishes to also assign the Parking Lease to Assignee, and Assignee wishes to accept such assignment.

NOW THEREFORE, Assignor and Assignee hereby agree and state as follows:

1. Assignor hereby transfers, assigns and sets over unto Assignee all of Assignor's right, title and interest in and to the Parking Lease. Assignee hereby accepts the foregoing assignment and assumes all of Assignor's obligations under the Parking Lease arising from and after the date hereof.

2. Assignor shall give H&M written notice of this Assignment and shall, to the extent they reflect sums owed under the Parking Lease after the date hereof, promptly direct all future payments received in connection with the Parking Lease to Assignee.

3. Assignee agrees to, and hereby does, indemnify, save and hold Assignor harmless of, from and against any and all loss, cost, expense, liability, damages, actions, causes of action, demands or claims arising out of or in connection with the obligations of lessor under the Parking Lease arising from and after the date hereof. Assignor agrees to promptly defend, indemnify and hold harmless Assignee with respect to any claims, demands, obligations or payments arising from any breach, default, violation or failure to perform any obligations of Assignor as lessor under the Parking Lease, which have occurred, or which accrue from acts or omissions, on or prior to the date hereof. Assignor further certifies to Assignee that Assignor has not previously assigned or collaterally assigned its rights under the Parking Lease.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be duly executed the day and year first above written.

ASSIGNOR:

Chesterfield Village, Inc.,
a Missouri corporation

By: Kathleen Higgins

Name: KATHLEEN HIGGINS

Title: VP

ASSIGNEE:

City of Chesterfield, Missouri,
a Missouri municipal corporation

By: Michael G. Herring

Name: Michael G. Herring

Title: City Administrator

Witness: Robert Heggre

Print Name: Robert Heggre

EXHIBIT A

The Parking Lease

[Attached]

**PARKING LEASE AGREEMENT
BETWEEN HENKELS & McCOY, INC.
AND Doorack Brick Contracting**

This LEASE AGREEMENT made the 10 day of December, 2008, by and between HENKELS & McCOY, INC. a corporation with its principal offices at 985 Jolly Road, Blue Bell, Pennsylvania 19422 (hereinafter, H&M) and Doorack Brick Contracting (hereinafter, Doorack Brick), a (type of entity) with its principal offices at 12232 Hadley Hill Rd Sun Set Hill Mo 63127 .

WHEREAS H&M desires to lease a portion of property owned by Doorack Brick (Leased Premises) located at Chesterfield Yard, to store (automobiles, trucks, equipment and materials) until the completion of its work on or about 1, 2009.

WHEREAS Doorack Brick agrees to rent to H&M such property on a month-to-month basis at a rate of 4000.00 dollars (\$) per month (or "in kind" work).

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, the parties agree as follows:

1. **POLLUTION AND HAZARDOUS MATERIALS WARRANTY AND INDEMNITY.** Doorack Brick warrants it has fully disclosed to H&M all known or suspected conditions that could give rise to any environmental liabilities in connection with the Leased Premises, including without limitation buried hazardous substances, petroleum products, all known or suspected PCB-containing items, asbestos-containing materials, all underground storage tanks and/or other latent conditions which could result in the release into the environment of such substances or products. ~~Doorack Brick agrees to defend, indemnify and hold harmless H&M, its agents, and employees from and against any claims, damages, losses, costs, including bodily injury, sickness disease or death that may arise due to the breach of any of the foregoing representations and warranties. This indemnification shall survive the term of the Lease and shall be binding for a period of five (5) years thereafter.~~

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[Signature]

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D.B.C.B.
2. **TERMINATION.** Either party may terminate this Lease upon thirty (30) days written notice. (If a security deposit is required, insert the following: H&M shall be entitled to the return of its security deposit within seven days (7) after the inspection of the premises by Superior. Such inspection shall take place no later than seven days (7) after H&M vacates the premises).
3. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement between the parties and there are no oral or written understandings of any kind.

- 4. MODIFICATIONS. Except as otherwise set forth herein, this Agreement can not be changed, modified or otherwise varied except by written agreement signed by both parties.
- 5. SEVERABILITY. It is believed that no provision of this Agreement is contrary to or in violation of any state or federal law, but if it should be determined that there is a provision hereof that is in conflict with any such law or regulation, then such provision shall continue only to the extent permitted. In the event any provision of this Agreement is thus held inoperative, the remaining provisions shall, nevertheless, remain in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto executed this Agreement the day and year first above written.

HENKELS & McCOY, INC.:

By: *[Signature]*

Title: *Supervisor*

Attest:

By: _____

Title:

By: *Maile B Doorack*

Title: *Secretary*

Doorack Brick Contracting Company



12232 Hadley Hill Rd
St. Louis, Missouri 6312
Phone No. (314) 849-905
Fax No. (314) 849-741

February 9, 2009

Henkels & McCoy, In.
Central Region
1620 North Broadway
Salem, Illinois, 62881

Attn: Brian Barnett or Ryan

Gentlemen,

We have assigned our rights to the lease we have with you to Chesterfield Village, Inc (aka Sachs Properties, Inc.) as of February 10, 2009.

Here is the contact information:

Sachs Properties, Inc.
400 Chesterfield Center
Suite 600
Chesterfield, Mo. 63017
Attention: Ms. Kathleen (Kathy) Higgins, President
Office phone-# 636-537-1000
Fax # ----- 636-537-0718
Email: khiggins@sachsproperties.com

I enclose a copy of the Assignment. I will sent you a fully executed copy as soon as I have it.

It has been a pleasure leasing to you and hope all goes well for you.

I will be sending Kathy Higgins all of your contract information and you should be hearing from her before the 10th of March.

Sincerely,

DOORACK BRICK CONTRACTING COMPANY, INC?

By *Marilyn B Doorack*

cc: Ms. Kathy Higgins, President
Sachs Properties, Inc.

Doorack Brick Contracting Company



FEBRUARY 9, 2009

12232 Hadley Hill Rd
St. Louis, Missouri 63127
Phone No. (314) 849-9053
Fax No. (314) 849-7418

Henkels & McCoy, Inc.
Central Region
1620 North Broadway
Salem, Illinois, 62881

Re: Rent - 16659 Old Chesterfield Rd.
Chesterfield, Mo. 63017

Attn: Brian Barnett or Ryan

Rent March 10, 2009 though April 9, 2009 ----- \$ 4,000.00.

DOORACK BRICK CONTRACTING COMPANY, INC.
BY,

Maile B Doorack

Make this check & all future checks to:

CHESTERFIELD VILLAGE, INC.

Mailing address:

Sachs Properties
400 Chesterfield Center, Suite 600
Chesterfield, Mo. 63017
Attention: Kathy Higgins, President

cc: Ms. Kathy Higgins, President
Sachs Properties, Inc.