

BILL NO.: 4957

ORDINANCE NO.: _____

Introduced by: City Manager Nathan Mai-Lombardo

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A REAL ESTATE PURCHASE AND SALE AGREEMENT WITH THE FERGUSON-FLORISSANT SCHOOL DISTRICT FOR FOUR ADJOINING PARCELS TOTALING APPROXIMATELY 10.403 ACRES WHICH INCLUDES 8249 AIRPORT ROAD, SAID AGREEMENT IS ATTACHED HERETO AND INCORPORATED HEREIN

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BERKELEY, MISSOURI, AS FOLLOWS:

Section 1. The City Manager is hereby authorized to execute, on behalf of the City of Berkeley, Missouri, a real estate purchase and sale agreement with the Ferguson-Florissant School District for four adjoining parcels totaling approximately 10.403 Acres, which includes 8249 Airport Road.

Section 2. The agreement is attached hereto and incorporated herein.

Section 3. Any ordinance which conflicts with this ordinance is hereby repealed.

Section 4. This Ordinance shall be in full force and effect from and after the date of its passage.

1st Reading this 17th day of July 2023

2nd Reading this 17th day of July 2023

3rd Reading, PASSED and APPROVED, this _____ day of _____ 2023

Babatunde Deinbo, Mayor

ATTEST:

Deanna L. Jones, City Clerk

Final Roll Call:

| | |
|---------------------------------------|--|
| Councilwoman Verges | Aye ___ Nay ___ Absent ___ Abstain ___ |
| Councilwoman Williams | Aye ___ Nay ___ Absent ___ Abstain ___ |
| Councilman Hoskins | Aye ___ Nay ___ Absent ___ Abstain ___ |
| Councilwoman Anthony | Aye ___ Nay ___ Absent ___ Abstain ___ |
| Councilman Hindeleh | Aye ___ Nay ___ Absent ___ Abstain ___ |
| Councilwoman-at-Large Crawford-Graham | Aye ___ Nay ___ Absent ___ Abstain ___ |
| Mayor Deinbo | Aye ___ Nay ___ Absent ___ Abstain ___ |

Approved as to Form:

Donnell Smith, City Attorney

REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (the "Agreement") is made and entered into as of the ____ day of _____, 2023 (the "Effective Date"), by and between the Ferguson-Florissant School District (the "Seller"), and the City of Berkeley, Missouri (the "Purchaser").

WHEREAS, Seller is the owner of certain real property and improvements thereon located at 8249 Airport Road, Berkeley, Missouri 63134; and

WHEREAS, Seller has agreed to sell and convey such real property and improvements to Purchaser, and Purchaser has agreed to purchase such real property, on the terms set forth herein.

NOW, THEREFORE, for and in consideration of mutual promises and covenants contained herein, the receipt and sufficiency of which is hereby acknowledged, Seller and Purchaser hereby agree as follows:

SECTION 1 THE PROPERTY

For the price and subject to the terms, conditions and provisions set forth herein, Seller shall sell and convey to Purchaser and Purchaser shall purchase from Seller the following property:

(a) The real property described above containing approximately 4.82 acres, together with any and all estates, rights, privileges, easements and appurtenances belonging or in any way appertaining to or benefiting such real property; and

(b) All structures, buildings, permanent improvements, and fixtures located in, on, above, or below the real property, ((a) and (b) shall be collectively referred to herein as the "**Real Property**").

SECTION 2 PURCHASE PRICE

The purchase price for the Real Property ("**Purchase Price**") shall be Eight Hundred Thousand 00/100 Dollars (\$800,000.00). The Purchase Price shall be paid in cash on the Closing Date (defined below), subject to the terms hereof and subject to the prorations, credits and adjustments provided in this Agreement. Purchaser shall deliver to Title and Escrow Agent (defined below), by check or wire transfer, the amount of Five Thousand Dollars (\$5,000.00) (the "**Independent Agreement Consideration**"), within five (5) days after the Effective Date, which amount Seller and Purchaser agree has been bargained for as consideration for Seller's execution and delivery of this Agreement and Purchaser's right to inspect the Real Property. The Independent Agreement Consideration is in addition to, and independent of, any other consideration or payment provided for in this Agreement and is non-refundable in all events. The Title and Escrow Agent shall forward the Independent Agreement Consideration to Seller upon the earlier to occur of (i) the Closing Date, or (ii) termination of this Agreement by either party hereto. Notwithstanding anything contained in this Agreement to the contrary, at the Closing Date, Purchaser shall receive a credit against the Purchase Price for the Independent Agreement Consideration.

At the closing of the transaction, Purchaser shall deliver by certified / bank check or wire transfer the total Purchase Price (less the Independent Agreement Consideration and any credits due Purchaser hereunder, if any) to _____ Title Company, located at _____, Missouri, as escrow agent (the "**Title and Escrow Agent**") into the Title and Escrow Agent's escrow account and the net sale proceeds shall be disbursed by Title and Escrow Agent to Seller by bank wire transfer on the Closing

Date in accordance with escrow closing instructions mutually agreed upon by Seller and Purchaser.

SECTION 3 TITLE AND DEED

On the Closing Date, Seller shall sell and convey to Purchaser good and marketable title to the Real Property by Special Warranty Deed (the “**Deed**”), subject only to the “**Permitted Exceptions**” (defined below). Title to the Real Property as aforesaid shall be insured by Title and Escrow Agent as provided in Section 4.

SECTION 4 CONTINGENCIES

Purchaser shall have forty-five (45) days after execution of this Agreement (the “**Due Diligence Period**”) in which to satisfy and/or waive the following contingencies (collectively, “**Contingencies**”).

(a) Title. Title to the Real Property shall be transferred by the Deed, free and clear of all Objectionable Exceptions (as such term is hereinafter defined). Within twenty (20) days after the Effective Date, Purchaser, at Purchaser’s sole cost and expense, shall obtain a commitment for an owner’s policy of title insurance for the Real Property (“**Commitment**”). Prior to the expiration of the Due Diligence Period, Purchaser shall review said commitment for any defects or deficiencies of title (collectively the “**Exceptions**”), and notify Seller of those Exceptions which adversely affect Purchaser’s anticipated use of the Real Property to Purchaser (collectively “**Objectionable Exceptions**”). In the event Purchaser fails to notify Seller of any Objectionable Exceptions prior to the expiration of the Due Diligence Period, it shall be deemed that all Exceptions are acceptable to Purchaser (the “**Permitted Exceptions**”), and that Purchaser has waived all contingencies of title. In the event Purchaser timely notifies Seller of any Objectionable Exceptions, Seller shall have the right to cure such Objectionable Exceptions by notifying Purchaser in writing of Seller’s election no later than ten (10) business days after the expiration of the Due Diligence Period. In the event Seller elects to cure any Objectionable Exceptions, Seller shall have a reasonable period of time, not to exceed the earlier of thirty (30) days after Seller’s election or the Closing Date in which to complete the same. In the event Seller elects not to cure such Objectionable Exceptions, or Seller fails to notify Purchaser of its election within said ten (10) business days, this Agreement shall automatically be null and void unless Purchaser notifies Seller in writing, within five (5) business days after the expiration of said ten (10) business day period (fifteen (15) business days after the Due Diligence Period) that Purchaser elects to take title to the Property subject to all Objectionable Exceptions. The cost of Purchaser’s title insurance policy from the Title and Escrow Agent, together with the cost of any special endorsements, shall be borne solely by Purchaser.

(b) Survey. During the Due Diligence Period, Purchaser, at Purchaser’s sole cost and expense, may obtain a survey of the Real Property (as applicable, the “**Survey**”). Said Survey shall be prepared by a surveyor, duly licensed in the state where the property is located and such survey shall meet ALTA/ASCM Minimum Standards. If the Survey discloses any matter determined to constitute a material defect to Purchaser, Purchaser shall notify Seller in writing prior to the expiration of the Due Diligence Period. In the event Purchaser fails to notify Seller of any material defect set forth in the Survey prior to the expiration of the Due Diligence Period, it shall be deemed that the Survey is acceptable, and that Purchaser has waived all contingencies of the Survey. In the event Purchaser timely notifies Seller of any material defect set forth in the Survey, Seller shall have the right to cure any material defect of the Survey by notifying Purchaser of Seller’s election no later than ten (10) business days after the Due Diligence Period. In the event Seller elects to cure any material defect of the Survey, Seller shall have a reasonable period of time, not to exceed the earlier of thirty (30) days after Seller’s election or the Closing Date in which to complete the same. In the event Seller elects not to cure all material defects identified in the

Survey, or Seller fails to notify Purchaser of its election within said ten (10) business days, this Agreement shall automatically be null and void, unless Purchaser notifies Seller in writing, within five (5) business days after the expiration of said ten (10) business day period (fifteen (15) business days after the Due Diligence Period), that Purchaser elects to waive all material defects identified by the Survey.

(c) Inspections and Tests. Purchaser shall have the right, during the Due Diligence Period and at Purchaser's sole cost and expense, to perform certain Inspections (including environmental investigations) of the Real Property, (collectively, "**Inspections**") that Purchaser may reasonably request. Seller shall also deliver to Purchaser copies of all documents, reports, studies, surveys and other agreements within Seller's possession within ten (10) business days after execution of this Agreement (the "**Disclosures**"). If any such Inspections or Disclosures identify any matters which are determined to be material defects, Purchaser shall notify Seller in writing prior to the expiration of the Due Diligence Period. In the event Purchaser fails to timely notify Seller of any material defects disclosed by the Inspections or Disclosures prior to the expiration of the Due Diligence Period, it shall be deemed that all Inspections or Disclosures with respect to the Real Property are acceptable, and that Purchaser has waived all contingencies with respect to such Inspections or Disclosures. In the event Purchaser timely notifies Seller of any material defect disclosed by any Inspections, Seller shall have the right to cure all material defect disclosed by any Inspections or Disclosures, by notifying Purchaser of Seller's election no later than ten (10) business days after the Due Diligence Period. In the event Seller elects to cure any material defects disclosed by any Inspections or Disclosures, Seller shall have a reasonable period of time not to exceed the earlier of thirty (30) days after Seller's election or the Closing Date in which to complete the same. In the event Seller elects not to cure any material defects disclosed by any Inspections or Disclosures, or Seller fails to notify Purchaser of its election within said ten (10) business days, this Agreement shall automatically be null and void, unless Purchaser notifies Seller in writing within five (5) business days after the expiration of said ten (10) business day period (fifteen (15) business days after the Due Diligence Period), that Purchaser elects to waive all material defects disclosed by any Inspections or Disclosures.

SECTION 5

REPRESENTATIONS AND WARRANTIES OF SELLER AND PURCHASER

(a) Representations and Warranties of Seller. Seller represents and warrants to Purchaser that the following are true, accurate, and complete as of the date hereof, and Seller agrees that by closing this transaction, the following items shall be true, accurate, and complete as of the Closing Date:

(1) Title. From the date hereof until the Closing Date, Seller shall not create, allow, or suffer to be created on the Real Property any easement, lien, mortgage, encumbrance, defect or other interest in favor of third parties unless agreed to in writing by Purchaser.

(2) FIRPTA. Seller is not a "foreign corporation", "foreign partnership" or "foreign estate" as those terms are defined in the Internal Revenue Code of 1986, as amended, and that Seller will furnish to Purchaser such further assurances with respect to this representation and warranty as Purchaser shall reasonably request.

(3) Due Execution and Enforceability. In addition to any other representations or warranties contained in this Agreement, Seller represents and warrants to Purchaser that this Agreement and all documents executed by Seller which are to be delivered to Purchaser at the Closing Date are, or at the time of closing will be, duly authorized, executed, and delivered by Seller, and are, or at the Closing Date will be, legal, valid, and binding obligations of Seller, and to the best knowledge of Seller, do not, and at the time of closing will not, violate any provisions

of any agreement to which Seller is a party or to which it is subject or any law, judgment or order applicable to Seller.

(b) Representations and Warranties of Purchaser. In addition to any other representations or warranties contained in this Agreement, Purchaser represents and warrants to Seller that this Agreement and all documents executed by Purchaser which are to be delivered to Seller at the Closing Date are, or at the time of closing will be, duly authorized, executed, and delivered by Purchaser, and are, or at the Closing Date will be, legal, valid, and binding obligations of Purchaser, and do not, and at the time of closing will not, violate any provisions of any agreement to which Purchaser is a party or to which it is subject or any law, judgment or order applicable to Purchaser.

SECTION 6 OPERATING EXPENSES

At the Closing, Purchaser and Seller shall prorate all items of income and expense relating to the Property (other than taxes because the Real Property is exempt) based upon Purchaser's and Seller's respective periods of ownership for the calendar year in which the Closing occurs, with Purchaser treated as the owner of the Property on the Closing Date, including without limitation all utility services charges for electricity, heat and air conditioning service, other utilities, common area maintenance, taxes other than real estate taxes such as rental taxes, and all expenses incurred in operating the Property and any other costs incurred in the ordinary course of business or the management and operation of the Property, shall be prorated on an accrual basis. Seller shall pay all such expenses that accrue prior to the Closing Date and Purchaser shall pay all such expenses accruing on and after the Closing Date. To the extent possible, Seller and Purchaser shall obtain billings and meter readings as of the Closing Date to aid in such prorations.

SECTION 7 INSURANCE; CONDEMNATION

(a) Seller shall bear all risk of loss with respect to the Real Property until the Closing Date. In the event of damage to the Real Property by fire or other casualty prior to the Closing Date, then this Agreement may be terminated at the option of Purchaser, which option shall be exercised, if at all, by Purchaser's written notice thereof to Seller within five (5) days after ascertaining the amount of recoverable insurance proceeds, and upon the exercise of such option by Purchaser, this Agreement shall become null and void and neither party shall have any further liability or obligations hereunder, except as otherwise provided in this Agreement. If Purchaser does not so elect to terminate, then this Agreement shall remain in full force and effect and Seller shall assign and transfer to Purchaser on the Closing Date all of Seller's right, title and interest in and to all insurance proceeds paid or payable to Seller on account of such fire or casualty.

(b) In the event of the commencement of condemnation or eminent domain proceedings regarding any part of the Real Property prior to the Closing Date, Purchaser may (1) terminate this Agreement by written notice to Seller, or (2) proceed with the closing, in which event Seller shall assign to Purchaser all of Seller's right, title and interest in and to any award made in connection with such condemnation or eminent domain proceedings. Seller shall immediately notify Purchaser in writing of the commencement or occurrence of any condemnation or eminent domain proceedings. If such proceedings would result in the taking of any part of the Real Property or the taking or closing of any right of access to the Real Property, Purchaser shall then notify Seller, within ten (10) days of Purchaser's receipt of Seller's notice, of its election under this Section.

SECTION 8 CLOSING

(a) Closing Date. Provided all conditions to closing set forth in this Agreement have been satisfied or waived by Purchaser and/or Seller, and this Agreement has not been otherwise terminated by either party in accordance with provisions herein set forth, the transaction contemplated herein shall be closed at the office of the Title and Escrow Agent on August 15, 2023 (the “**Closing Date**”), or such other date mutually agreed upon by the parties.

(b) Closing Procedure. The transaction contemplated herein shall be closed in accordance with the following procedure:

(1) Delivery of Documents by Seller. On or before the Closing Date, Seller shall deliver or cause the following documents to be delivered to the Title and Escrow Agent:

- (i) Full releases of any mortgages, deeds of trust and other financing instruments affecting the Real Property, duly executed by the holders thereof, acknowledged and in proper form for recording;
- (ii) The Deed, subject only to the Permitted Exceptions; and,
- (iii) A closing statement prepared by the Title and Escrow Agent and approved by both parties showing the Purchase Price and all charges and credits to the Purchaser and Seller provided for herein; and,
- (iv) Such other documents, instruments, certificates and assurances as shall be required by the provisions of this Agreement.

(2) Deliveries by Purchaser. On or before the Closing Date, Purchaser shall deliver or cause the following to be delivered to the Title and Escrow Agent:

- (i) The Purchase Price due at closing, adjusted as herein provided, all as shown on Purchaser’s closing statement; and
- (ii) Such other documents, instruments, certificates and assurances as shall be required by the provisions of this Agreement.

(c) Closing Costs. Seller shall pay recording fees for any releases of liens and Seller’s attorney’s fees. Purchaser shall pay recording fees for the Deed, the cost of the Title Policy, Survey, and for Purchaser’s attorney’s fees. All remaining closing costs, if any, shall be divided in accordance with the customary allocation in St. Louis County, and if none, shall be equally divided.

SECTION 9 AS IS, WHERE IS

Seller has not made and does not hereby make any representations, warranties or other statements as to the condition of the Real Property and Purchaser acknowledges that at Closing it is purchasing the Real Property on an “AS IS, WHERE IS” basis and without relying on any representations and warranties of any kind whatsoever not expressly made by Seller in this Agreement as to any matters concerning the Real Property. Purchaser acknowledges that Purchaser is relying solely upon the results of Purchaser’s

own inspections or other information obtained or otherwise available to Purchaser, rather than any information that may have been provided by Seller to Purchaser. Purchaser represents that upon completion of the inspections contemplated or permitted by this Agreement, Purchaser will have made all of the investigations and inspections Purchaser deems necessary in connection with its purchase of the Real Property, and that approval by Purchaser of such inspections or failure to terminate this Agreement pursuant to the terms hereof will be deemed to be approval of Purchaser without reservation of all aspects of this transaction, including but not limited to the physical condition of the Real Property.

SECTION 10 POSSESSION

Exclusive possession of the Real Property shall be delivered to Purchaser on the Closing Date. Prior to the Closing Date, Seller will remove its furniture, surveillance cameras and other items of personal property from the Real Property.

SECTION 11 ACCESS BY PURCHASER; DELIVERIES; OBJECTIONS BY PURCHASER; INDEMNITY

From the Effective Date until the Closing Date, Purchaser and its agents and designees shall have the right to enter the Real Property for the purpose of inspecting the same and making such tests, inquiries and examinations as Purchaser shall deem necessary. Upon completion thereof, Purchaser shall, at its sole expense, cause the Real Property to be restored to substantially the same condition it was in prior to such entry (unless Purchaser closes its acquisition of the Real Property, in which event Purchaser need not make such restoration), and shall indemnify and hold Seller harmless of and from all and against any loss, cost, liability or other reasonable expense arising from Purchaser conducting its due diligence reviews contemplated by this Agreement and Purchaser's performance of any work related thereto. This indemnity provision shall survive Closing or earlier termination of this Agreement.

SECTION 12 DEFAULT

In the event Seller defaults under or breaches this Agreement and Purchaser has performed the terms described herein, Purchaser shall be entitled to pursue all remedies available at law or in equity, including enforcing specific performance of this Agreement. In the event Purchaser defaults under or breaches this Agreement and Seller has performed the terms described herein, Seller shall be entitled to pursue all remedies available at law or in equity. Any remedies provided to a party under this Agreement shall not be deemed exclusive, but shall be in addition to all other available remedies.

SECTION 13 NO BROKERAGE COMMISSIONS

Seller and Purchaser each represent and warrant to the other that neither of them has dealt with any persons in connection with this transaction, and each party shall indemnify the other against any claim for commission or fee made by any person based on dealings with the indemnifying party.

SECTION 14 NOTICES

Any notices or other communications required or contemplated under this Agreement shall be in writing and personally delivered, evidenced by a signed receipt, emailed, or mailed by certified mail, return

receipt requested, postage prepaid, to the addresses indicated below or to such other person or address as the parties may, from time to time, provide by notice to the other. The date of notice shall be the date of delivery of the notice if personally delivered, the date of receipt if by email, or three days from the date of mailing if the notice is mailed by certified mail.

To Seller: Ferguson-Florissant School District
8855 Dunn Rd.
Hazelwood, Missouri 63042
Attn: Dr. Joseph Davis, Superintendent

With a copy to: Lashly & Baer, P.C.
714 Locust Street
St. Louis, Missouri 63101
Attn: Lisa O. Stump

To Purchaser: City of Berkeley
8425 Airport Rd.
Berkeley, Missouri 63134
Attn: Nathan Mai-Lombardo, City Manager

With a copy to: _____

SECTION 15 ENTIRE AGREEMENT; AMENDMENT

This document and exhibits fully sets forth all agreements and understandings of the parties to this Agreement with respect to the subject matter hereof. All warranties, representations and covenants contained in this Agreement are the joint and several warranties, representations and covenants of each person identified as a Seller herein and shall survive the Closing. Each pronoun used herein shall have the same gender as the person to which it refers. All exhibits referred to in this Agreement are hereby incorporated herein by reference.

SECTION 16 SEVERABILITY

If any provision of this Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.

SECTION 17 GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri.

SECTION 18
SUCCESSORS AND ASSIGNS

All provisions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by and against the respective heirs, successors, assigns and personal representatives of each party to this Agreement. Any party may from time to time change the address at which its notices are to be delivered or mailed by giving the other party notice of such change.

SECTION 19
TIME IS OF THE ESSENCE

Time is of the essence, and all deadlines set forth herein shall be strictly adhered to by the parties. If the final day of any period of time set forth in any provision of this Agreement falls upon a Saturday, Sunday or legal holiday under the laws of Missouri, therein such event, the time of such period shall be extended to the next business day which is not a Saturday, Sunday or legal holiday.

SECTION 20
COUNTERPARTS

This Agreement may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument.

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

SELLER:

Ferguson-Florissant School District

By: _____
_____, _____

PURCHASER:

City of Berkeley

By: _____
_____, _____