

**MUNICIPAL ORDER 39-2022**

**A MUNICIPAL ORDER AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE A REAL ESTATE PURCHASE AGREEMENT FOR THE ACQUISITION OF PROPERTIES LOCATED AT 1438, 1500 AND 1504 WEST FIFTH STREET.**

**WHEREAS**, Mills-Hazel Property Management Company, LLC owns certain real properties located at 1438, 1500 and 1504 West Fifth Street in Owensboro, Daviess County, Kentucky; and

**WHEREAS**, the property owner now desires to sell the real properties located at 1438, 1500 and 1504 West Fifth Street in Owensboro, Daviess County, Kentucky; and

**WHEREAS**, the City of Owensboro seeks to acquire said properties to expand its property housing the Department of Public Works.

**NOW, THEREFORE, BE IT ORDERED BY THE CITY OF OWENSBORO, KENTUCKY, AS FOLLOWS:**

**Section 1.** The Board of Commissioners hereby authorizes and directs the Mayor and other appropriate city officials to execute a real estate purchase agreement which sets forth the terms and conditions for the City's acquisition of the properties located at 1438, 1500 and 1504 West Fifth Street. Said properties are more particularly described in Exhibit "A" herein.

**Section 2.** That the City of Owensboro, Kentucky, by and through its Board of Commissioners, hereby approves the purchase of 1438, 1500 and 1504 West Fifth Street, in accordance with the terms of the proposed real estate purchase agreement mentioned above in Section 1, as such conveyance is for the purpose of expanding its property housing the Department of Public Works.

**Section 3** That the Mayor, City Manager and appropriate staff members are hereby authorized to sign any and all deeds or other documents deemed necessary to the furtherance of the authority outlined herein.

**INTRODUCED, PUBLICLY READ AND FINALLY APPROVED ON ONE READING,** this the 18th day of October, 2022.

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Thomas H. Watson, Mayor

ATTEST:

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Beth Davis, City Clerk

## EXHIBIT "A"

Tract No.1  
1438 West Fifth Street

Beginning at a stake which is 49.3 feet east of a stake which is the southwest intersection of Fifth Street and Monarch Street, if Monarch Street were extended, on the South side of West Fifth Street, thence running east along parallel lines with Fifth Street, fifty-two (52) feet; thence running back in parallel lines to Fifth Street the same width fifty-two feet, one hundred and three feet.

AND BEING the same property conveyed to Mills-Hazel Property Management Company, LLC, a Kentucky limited liability company, by deed from Kelly Munoz and Apolonia Munoz, Jr., wife and husband, dated September 21, 2001, of record in Deed Book 740, page 954, Daviess County Clerk's Office.

Tract No. 2  
1500 West Fifth Street

Said Property located at No. 1500 West Fifth Street in Owensboro, Kentucky, and fronting 52 feet on Fifth Street and running back 103 feet.

Beginning at a stake which is 49.3 feet east of a stake which is the southwest intersection of Fifth Street and Monarch Street, if Monarch Street were extended, on the south side of West Fifth Street. Beginning at a stake which is 49.3 feet east of the stake on the southwest intersection of Fifth Street and Monarch Street if extended; thence running east along parallel lines with Fifth Street Fifty-Two (52) feet; thence running back in parallel lines to Fifth Street the same width fifty-two (52) feet, one hundred and three (103) feet.

AND BEING a part of the same property conveyed to Mills-Hazel Property Management Company, LLC, a limited liability company, by deed from Joseph W. Mills and Vicki H. Mills, by and through her Attorney-in-Fact, Joseph W. Mills, husband and wife, and James W. Hazel, Jr. and Paula K. Hazel, by and through her attorney-in-Fact, James W. Hazel, Jr., husband and wife, dated February 7, 2002, of record in Deed Book 747, Page 91, Daviess County Clerk's Office.

Tract No. 3  
1504 West Fifth Street

Beginning at a stake in the south margin of West Fifth Street at the northwest corner of a lot of Henry Cline 48 feet and 5 inches west of the northwest corner of the lot sold by J.J. Tennes to Cummins but now also belonging to Henry Cline; thence westwardly with the south margin of Fifth Street 31 feet to a stake northeast corner of the Frederick lot; thence southwardly at right angles to Fifth Street and with the Frederick East line 117 feet and 5 inches to a stake in the north margin of the alley hereinafter mentioned; thence with same eastwardly parallel with Fifth Street 31 feet to the southwest corner of the Henry Cline lot first above mentioned; thence with the west line of said lot northwardly 117 feet and 5 inches to the beginning, and the right to use the 10 foot alley which runs back of said lot and adjoining lots eastwardly and then northwardly to Fifth Street, being the same alley mentioned in Deeds to L.E. Morris, Henry Cline and others conveying lots abutting thereon.

AND BEING the same property conveyed to Mills-Hazel Property Management Company, LLC, a Kentucky limited liability company, by deed from James D. Warner and Alicia G. Warner, dated September 9, 2002, of record in Deed Book 756, page 199, Daviess County Clerk's Office.

## **REAL ESTATE PURCHASE AGREEMENT**

**THIS REAL ESTATE PURCHASE AGREEMENT** (“Agreement”) is made and entered into on this \_\_\_ day of May, 2022, by and between Mills-Hazel Property Management Company, LLC, a limited liability company, P.O. Box 22512, Owensboro, Kentucky 42304 (hereafter the “Seller”) and the City of Owensboro, Kentucky, a Kentucky municipal corporation of the home rule class, 101 East Fourth Street, P.O. Box 10003, Owensboro, Kentucky 42302-9003, (hereafter the “Buyer”). The Seller and Buyer may also be referred to individually as a “Party” and collectively as the “Parties”.

### **RECITALS**

**WHEREAS**, Seller owns certain real properties and improvements located at 1438 W. 5<sup>th</sup> Street, 1500 W. 5<sup>th</sup> Street and 1504 W. 5<sup>th</sup> Street in Owensboro, Daviess County, Kentucky and have agreed to sell such properties to Buyer, the City of Owensboro; and

**WHEREAS**, the Parties desire to evidence their agreement by this writing which supersedes any prior contract(s) and/or communications (oral or written) between the Parties regarding the sale and purchase of the properties.

**NOW, THEREFORE**, in consideration of the purchase price to be paid by Buyer, the mutual covenants set forth herein, and other good and valuable consideration, the receipt of which is hereby acknowledged by Seller, the Parties agree as follows:

- (1) Seller agrees to sell, and Buyer agrees to buy the properties located at 1438 W. 5<sup>th</sup> Street, 1500 W. 5<sup>th</sup> Street and 1504 W. 5<sup>th</sup> Street in Owensboro, Daviess County, Kentucky, more particularly described in Exhibit A, which is attached hereto and incorporated by reference (hereinafter referred to as the “Properties”).

- (2) The purchase price for the Properties shall be: Sixty Thousand Dollars (\$60,000.00) (the "Purchase Price"), to be paid contemporaneously with the execution of the deed.
- (3) Seller shall deliver insurable fee simple title to the Properties and shall convey same to Buyer by deed of General Warranty.
- (4) Seller shall execute a General Warranty Deed in form and substance satisfactory to Buyer in its reasonable discretion conveying title to the Properties to Buyer as required above. Seller shall further provide such other documentation reasonably required by Buyer's title insurance company, if any, to establish authority for the execution of the deed and any other closing documents for the Seller.
- (5) Buyer shall pay for the costs of a survey, preparation of the deed, title examination, title insurance, if any, and recording of the deed.
- (6) Seller does hereby indemnify, defend, and hold Buyer harmless from any and all costs, loss, damages or expenses, of any kind or nature (including without limitation mechanics' liens, reasonable attorneys' fees and expenses) arising from or associated with in any way the Properties until such time as the Buyer is tendered and accepts possession of the Properties. Notwithstanding anything to the contrary herein, the indemnity set forth herein shall survive the closing and any termination of this Agreement.
- (7) The Parties agree that the risk of any loss or damages to the subject properties prior to Buyer being tendered and accepting possession of the Properties shall remain with the Seller.
- (8) Seller makes the following warranties and representations:

- (a) Acceptance of this Agreement has been duly authorized by all necessary action on the part of the Seller and the undersigned has the full power and authority from all those with an interest in the Properties to execute this Agreement and bind the Seller to such terms and conditions as are contained herein.
- (b) There is no legal or administrative action, suit, or proceeding pending or known to be threatened against or affecting Seller with respect to the Properties or against the Properties which would adversely affect Seller's right to convey the Properties to Buyer as contemplated in this Agreement.
- (c) The Seller is not a party to any other contract for the sale or lease of the Properties that conflicts with or results in a breach of this Agreement. Seller acknowledges and agrees that, at Seller's expense, it must provide for the resolution and extinguishment of any and all claims against and/or interests in the Properties held by third parties and/or arising out of leasehold interests.
- (d) Seller will not willfully allow or be a party to the preparation, execution and recordation of any restriction, easement, or other matter affecting the title to the Properties prior to closing unless Seller obtains Buyer's written approval of such restriction, easement, or other matter.
- (e) Seller has no actual knowledge of any adverse environmental condition existing upon or within the Properties.
- (f) This Agreement constitutes the valid and binding obligation of the Seller and is enforceable against the Seller in accordance with its terms. The execution

of this Agreement, delivery of deed and all required documents, Seller's performance of this Agreement, and the transaction contemplated hereby have been duly authorized by the requisite action on the part of the Seller.

- (g) As of the closing date, there will be no tenants residing on any of the Properties.
- (h) Subject to the other provisions herein, the Properties are being sold "as is" with all of their faults and deficiencies.
- (9) The Parties agree that "time is of the essence" with respect to all provisions herein and a closing on the Properties shall be held on or before August 31, 2022, or such later date as the Parties may agree to in writing.
- (10) Buyer's obligation to purchase is conditioned upon approval of the transaction by the Owensboro Board of Commissioners and upon successful closing of the alley located to the south and east of the Properties.
- (11) Seller agrees to continue to timely pay all utilities. The Seller shall indemnify the Buyer for any claims or liens arising from failure to pay said utility charges until Buyer takes possession of the Properties.
- (12) Seller and Buyer agree to prorate responsibility for 2022 for all real property taxes associated with the Properties as of date of closing.
- (13) This Agreement represents the entire agreement between the Parties. There are no other agreements or promises regarding the subject matter of this Agreement that have been made which are not set forth herein.
- (14) The Parties expressly agree that this Agreement is intended to be as broad and inclusive as permitted by the laws of the Commonwealth of Kentucky and, if any

portion thereof is held invalid, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect.

- (15) The Parties, by signing and executing this Agreement, represent and warrant that they do so with full authority to so act and warrant that they sign and execute this Agreement after consultation with their respective counsel.
- (16) This Agreement may be amended, modified, supplemented or changed in whole or in part only by an agreement in writing making specific reference to this Agreement and executed by each of the Parties hereto. Any of the terms and conditions of this Agreement may be waived in whole or in part, but only by an agreement in writing making specific reference to this Agreement and executed by the Party waiving said terms and/or conditions. The failure of any Party hereto to insist upon strict performance of or compliance with the provisions of this Agreement shall not constitute a waiver of any right of any such Party hereunder or prohibit or limit the right of such Party to insist upon strict performance or compliance at any other time.
- (17) This Agreement and the rights of the Parties hereunder may not be assigned, and the obligations of the Parties hereunder may not be delegated, in whole or in part, by any Party without the prior written consent of the other Party hereto, which consent shall not be unnecessarily withheld or delayed.
- (18) This Real Estate Purchase Agreement may be executed in counterparts and executed copies may be evidenced by faxed transmission to the Parties.
- (19) This Agreement shall be construed and enforced in accordance with, and shall be governed by, the laws of the Commonwealth of Kentucky without regard to its

principles of conflict of laws. The Parties hereby consent to jurisdiction and venue in the Circuit Court of Daviess County, Kentucky, and hereby waive any objection to the jurisdiction of, or the venue of an action instituted in, such court. This Agreement shall be governed by and construed under Kentucky law.

**IN WITNESS WHEREOF**, the Parties have executed this Real Estate Purchase Agreement, on this the \_\_\_\_\_ day of May, 2022.

SELLER: MILLS-HAZEL PROPERTY MANAGEMENT COMPANY, LLC

By: \_\_\_\_\_  
Joseph W. Mills, Member

BUYER: CITY OF OWENSBORO, KENTUCKY

By: \_\_\_\_\_  
Thomas H. Watson, Mayor

ATTEST:

\_\_\_\_\_  
Beth Davis, City Clerk

COMMONWEALTH OF KENTUCKY )  
COUNTY OF DAVIESS )

I, \_\_\_\_\_, a Notary Public in the Commonwealth of Kentucky, State at Large, hereby certify that the foregoing Real Estate Purchase Agreement was signed, sworn to and acknowledged before me by Joseph W. Mills, Member for and on behalf of Mills-Hazel Property Management Company, LLC, on this the \_\_\_\_\_ day of May, 2022.

\_\_\_\_\_  
Notary Public, State of Kentucky at Large  
My commission expires: \_\_\_\_\_  
ID # \_\_\_\_\_

COMMONWEALTH OF KENTUCKY     )  
COUNTY OF DAVIESS             )

I, \_\_\_\_\_, a Notary Public in the Commonwealth of Kentucky, State at Large, hereby certify that the foregoing Real Estate Purchase Agreement was signed, sworn to and acknowledged before me by Thomas H. Watson, Mayor and Beth Cecil, City Clerk, for and on behalf of the City of Owensboro, Kentucky, on this the \_\_\_\_\_ day of May, 2022.

\_\_\_\_\_  
Notary Public, State of Kentucky at Large  
My commission expires: \_\_\_\_\_  
ID # \_\_\_\_\_

PREPARED BY:

\_\_\_\_\_  
Mark Pfeifer  
City Attorney  
101 East Fourth Street  
P.O. Box 10003  
Owensboro, Kentucky 42302-9003  
(270) 687-8556

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