

MUNICIPAL ORDER 43-2022

A MUNICIPAL ORDER DECLARING THE PROPERTY LOCATED AT 1536 HERR AVENUE AS SURPLUS PROPERTY AND AUTHORIZING THE MAYOR TO EXECUTE A REAL ESTATE PURCHASE AGREEMENT AND DEED CONVEYING THE PROPERTY TO THE ADJACENT PROPERTY OWNER.

WHEREAS, the City of Owensboro owns certain real property located at 1536 Herr Avenue in Owensboro, Daviess County, Kentucky, containing 0.030 acres, more or less; and

WHEREAS, the City now desires to declare this property to be surplus property, so it can be transferred to the adjacent property owner.

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

Section 1. In accordance with KRS 82.083(3), the Board of Commissioners makes the following determination:

- (1) The surplus real property owned by the City is located at 1536 Herr Avenue and contains 0.030 acres, more or less.
- (2) The intended use for the property at the time of acquisition was the proposed widening of Hanning Lane.
- (3) It is in the public interest to dispose of the property listed above as it was not used in the widening of Hanning Lane, and so that the property can be used by the adjacent property owner.
- (4) The property located at 1536 Herr Avenue shall be conveyed without monetary consideration to Dana Kaye Biggs, the adjacent property owner.

Section 2. By and through the Board of Commissioners, the property located at 1536 Herr Avenue is hereby declared surplus property which may be transferred, sold, or otherwise conveyed in accordance with KRS 82.083.

Section 3. That the City of Owensboro, Kentucky, by and through its Board of Commissioners, hereby approves the conveyance of 1536 Herr Avenue in accordance with the terms of the attached proposed real estate purchase agreement.

Section 4. That the Mayor, City Manager and appropriate staff members are hereby authorized to sign the real estate purchase agreement, deed and all other documents deemed necessary to the furtherance of the authority outlined herein.

INTRODUCED, PUBLICLY READ AND FINALLY APPROVED ON ONE READING, this the 1st day of November, 2022.

Thomas H. Watson, Mayor

ATTEST:

Beth Davis, City Clerk

REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT ("Agreement") is made and entered into on this ____ day of November, 2022, by and between 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 "Seller"), and Dana Kaye Biggs, 1532 Herr Avenue, Owensboro, Kentucky 42301 (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 property located at 1536 Herr Avenue in Owensboro, Daviess County, Kentucky (the "Property"), and has agreed to sell the Property to Buyer; and

WHEREAS, the Seller acknowledges that it has been informed of the Buyer's desire to acquire the Property to be consolidated with her adjacent property located at 1532 Herr Avenue; 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 Property.

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 purchase, the Property located at 1536 Herr Avenue, Owensboro, Daviess County, Kentucky, and more particularly described in Exhibit A, which is attached hereto and incorporated by reference.
- (2) There is no monetary consideration for the transfer of the Property.
- (3) Seller shall deliver insurable fee simple title to the Property 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 her reasonable discretion, conveying title to the Property 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, title examination, title insurance, if any, costs associated with obtaining a mortgage loan, if any, and recording of the deed.
- (6) Seller does hereby indemnify, defend, and hold Buyer harmless from any and all costs, losses, damages or expenses, of any kind or nature (including without limitation mechanics' liens, reasonable attorneys' fees, and expenses), arising from or associated in any way with the Property, until such time as the Buyer is tendered and accepts possession of the Property. 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 property prior to Buyer being tendered and accepting possession of the Property shall remain with the Seller.

- (8) Seller makes the following warranties and representations:
- (a) The undersigned Seller is the only entity holding title to the Property, and therefore has full power and authority to execute this Agreement.
 - (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 Property or against the Property which would adversely affect Seller's right to convey the Property 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 Property 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 Property 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, or recordation of any restriction, easement, or other matter affecting the title to the Property prior to closing, unless the 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 Property.
 - (f) This Agreement constitutes the valid and binding obligation of the Seller and is enforceable against the Seller in accordance with its terms.
 - (g) Subject to the other provisions herein, the Property is being sold "as is" with all of its faults and deficiencies.

- (9) The Parties agree that “time is of the essence” with respect to all provisions herein and a closing on the property shall be held on or before December 31, 2022, or such later date as the Parties may agree to in writing. Seller agrees that it shall surrender possession of the Property immediately upon delivery of the deed at closing.
- (10) Seller’s obligation to sell is conditioned upon approval of the transaction by the Owensboro Board of Commissioners.
- (11) The ad valorem real property taxes shall be prorated as of the date of closing, with the Seller being responsible for such taxes up until the closing date.
- (12) This Agreement represents the entire agreement between the Parties. There are no other agreements or promises regarding the subject matter of this Agreement which are not set forth herein.
- (13) The Parties expressly agree that this Agreement is intended to be as broad and inclusive as permitted by applicable law and, if any portion thereof is held invalid, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect.
- (14) 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.
- (15) 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.

- (16) 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.
- (17) This Agreement may be signed in one or more counterpart copies. Each counterpart copy shall constitute an Agreement, and together they form the fully executed Agreement.
- (18) Any notice, request, instruction, or other document or communication required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed given:
 - (a) Upon actual receipt of certified mail or a reputable overnight delivery service, such as UPS or Federal Express; or
 - (b) Upon three days' mailing by first-class mail; or
 - (c) Upon personal delivery if delivered to the addresses set forth above or to such other address as any party may hereafter specify by written notice to the other party hereto.

(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.

IN WITNESS WHEREOF, the Parties have executed this Real Estate Purchase Agreement, on this the _____ day of November, 2022.

SELLER:

CITY OF OWENSBORO, KENTUCKY

Thomas H. Watson, Mayor

ATTEST:

Beth Davis, City Clerk

BUYER:

Dana Kaye Biggs

COMMONWEALTH OF KENTUCKY)
COUNTY OF DAVIESS)

The foregoing Real Estate Purchase Agreement was signed, sworn to and acknowledged before me by Thomas H. Watson, Mayor, and Beth Davis, City Clerk, for and on behalf of the City of Owensboro, Kentucky, on this the _____ day of November, 2022.

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

COMMONWEALTH OF KENTUCKY)
COUNTY OF DAVIESS)

The foregoing Real Estate Purchase Agreement was signed, sworn to and acknowledged before me by Dana Kaye Biggs, on this the _____ day of November, 2022.

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

Prepared by:

Mark Pfeifer
City Attorney
City of Owensboro
101 E. 4th Street
Owensboro, KY 42303
(270)687-8556

EXHIBIT A

Legal Description: 1536 Herr Avenue, Owensboro, KY

That certain tract containing 0.030 acres, more or less, as shown on the plat of record in Plat Book _____, page _____, Office of the Daviess County Clerk, to which plat reference is hereby made for a particular description of said tract.

AND BEING part of the same property conveyed to the City of Owensboro, Kentucky, from Helen Marie Bennett, widow, by deed dated April 1, 1991, of record in Deed Book 599, page 671, Office of the Daviess County Clerk.