

MUNICIPAL ORDER 27-2023

A MUNICIPAL ORDER AUTHORIZING THE SALE OF THE CITY OF OWENSBORO'S ONE-THIRD (1/3) INTEREST IN PROPERTY CONTAINING APPROXIMATELY 20.00 ACRES LOCATED IN THE MIDAMERICA AIRPARK AND AUTHORIZING THE MAYOR TO EXECUTE A REAL ESTATE OPTION, PURCHASE AGREEMENT AND DEED CONVEYING THE PROPERTY TO KENERGY CORP.

WHEREAS, the City of Owensboro owns an undivided one-third (1/3) interest in 83.454 acres of vacant real property located in the MidAmerica Airpark in Owensboro, Kentucky, which is jointly owned by Economic Development Properties, Inc. (EDP).; and

WHEREAS, Kenergy Corp. desires to obtain an option to purchase the City's interest in approximately 20.00 acres of the 83.454 acre tract and relocate its offices presently located at 3111 Fairview Drive there; and

WHEREAS, the conveyance by the City of the tract containing approximately 20.00 acres in the MidAmerica Airpark will promote economic development within the City and the property should be sold or transferred in accordance with KRS 82.083(4)(b).

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 real property to be sold is a one-third (1/3) interest in approximately 20.00 acres located in the MidAmerica Airpark.
- (2) The intended use for the property at the time of acquisition was to promote economic development by encouraging businesses to locate on the property.

(3) It is in the public interest to dispose of the property so that it can be used for a business purpose and return the property to the tax rolls for the benefit of the City.

(4) The property shall be conveyed for monetary consideration to Kenergy Corp. for economic development purposes in accordance with KRS 82.083(4)(b).

Section 2. By and through the Board of Commissioners, the property listed in Section 1(1) above may be transferred, optioned, sold, or otherwise conveyed in accordance with KRS 82.083(4).

Section 3. That the City of Owensboro, Kentucky, by and through its Board of Commissioners, hereby approves the sale of an option to purchase its one-third (1/3) interest in 20.00 acres located in the MidAmerica Airpark in accordance with the terms of the attached Real Estate Option.

Section 4. That the Mayor, City Manager and appropriate staff members are hereby authorized to sign the attached Real Estate Option, and any and all real estate purchase agreements, 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 6th day of June, 2023.

Thomas H. Watson, Mayor

ATTEST:

Beth Davis, City Clerk

REAL ESTATE OPTION

THIS OPTION is made and entered into this the _____ day of _____, 2023, by and between **ECONOMIC DEVELOPMENT PROPERTIES, INC.**, a Kentucky corporation, P.O. Box 782, Owensboro, KY 42302, and **CITY OF OWENSBORO**, a Kentucky municipality, 101 E. Fourth Street, Owensboro, KY 42303, hereinafter "**OPTIONORS**," and **KENERGY CORP.**, a Kentucky corporation, Post Office Box 18, Henderson, KY 42419, hereinafter "**OPTIONEE**;"

WITNESSETH: For and in consideration of \$1,000.00, cash in hand paid, and other good and valuable consideration, the receipt of all of which is hereby acknowledged, Optionors do hereby GRANT unto Optionee, its successors and assigns, under the terms and conditions set forth herein, the exclusive right and option to purchase the below described real property, said real property being located in Daviess County, Kentucky, and being more particularly described as follows:

Approximately 20 acres to be surveyed from Daviess County PVA Parcel 004-24-11-019-0000, in Deed Book 702, page 204, Daviess County Clerk's Office.

Being that same real property acquired by Optionors from Mary O'Bryan Williams, et al by deed of correction dated May 13, 1999, of record in Deed Book 702, page 204, Daviess County Clerk's Office. See deed in Deed Book 588, page 609, dated February 26, 1990.

The parties further **AGREE, PROMISE AND UNDERSTAND** as follows:

1. Optionors understand that Optionee has entered into this Option without Optionee first obtaining approval of its board of directors. Such approval is necessary and shall be sought at the regular monthly meeting of the board of directors on _____, 2023, and Optionee will notify Optionors in writing the following day of the board's action. If approval is granted this option shall remain in effect according to the terms and conditions set forth herein. If approval is not granted Optionors shall refund the \$1,000.00 consideration payment to Optionee and this option shall be null and void, and of no effect. The following terms apply if the Optionee has obtained approval of its board of directors.

2. The term of this option shall be nine (9) months from the date hereof; however, this option may be extended an additional three (3) months under the same terms and conditions for an additional payment by Optionee to Optionor in the amount of \$1,000.00 on or before expiration of the original nine (9)-month period. The option payment or payments shall be applied to the purchase price if the Option is exercised.

3. The purchase price shall be a total of \$40,000.00 per acre.

4. This option may be exercised by written notice delivered to the Optionor, or posted by regular United States mail on or before midnight of the last day of the option term in effect to Brad Davis, Vice President of Business Development, GOEDC, 200 East Third Street, Suite 200, Owensboro, KY 42303 or such other person and address as designated in writing by Optionors to Optionee.

5. Upon exercise of the option herein granted, Optionee shall have 30 days within which to ascertain marketability of title and provide written notice to Optionors of any defects rendering title unmarketable. Any defects rendering title unmarketable shall be cured within 90 days of Optionors' receipt from Optionee of written notice of such defects, at the expense of the Optionors. If Optionors fails to remedy any such defects within the specified period of time, Optionee shall as its sole remedy obtain a refund of any option payments made to Optionors.

6. Upon approval of title by counsel for Optionee or by a court of competent jurisdiction, Optionors shall, within a period of 15 days thereafter, deliver to Optionee, or its designee, a properly executed deed conveying said real property with covenant of General Warranty, at which time Optionee shall pay the balance of the purchase price to the Optionors and be entitled to take possession of the real property. Optionors shall be responsible for payment of deed preparation and the Kentucky transfer tax. Optionee shall be responsible for cost of title examination and recording fee. Any current ad valorem taxes shall be prorated as of the date of delivery of the deed.

7. Prior to the exercise of option Optionee shall have the right to enter upon the subject real property at reasonable times for the purpose of making inspections and investigations, including the drilling of holes, and performing such engineering surveys and environmental studies as Optionee deems appropriate. Any tests shall be conducted in a manner so as not to unreasonably disturb the property. Further, after the conclusion of the inspection and testing, Optionee agrees to immediately repair and restore the property to its former condition. Optionee shall pay all costs incurred in making such inspections and testing and shall indemnify, defend and hold Optionors harmless from any liens, claims, losses and liabilities arising out of Optionee's exercising such right and privilege to go upon the property. Optionee's indemnity of Optionors hereunder shall survive the rescission, cancellation, termination or consummation of the Option. This obligation of Optionee includes, but is not limited to, reimbursing Optionors (or the lessee of farming

rights to the property, as designated by Optionor) for any damage to crops growing on the property.

8. This document contains the entire agreement between the parties hereto and no modification or amendment shall be binding upon any party unless made in writing and signed by all parties hereto.

9. Optionee shall have the right to record the Memorandum of this Option (attached hereto as Exhibit B) in the Daviess County Clerk's Office.

10. If before the closing, Optionors have received the annual rent payment from the lessee of farming rights to the property, Optionors shall have the right to retain that rent free of any claim of Optionee, and the lessee shall have the right to harvest the crops planted under the current lease. If after the closing, Optionee damages or destroys any crops planted on the property, Optionee shall indemnify Optionors, and pay to said lessee, the amount due the lessee under the farm lease for said damage or destruction.

11. This contract shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, and upon default in any of the terms of this Agreement the defaulting party agrees to pay all court costs and reasonable attorney's fees of the non-defaulting party related to such default. **IN TESTIMONY WHEREOF**, witness the hands of the parties hereto this day and date first above written.

OPTIONORS:

**ECONOMIC DEVELOPMENT
PROPERTIES, INC.**

**By: _____
TOM WATSON, PRESIDENT**

CITY OF OWENSBORO, KENTUCKY

By: _____
TOM WATSON, MAYOR

OPTIONEE: KENERGY CORP.

By _____
TIM LINDAHL, PRESIDENT and

CEO
STATE OF KENTUCKY

COUNTY OF DAVIESS

The foregoing was signed and acknowledged before me by **TOM WATSON, PRESIDENT OF ECONOMIC DEVELOPMENT PROPERTIES, INC.**

on the _____ day of _____, 2023.

My commission expires _____

Notary Public, State of Kentucky at Large
Notary Public ID No.: _____

STATE OF KENTUCKY

COUNTY OF DAVIESS

The foregoing was signed and acknowledged before me by **TOM WATSON, MAYOR OF THE CITY OF OWENSBORO**, this _____ day of _____, 2023.

My commission expires _____

Notary Public, State of Kentucky at Large
Notary Public ID No.: _____

STATE OF KENTUCKY

COUNTY OF DAVIESS

The foregoing was signed and acknowledged before me by **TIM LINDAHL, PRESIDENT and CEO of KENERGY CORP.** for and on behalf of said corporation, this _____ day of _____, 2023.

My commission expires: _____

Notary Public, State of Kentucky at Large
Notary Public ID No.: _____

This instrument was prepared by:

J. Christopher Hopgood
DORSEY, KING, GRAY, NORMENT & HOPGOOD
Attorneys at Law
318 Second Street
Henderson, Kentucky 42420