

## **MUNICIPAL ORDER 32-2023**

### **A MUNICIPAL ORDER AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE A REAL ESTATE PURCHASE AGREEMENT FOR THE ACQUISITION OF PROPERTY LOCATED AT 600 WEST THIRD STREET.**

**WHEREAS**, Joel David Osborne owns certain real property located at 600 West Third Street in Owensboro, Daviess County, Kentucky; and

**WHEREAS**, Joel David Osborne now desires to sell the real property located at 600 West Third Street in Owensboro, Daviess County, Kentucky; and

**WHEREAS**, the City of Owensboro seeks to acquire said property for use as parking for the indoor sports complex and to continue revitalization in the downtown area.

**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 property located at 600 West Third Street. Said property is 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 600 West Third Street, in accordance with the terms of the proposed real estate purchase agreement mentioned above in Section 1, as such acquisition is for the purpose of parking for the indoor sports complex and furthering its revitalization of the downtown area.

**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 5th day of September, 2023.

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Thomas H. Watson, Mayor

ATTEST:

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Beth Davis, City Clerk

## **REAL ESTATE PURCHASE AGREEMENT**

**THIS REAL ESTATE PURCHASE AGREEMENT** ("Agreement") is made and entered into on this \_\_\_\_ day of August, 2023, by and between Joel David Osborne, single, of 1421 Triplett Street, Owensboro, Kentucky 42303 (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 Property and improvements located at 600 W. 3<sup>rd</sup> Street in Owensboro, Daviess County, Kentucky and has agreed to sell such property 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 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 buy the property located at 600 W. 3<sup>rd</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 "Property").

- (2) The purchase price for the Property shall be: Seven Hundred Twenty-Five Thousand Dollars (\$725,000.00) (the "Purchase Price"), to be paid contemporaneously with the execution of the deed.
- (3) Seller shall deliver insurable fee simple title to the 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 its reasonable discretion conveying title to the Property to Buyer as required above. Seller shall further provide such other documentation reasonably required by Buyer, 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 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) Seller is the only person holding title to the Property and is under no legal disability impairing his ability to sell.
- (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, he 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 and recordation of any restriction, easement, or other matter affecting the title to the Property 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 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) As of the closing date, there will be no tenants residing on any of the Property.
- (h) 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 a closing on the Property shall be held on or before September 30, 2023, or such later date as the Parties may agree to in writing. Second Party agrees that First Party will have until November 30, 2023 to remove any and all possessions, belongings or materials from the Property.
- (10) Buyer's obligation to purchase is conditioned upon approval of the transaction by the Owensboro Board of Commissioners.
- (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 Property.
- (12) Seller and Buyer agree to prorate responsibility for 2023 for all real property taxes associated with the Property 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 August, 2023.

SELLER:

\_\_\_\_\_  
Joel David Osborne

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 Joel David Osborne, on this the \_\_\_\_\_ day of August, 2023.

\_\_\_\_\_  
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 Davis, City Clerk, for and on behalf of the City of Owensboro, Kentucky, on this the \_\_\_\_\_ day of August, 2023.

\_\_\_\_\_  
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

## **EXHIBIT "A"**

### **600 W. 3rd Street**

BEING that certain lot containing 0.316 acres identified as 600 West 3<sup>rd</sup> Street on the plat of the Roberts Brothers Realty-Ohio Valley Properties Consolidation and Redivision of record in Plat Book 25, page 15, Office of the Daviess County Clerk, to which plat reference is hereby made for a more particular description of said lot

AND BEING the same property conveyed to Joel David Osborne from Daniel Osborne as Trustee of the Joel David Osborne Irrevocable Trust, by deed dated August 14, 2023, of record in Deed Book 1085, page 318, Clerk's Office aforesaid.