



CITY OF BALLWIN

14811 Manchester Road, Ballwin, MO 63011

BILL NO. 3805

ORDINANCE NO. _____

INTRODUCED BY

ALDERMEN TERBROCK, FINLEY, HARDER, DOGAN, FLEMING, LEAHY, KERLAGON, BOLAND

AN ORDINANCE AUTHORIZING THE MAYOR OF THE CITY OF BALLWIN TO EXECUTE A REAL ESTATE CONTRACT WITH BALLWIN ATHLETIC ASSOCIATION.

WHEREAS, The Board of Aldermen has determined that it would be a consistent continuation of the Community Development Block Grant previously received to transfer the property at #1 Ballpark Drive to Ballwin Athletic Association for no consideration as long as Ballwin Athletic Association utilizes the property for not-for-profit athletic leagues.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BALLWIN, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:

Section 1. The Mayor of the City of Ballwin is authorized to execute the contract attached hereto.

Section 2. This Ordinance shall take effect and be in full force from and after its passage and approval.

PASSED this _____ day of _____, 2013.

TIM POGUE, MAYOR

APPROVED this _____ day of _____, 2013.

TIM POGUE, MAYOR

ATTEST: _____
ROBERT KUNTZ, CITY ADMINISTRATOR

**SALE CONTRACT
FOR
#1 BALLPARK DRIVE, BALLWIN MO 63021**

This Contract is made between City of Ballwin, Missouri ("**Seller**"), and Ballwin Athletic Association ("**Buyer**"). The "**Effective Date**" shall be the date of final acceptance of this contract, as indicated by the date adjacent to the signature of the last party to sign this Contract.

1. PROPERTY.

Seller agrees to sell and convey to Buyer and Buyer agrees to purchase from Seller, the following described real estate, the legal description on Seller's deed(s) to govern, which may be confirmed by the Survey, if any, pursuant to Section 6 infra. Such real estate and any other included property set forth below are collectively referred to herein as the "Property" located at:

#1 Ballpark Drive, Ballwin, MO 63021

2. INCLUSIONS, EXCLUSIONS AND EXCEPTIONS.

The Purchase Price and the Property includes all existing improvements on the real estate and all appurtenances, fixtures and equipment, including but not limited to the following : all buildings and structures, and all personal property used in the operation of any such buildings, structures or other improvements, including all equipment, apparatus, machinery and appliances, and all mechanical, electrical, plumbing, heating, ventilating and air conditioning, gas, water, lighting, power, laundry, garbage disposal, fire prevention, elevator, antenna and pool systems, fixtures and equipment, together with all floor coverings, storm windows and doors, screens and awnings, and keys. Seller warrants to convey all included personal property free and clear, and to execute and deliver to Buyer at Closing a bill of sale with warranty of title.

The following items are also **included** in the sale: All real estate and furniture, fixtures, equipment, and tangible assets used in the operation of ball fields and administrative offices for Ballwin Athletic Association.

3. PURCHASE PRICE AND INDEMNITY.

No consideration shall be paid by the Buyer to the Seller for conveyance of the Property. The Seller purchased the property in 1982 with Community Development Block Grant funds and the Property has been occupied by the Buyer for the purpose of conducting not for profit athletic leagues, pursuant to a series of long term leases. While in possession of the Property, the Buyer has made valuable improvements to the property, including, but not limited to the erection and improvement of structures, baseball fields, landscaping, pavement and drainage control. Conveyance of the property from Seller to Buyer is a consistent continuation of the Community Development program by which the Property was purchased and for which it has been utilized since 1982. However, if Seller becomes liable to reimburse St. Louis County and/or the U.S. Department of Housing and Urban Development for all or any part of the block grant funds received, Buyer shall indemnify Seller and repay any such funds to Seller upon demand. This provision shall survive closing and transfer of title.

4. CLOSING.

Subject to the terms of this Contract, this sale will be closed (meaning the exchange of the Deed) (the "**Closing**") at the office of Old Republic Title in Ladue MO, on or before **5PM, on 30th September, 2013** (the "**Closing Date**").

Possession and all keys will be delivered to Buyer at Closing. The Buyer shall pay all costs at closing.

Seller warrants that the Property will be vacant as of the time of delivery of possession (except for tenants or others in possession pursuant to any lease or other agreement identified above and/or approved pursuant to this Contract), and in its present condition (together with any improvements or repairs required by this Contract), ordinary wear and tear excepted.

5. TITLE AND SURVEY.

At Closing, Seller shall transfer marketable title to the Property subject only to the Permitted Exceptions, as directed by Buyer, by special warranty deed, (the "**Deed**"), properly executed and in recordable form. Within 30 days after the Effective Date, Buyer may order an authorized title insurance company to issue a Title Commitment for an Owner's Policy, at Buyer's cost.

The Title Commitment shall be issued by the Closing Agent, unless otherwise specified. Buyer, at its sole option, expense and liability may also obtain a survey of the Property ("**Survey**") to determine if there are any defects, encroachments, overlaps, boundary line or acreage discrepancies, or other adverse matters that may be disclosed. Buyer acknowledges that all surveys are not alike (*i.e.*, a "spot survey" is not the same as a "stake survey") and may not disclose all defects.

6. INSPECTIONS.

Buyer and Seller acknowledge that the Property is to be conveyed "as is" in its current condition. Buyer has occupied the property prior to closing and may be more familiar with the condition of the Property than Seller. Therefore, this contract is not contingent upon any inspections by Buyer.

7. ADJUSTMENTS AND CLOSING COSTS.

Adjustments, charges and Closing costs are agreed to be paid by the parties, with sufficient Funds to satisfy their respective obligations hereunder, as of the date of Closing (unless otherwise expressly set forth herein or in a Rider hereto). Such matters and the following prorations shall be itemized on a closing statement prepared by Closing Agent and executed by Buyer and Seller at or prior to Closing (the "**Closing Statement**"), together with all other documents required of them pursuant to this Contract and/or customarily required by Closing Agent to complete the Closing.

Buyer shall pay for: (a) hazard insurance premium(s) from and after Closing; (b) fees for the Survey ordered by or for Buyer; (c) title company charges (including Closing, recording and escrow fees) (d) special taxes, special subdivision and any other owner association assessments (“**Special Assessments**”) levied after Closing; (e) applicable municipal occupancy permit fee.

8. BINDING EFFECT AND ASSIGNABILITY

This Contract is binding on and shall inure to the benefit of the parties and their respective heirs, successors and permitted assigns. Buyer may not assign this Contract without the written consent of Seller.

9. REVERSION

The Special Warranty Deed conveying the property from Seller to Buyer shall contain a clause affirmatively stating that in the event the property is no longer used by Buyer as ball fields and supporting structures for the conduct of not-for-profit athletic leagues, Seller may reenter the property and title shall immediately revert to Seller in fee simple absolute. In addition, Buyer agrees that the remainder of Buyer’s property, adjacent to the property sold pursuant to this contract, shall be held subject to the same reversion. Appropriate script shall be added to a boundary adjustment plat.

10. ENTIRE AGREEMENT/MODIFICATION.

This Contract and any Rider(s) or other attachments hereto constitute the entire agreement between the parties hereto concerning the Property. There are no other understandings, written or oral, relating to the subject matter hereof. This Contract may not be changed, modified or amended, in whole or in part, except in writing signed by all parties.

11. DEFAULT REMEDIES.

If either party defaults in the performance of any obligation under this Contract, the party claiming a default shall notify the other party in writing of the nature of the default and the party’s election of remedy. The notifying party may, but is not required to, provide the defaulting party with a deadline for curing the default. Following a default by either Seller or Buyer, the other party shall have all remedies permissible in law or equity.

12. PREVAILING PARTY.

In the event of any litigation between the parties pertaining to this Contract, the prevailing party shall be entitled to recover, in addition to any damages or equitable relief, the costs and expenses of litigation, including court costs and reasonable attorney fees. The provisions of this Section shall survive Closing or any termination of this Contract.

13. LEAD-BASED PAINT DISCLOSURE.

Buyer has reviewed and signed, if required by law, a Disclosure of Information of LeadBased Paint and/or Lead-Based Paint Hazards form.

14. SIGNATURES.

This Contract may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. For purposes of executing this Contract, a document signed and transmitted by facsimile machine or a scanned image, such as a pdf, via e-mail is to be treated as an original document.

15. GOVERNING LAW/CONSTRUCTION.

This Contract shall be construed in accordance with the laws of the State of Missouri, including the requirement to act in good faith. The terms "**Seller**" and "**Buyer**" may be either singular or plural masculine, feminine or neuter gender, according to whichever is evidenced by the signatures below. Section captions in this Contract are intended solely for convenience of reference and will not be deemed to modify, place any restriction upon, or explain any provisions of this Contract. If anyone or more provisions contained in this Contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such invalidity, illegality or unenforceability shall not be deemed to terminate this Contract or to affect any other provision hereof, but rather this Contract shall, to the fullest extent permitted by law, remain in full force and effect and be construed as if such invalid, illegal or unenforceable provision(s) had never been contained herein; provided, however, that such provision(s) may be referred to in order to determine the intent of the parties.

16. NOTICES.

Any notice, consent, approval, request, waiver, objection or other communication (collectively, "**Notice**") required under this Contract to be delivered to Seller shall be in writing and shall be deemed to have been delivered to Seller upon delivery thereof to the Seller. Likewise, any Notice to be delivered to Buyer shall be in writing and shall be deemed delivered to Buyer upon delivery thereof to the Buyer. Refusal to accept service of a Notice shall constitute delivery of the Notice.

17. ACCEPTANCE DEADLINE.

Buyer's offer to purchase the Property from Seller shall automatically expire if Seller has not accepted this Contract, by signing and delivering a fully-executed copy to Buyer, on or Buyer's delivery of written Notice to Seller that this offer to purchase is withdrawn.

18. TIME IS OF THE ESSENCE.

Time is of the essence in the performance of the obligations of the parties under this Contract. All references to a specified time shall mean Central Time. With the exception of the term "banking days," as used herein, a "day" is defined as a 24-hour calendar day, seven (7) days per week.

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

SELLER:
CITY OF BALLWIN, MISSOURI

BUYER:
BALLWIN ATHLETIC ASSOCIATION

By: _____

By: _____

Its: _____

Its: _____