

RESOLUTION NO. 2020 - 35

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AND PERFORM UNDER THE TERMS OF A CERTAIN AGREEMENT; AND FOR OTHER PURPOSES

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEARCY, TO-WIT:

WHEREAS, the City of Searcy has been presented a certain agreement associated with the operations of the City of Searcy for the acquisition of certain real property located in Searcy, White County, Arkansas, along with all improvements lying thereon, from:

A. Healthcorp, Inc.

(the "Agreement") a copy of which has been submitted to the Searcy City Council; and

WHEREAS, the City of Searcy wishes to approve the execution of, ratify the terms of and perform under the conditions contained in, the Agreement.

NOW, THEREFORE, be it resolved by the City Council of the City of Searcy, Arkansas, to-wit:

Section 1. That the Searcy City Council approves and ratifies the terms, conditions, and obligations contained within the Agreement.

Section 2. That the Searcy City Council authorizes and directs the Mayor and City Clerk to make, execute, and perform under the terms of, the Agreement.

Section 3. That the Mayor is authorized to take all actions determined to be necessary, in the sole and exclusive determination of the Mayor, in the performance of all obligations, duties and responsibilities contained within the Agreement.

PASSED AND ADOPTED this 12th day of November, 2019.

/s/ Kyle Osborne
Mayor of Searcy

ATTEST:

/s/ Jerry Morris
City Clerk

AGREEMENT OF SALE

THIS AGREEMENT made and entered into by and between THE CITY OF SEARCY, ARKANSAS, ("Seller") and HEALTHCORP, INC. ("Buyer").

WITNESSETH:

1. Property to be Sold. For the consideration and subject to the terms and conditions hereof, Seller agrees to sell and Buyer agrees to purchase that real property located in the City of Searcy, White County, Arkansas, which is more particularly described in Exhibit A attached hereto and made a part hereof by this reference (the "Property").

2. Purchase Price. The purchase price for the Property shall be:

2.1 One Million Seven Hundred Thousand and No/100ths Dollars (\$1,700,000.00) (the "Purchase Price"); and

2.2 One Half (1/2) of the expense of floodproofing the improvements constructed upon the Property, with the cost of these expenses not to exceed \$85,000.00. This sum may be deducted from the Price at Closing and held by the Buyer until the said floodproofing has been completed and, to the extent not utilized by Buyer to perform this floodproofing, shall be refunding, in whole or in part, to the Seller.

3. [Intentionally Omitted]

4. Title Insurance; Survey; and Other Property Information.

4.1. Title Insurance. Within twenty (20) days from the Effective Date (as hereinafter defined), Seller shall provide to Buyer, with the expense to be split equally between Buyer and Seller, (i) a commitment (the "Title Insurance Policy") for an ALTA Owner's Policy of Title Insurance, providing coverage in an amount equal to the Purchase Price in favor of the Buyer, which shall reflect the existence of good, marketable and indefeasible title to the Property to be vested in Seller, subject only to those exceptions which are reasonably acceptable to Buyer (the "Permitted Exceptions"); and (ii) complete copies of all documents and instruments which are the basis for any exception, reservation or requirement contained in the commitment for the Title Insurance Policy. Seller shall, at Seller's expense, perform all curative work required for the removal of those exceptions or reservations identified by Buyer which are not Permitted Exceptions in a form and manner reasonably acceptable to Buyer prior to Closing.

4.2. Survey; Inspection. Seller shall provide to Buyer any survey, building plans, site map or any other, similar, document in its possession with respect to the Property within ten (10) days of the Effective Date or as may be agreed upon by Buyer and Seller. Seller shall, further, make the Property available to Buyer for the purpose of conducting a real property survey or for any other inspection or evaluation that Buyer might require to be performed upon th Property or any improvement lying and being situated upon the Property.

4.3. Environmental Reports. Within ten (10) days of the Effective Date, Seller shall provide to Buyer, a complete copy of all environmental surveys or reports which Seller possesses relating to the Property, or any part thereof, including, without limitation reports containing the results of any environmental testing conducted upon the Property, or any

property adjacent thereto, if any (the "Environmental Reports").

4.4. Other Information. Within ten (10) days of the Effective Date, Seller shall provide to Buyer, complete copies of any other reports, compilations, tests, documents or instruments which Seller possesses and which relate to or affect the Property or its use and occupancy.

5. Buyer's Inspection Period. Beginning as of the Effective Date (as hereinafter defined), and ending at 5:00 p.m. on the thirtieth (30th) day thereafter ("Buyer's Inspection Period"), the Buyer shall have the right to conduct such feasibility studies, testing, investigations and inspections, including soil boring, and surveys of the Property as Buyer deems appropriate, in Buyer's sole discretion, to determine whether the Property is suitable for Buyer's intended use. During the Buyer's Inspection Period, Buyer or Buyer's agents may enter upon the Property, with reasonable prior notice to Seller, for purposes of conducting such soil, environmental and other testing or inspections as Buyer determines appropriate.

6. Buyer's Termination Right. If, prior to the end of Buyer's Inspection Period, Buyer determines, in Buyer's sole discretion, that the Property is not suitable for Buyer's intended use, or if Buyer is unable to procure such governmental approvals as are required for Buyer's intended use of the Property, Buyer may, on notice to Seller, terminate Buyer's obligations under this Agreement. Upon such termination notice, this Agreement shall become null and void, and neither party hereto shall have further liability to the other party hereunder.

7. Environmental Matters. Seller represents that, to Seller's knowledge, no hazardous substances or materials exist on, about or within, or have been used, generated, stored, transported, disposed of on, or released upon the Property except in full compliance with all applicable Federal or State laws, statutes, ordinances, regulations, decrees, or directives relating or pertaining to environmental matters (such laws, statutes, ordinances, regulations, decrees, and directives being hereinafter referred to as "Environmental Laws"); and that there are no asbestos fibers, asbestos insulation, or asbestos building materials upon or within the Property. Seller represents that there is no action, suit, proceeding, investigation or inquiry before any court, administrative agency or other governmental authority pending, or, to the knowledge of Seller, threatened relating in any way to any applicable Federal or State Environmental Laws. For purposes hereof, "hazardous substances or materials" shall have that meaning as described and set forth in the Environmental Laws.

8. Closing. The closing of the transaction contemplated by this Agreement (the "Closing") shall take place within fifteen (15) days after the end of Buyer's Inspection Period (the "Closing Date"). The parties may extend the Closing Date by mutual agreement. If the Closing shall not have occurred as of the Closing Date, or any extended Closing Date, either party may terminate this Agreement by notice to the other party. The Closing shall take place at such place as may be agreed upon by the parties in Searcy, Arkansas. At the Closing, Seller shall: (i) execute and deliver a deed containing general covenants of warranty, subject only to the Permitted Exceptions, conveying the Property to, or as directed by, Buyer; (ii) execute and deliver such certificates or affidavits, and provide such documents and instruments, as may be required by the title insurance company; and (iii) execute, deliver and provide such other documents and instruments as shall be reasonably required to consummate the transactions contemplated by this Agreement. At the Closing, Buyer shall: (i) pay the Purchase Price in immediately available funds; and (ii) execute and deliver, and provide, such other documents and instruments as shall be reasonably required to consummate the transactions contemplated by this Agreement.

9. Closing Costs. At Closing, Seller shall pay: (i) all real property taxes and special assessments, if any, due or payable with respect to the Property as of the Closing Date, or for the year immediately preceding the Closing Date; (ii) the prorated amount (to the Closing Date) of all real property taxes and special assessments for the year in which the Closing occurs, based upon the assessment thereof

for the previous year. Buyer and Seller shall equally split all remaining closing costs and fees including, without limitation: (i) the cost of Arkansas Documentary Stamps; (ii) the cost of the Title Insurance Commitment and any policy of title insurance; (iii) the cost of preparation of the deed of conveyance; (iv) one-half of any closing fee assessed by the closing agent; and (v) all other costs and expenses normally paid by sellers in commercial real property transactions closed in White County, Arkansas.

10. Possession. Possession of the Property shall be delivered to Buyer at Closing, free of any claim or right to possession by any other party.

11. Additional Representations of Seller. Seller represents, as of the date hereof, which representations shall be true at closing that: (a) No consent or other approval, including any Court Order, is required of any third party for the performance of Seller's obligations hereunder; (b) There are no legal proceedings or suits pending, or to the best of Seller's knowledge, threatened, regarding encumbrances upon, or the ownership, use or possession of the Property; (c) the Property is in compliance with all laws, ordinances, rules, regulations or other requirements of any Federal, State, Municipal or other governmental department or agency having jurisdiction over the Property; (d) no other proceedings on the part of the Seller, are necessary to authorize or approve this Agreement and the transactions contemplated hereby; (e) this Agreement has been duly executed and delivered by the Seller, and constitutes a valid and binding obligation of the Seller, enforceable in accordance with its terms; (f) Seller is the owner and holder of good and marketable title to the Property subject only to those liens and encumbrances which will and can be satisfied at Closing from the Purchase Price; (g) No representation or warranty as set forth herein, contains, or will contain, any untrue statement of a material fact, or omits, or will omit to state a material fact necessary in order to make the statements contained therein not misleading; (h) Seller does not have knowledge of any fact that may materially adversely affect the Property that has not been disclosed to Buyer in this Agreement; (i) Seller is a corporation, duly formed, validly existing and in good standing under the laws of the state of Arkansas; and (j) the execution and delivery of this Agreement by the officer of Seller has been duly authorized by all proper action of the governing body of Seller and does not contravene the organizational documents of Seller.

12. Conditions Precedent to Buyer's Obligation. The obligations of Buyer hereunder are expressly conditioned upon: (i) the performance of each and every obligation of Seller to be performed hereunder; (ii) Buyer's receipt and acceptance of the Title Insurance Policy and the other items to be delivered by Seller hereunder; (iii) the truth, at closing, of each and every warranty and representation of Seller hereunder; (iv) the absence of any material adverse change in the Property, or the means of access to, zoning of, or Buyer's ability to use of the entirety of, the Property; (v) Buyer's ability to procure such approvals and authorizations for the use of and construction of improvements upon and to the Property. Buyer may, but shall be under no obligation to do so, waive any of the foregoing conditions. Seller agrees to reasonably cooperate in assisting Buyer to satisfy the foregoing conditions to the extent relating to governmental approvals.

13. Breach.

13.1. Buyer's Default. If the Buyer fails to perform any of Buyer's obligations under this Agreement for any reason other than Seller's default or the permitted termination of this Agreement by Seller or Buyer as provided herein, Seller shall be entitled to enforce this Agreement and shall have all remedies afforded under Arkansas law.

13.2. Seller's Default. If Seller fails to perform any of Seller's obligations under this Agreement for any reason other than Buyer's default or the permitted termination of this Agreement by Seller or Buyer as expressly provided herein, Buyer shall be entitled to enforce this Agreement and shall have all remedies afforded under Arkansas law.

14. Miscellaneous Provisions.

14.1. Further Assurances. On or after the Closing Date, Seller agrees to give such further assurances, and to execute, acknowledge and deliver such other instruments of assignment or transfer as shall be reasonably necessary or appropriate in the judgment of Buyer to finalize the transactions contemplated by this Agreement.

14.2. Binding Effect. This Agreement shall be binding upon the respective parties hereto, their respective heirs, successors and assigns.

14.3. Entire Agreement. This Agreement, together with all Exhibits referred to herein, constitutes the entire agreement between the parties with respect to the subject matter hereof, and may be modified only by a writing executed by all parties.

14.4. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original. The parties agree that they shall be bound by their facsimile signatures on this Agreement.

14.5. Construction. This Agreement has been negotiated, prepared and drafted through the mutual efforts of Seller and Buyer, and their respective advisors and counsel. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise or be imposed which favors or disfavors any party by virtue of the authorship of any of the provisions of this Agreement. This Agreement has been executed and delivered in, and shall otherwise be construed under the domestic laws of the State of Arkansas. The word "including" shall mean, "including, without limitation."

14.6. Severability. If any one or more of the provisions hereof are determined to be invalid, illegal or otherwise unenforceable, such determination shall have no effect upon the remaining provisions hereof, which shall remain valid and enforceable in accordance with their terms.

14.7. Section Headings; Gender. The headings of Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All references to Section or Sections refer to the corresponding Section or Sections of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require.

14.8. No Brokers. The parties represent that no real estate broker or agent, or any other person, has been the procuring cause for the execution and delivery of this Agreement, or is otherwise involved in any respect in procuring the execution of this Agreement by the parties, and that no fee or commission is or will be due to any other person upon closing hereof, and the party whose actions results in any such claim for fees or commissions associated with the transactions contemplated by this Agreement, expressly indemnifies the other party of and from any and all cost, expense, damage and liability arising out of any such claim, including any attorney fee or cost incurred by such indemnified party. The provisions of this Section shall survive the Closing.

14.9. Notices. All notices or other communications required or permitted by the terms hereof, shall be in writing, and shall be deemed to have been given when placed in the United States Mail, postage prepaid, for delivery by Certified Mail, Return Receipt Requested, by hand delivery, by private overnight delivery service, or confirmed facsimile, when addressed or sent to the addresses set forth upon the signature pages of this Agreement. All such notices shall be deemed received on the date of delivery, or the first day that delivery is refused.

DATED this ____ day of November, 2020, as to Buyer, and this ____ day of November, 2020, as to Seller (the "Effective Date").

SELLER:

HEALTHCORP, INC.

By:

Title:

BUYER:

THE CITY OF SEARCY, ARKANSAS

By:

Kyle Osborne, Mayor

Attest:

Jerry Morris, City Clerk-Treasurer

EXHIBIT A

[Real Property Description]

Tract #1: A part of the NW¼ SE¼ of Section 9, Township 7 North, Range 7 West more particularly described as follows, to-wit: Commencing at the Center Corner of said Section 9 and thence S 89° 17' 37" E 311.15 feet along the North line of said NW¼ SE¼ to point on the Easterly right of way of the relocated Skyline Drive for the Point of Beginning and thence continuing S 89° 17' 37" E 301.28 feet along said North line to a point on the Westerly right of way line of Beebe-Capps Expressway; thence S 19° 41' 47" E 42.70 feet along said Westerly right of way line; thence N 89° 17' 37" W 365.52 feet to a point on the Easterly right of way line of the relocated Skyline Drive; thence N 51° 41' 11" E 63.53 feet along said Easterly right of way line back to the Point of Beginning.

Tract #2: A part of the SE¼ of Section 9, Township 7 North, Range 7 West more particularly described as follows, to-wit: Commencing at the Center Corner of said Section 9 and thence S 89° 17' E 479.65 feet along the North Line of said SE¼; thence S 00° 00' E 40.00 feet for the Point of Beginning; thence S 89° 17' E 150.00 feet; thence S 00° 00' E 285.00 feet to the North Bank of Gin Creek; thence N 62° 52' W 168.54 feet along said North Bank; thence N 00° 00' W 210.00 feet back to the Point of Beginning.

Tract #3: A part of the SE¼ of Section 9, Township 7 North, Range 7 West and a part of Blocks 5 & 6 of Battles Addition to the City of Searcy, Arkansas, LESS & EXCEPT that part of Lucy Street contained in the following described tract of real property which is more particularly described as follows, to-wit: Commencing at the Center Corner of said Section 9 and thence S 89° 17' 00" E 473.65 feet along the North line of said SE¼; thence S 00° 00' 00" E 40.00 feet; thence S 89° 17' 00" E 150.00 feet for the Point of Beginning and thence S 00° 00' 00" E 312.00 feet to the Centerline of Gin Creek; thence S 66° 35' 00" E along said centerline 290.84 feet; thence S 64° 50' 11" E along said centerline 204.34 feet; thence S 76° 05' 45" E along said centerline 331.97 feet; thence S 11° 18' 30" W 20.00 feet to the North line of Western Hills Addition to the City of Searcy, Arkansas and the centerline of the Missouri & North Arkansas Railroad Dump; thence S 78° 40' 30" E 76.26 feet along the centerline of said dump to a point on the South line of Block 5 of Battles Addition; thence S 89° 25' 51" E 161.78 feet along said South line of said Block 5 and 6 of Battles Addition to a point on the Southwesterly right of way of Beebe Capps Expressway; thence N 70° 35' 17" W 653.49 feet along said right of way line; thence N 64° 24' 30" W 169.23 feet along said right of way line; thence N 47° 36' 19" W 166.41 feet along said right of way line; thence N 28° 33' 56" W 182.53 feet along said right of way line; thence N 19° 43' 01" W 71.84 feet along said right of way line; thence N 89° 17' 00" W 3.33 feet back to the Point of Beginning.