

RESOLUTION NO. 2021 -07

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 locate for the use of the City of Searcy in connection with the operation of the Searcy sports complex with:

A. James Bond and Debbie Bond, husband and wife;

(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 25th day of February, 2021.

/s/ Kyle Osborne
Mayor of Searcy

ATTEST:

/s/ Jerry Morris
City Clerk

AGREEMENT OF SALE

THIS AGREEMENT (“Agreement”) made and entered into by and between THE CITY OF SEARCY, ARKANSAS (“Buyer”) and JAMES BOND and DEBBIE BOND, husband and wife (collectively, whether one or more, the “Seller”).

W I T N E S S E T H:

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 Searcy, White County, Arkansas, which is described in Schedule 1.1 attached hereto and made a part hereof by this reference along with all improvements lying thereon (the “Property”). The parties agree that the description of the Property shall be finally determined by the Survey as hereinafter provided.
2. Purchase Price. The purchase price for the Property shall be Two Hundred Seventy-Five Thousand and No/100ths Dollars (\$275,000.00) (the “Purchase Price”). The Purchase Price will be paid in immediately available funds at Closing (as hereinafter defined).
3. Earnest Money Deposit. Coincident with the execution hereof, Buyer has delivered to Seller the sum of \$5,000.00 as Earnest Money for the performance of Buyer’s obligations hereunder. Seller shall hold the said Earnest Money Deposit pending the Closing hereof, and, at Closing, shall apply the same in reduction of the Purchase Price. In the event this transaction shall fail to close as a consequence of failure of title or due to some other fault of Seller, Sellers shall promptly refund the said Earnest Money Deposit to Buyer. In the event that this transaction shall fail to close due to some fault of Buyer, Sellers shall be entitled to retain the said Earnest Money Deposit as liquidated damages for Buyers' breach which shall be the sole and exclusive remedy of Seller.
4. Title Insurance; Survey.
 - 4.1. Within ten (10) business days from the Effective Date, Buyer shall procure, from White County Title Company, at Seller’s expense, (i) a commitment (the “Commitment”) for an ALTA Owner’s Policy of Title Insurance in the amount of 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. 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. Within thirty (30) days of the Effective Date, Seller shall provide to Buyer, any

plat and boundary survey (the "Survey") of the Property in the possession of the seller and shall permit Buyer access to the Property to perform any inspection, survey or other evaluation Buyer might reasonably require to be performed.

5. Buyer's Inspection Period. Beginning as of the Effective Date (as hereinafter defined), and ending at 5:00 p.m. on the 30th day thereafter ("Buyer's Inspection Period"), the Buyer shall have the right to conduct such feasibility studies, testing, investigations and inspections 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 for purposes of conducting such soil, environmental and other testing or inspections as Buyer determines appropriate. Buyer hereby indemnifies the Seller of and from all liabilities arising out of any such entry or the performance of any such testing.
6. Buyer's Termination Right. If, as of 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, Buyer may, on notice to Seller, terminate its obligations under this Agreement. Upon such termination this Agreement shall become null and void, and neither of the parties hereto shall have liability to any other party hereunder, or with respect hereto; provided, however, that in such event Seller shall deliver the Earnest Money Deposit to Buyer.
7. Environmental Matters. Seller represents that 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"); that there are no asbestos fibers, insulation, or building materials within any structure which is upon the Property; and 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. Seller shall and does hereby indemnify Buyer of and from any and all liability for damage, cost, fine, assessment, penalty or other claim of any nature or kind whatsoever, arising out of or relating to any violation or alleged violation of the Environmental Laws. The indemnity herein granted shall survive the Closing and shall be binding upon the Seller, and the Seller's successors and assigns forever.
8. Closing. The closing of the transaction contemplated by this Agreement (the "Closing") shall take place upon the later of: (i) that date which is thirty (30) days after the end of the Buyer's Inspection Period, or (ii) that date which is thirty (30) days after the satisfaction of Buyer's conditions precedent as hereinafter provided (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 the location as may be agreed upon by the parties. At the Closing, Seller shall: (i) execute and deliver a deed containing general covenants of warranty, subject only to those restrictions and reservations as are reasonably acceptable to Buyer, 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 and deliver such other documents and instruments as shall be reasonably required to consummate the transactions contemplated by this Agreement and specifically including any document necessary to convey the fixtures or other personal property lying upon the Property. At the Closing, Buyer shall: (i) pay the Purchase Price in immediately available funds or as may be set forth herein; 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; (ii) to Buyer, 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; (iii) one-half the cost of Arkansas Documentary Stamps; (iv) the cost of the Commitment; (v) the cost of preparation of the deed of conveyance; (vi) one-half of any closing fee assessed by the closing agent; (vii) the real estate commission (as hereinafter provided) and (viii) all other costs and expenses normally paid by sellers in commercial real property transactions closed in White County, Arkansas. At Closing, Buyer shall pay: (i) one-half the cost of Arkansas Documentary Stamps; (ii) one-half of any closing fee assessed by the closing agent; (iii) the recording fee for the deed of conveyance; and (iv) all other costs and expenses normally paid by buyers in commercial real property transactions closed in White County, Arkansas.

10. Additional Representations of Seller. Seller represents, as of the date hereof, which representations shall be true at closing that: (a) Sellers are individual residents of White County, Arkansas, and possess the full power, authority and the legal right to execute, deliver, and perform its obligations under this Agreement; (b) No consent or other approval, including any Court Order, is required of any third party for the performance of Seller's obligations hereunder; (c) 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; (d) 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; (e) Gas, electric power, water and sanitary sewer services are available to and servicing the Property; (f) The execution, delivery and performance of this Agreement have been duly authorized by all proper action of the governing body of Seller, and no other proceedings on the part of the Seller, are necessary to authorize and approve this Agreement and the transactions contemplated hereby; (g) 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; (h) The execution, delivery and performance of this Agreement by the Seller do not and will not contravene any provisions of the organizational documents of Seller; (i) 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; (j) 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; and (k) 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.

11. 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 Commitment; (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 construction of improvements upon and to the Property from governmental agencies having jurisdiction; (vi) Buyer's termination right as provided in Section 6 hereof; and (vii) Buyer's receipt and acceptance of the Survey. Buyer may, but shall be under no obligation to do so, waive any of the foregoing conditions.

12. Miscellaneous Provisions.
 - 12.1. 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.

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

 - 12.3. 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.

 - 12.4. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original.

 - 12.5. 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 in, and shall otherwise be construed under the domestic laws of the State of Arkansas. The word "including" shall mean, "including, without limitation."

 - 12.6. 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.

- 12.7. 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 as set forth herein.

All such notices shall be deemed received on the date of delivery, or the first day that delivery is refused.

- 12.8. Assignment. The rights of Buyer hereunder may be assigned by Buyer without Seller's prior consent.
- 12.9. 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.
- 12.10. No Brokers. The parties represent that no real estate broker or agent is involved in any respect in procuring this Agreement, and that no fee or commission will be due upon closing hereof, and the party whose actions result in any such claim for fees or commissions expressly indemnifies the other party of and from any and all cost and liability arising out of any such claim for real estate fee or commission in connection herewith, including any attorney fee or cost incurred by the other party. This provision shall expressly survive the Closing.
- 12.11. Cooperation. Seller will cooperate with Buyer to facilitate the satisfaction of Buyer's conditions precedent, including, specifically, the procurement of such rezoning, plat approval, lot split approval, or other approvals required of any governmental authority.
- 12.12. Mineral Reservation. Seller shall reserve one-half of the oil and gas and other minerals associated with the said real property with such reservation to last only for the life of both of those persons comprising Seller.

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DATED this ____ day of _____, 2021, as to Buyer, and this ____ day of _____, 2021, as to Seller (the "Effective Date").

BUYER:

THE CITY OF SEARCY, ARKANSAS

By: _____
Kyle Osborne, Mayor

SELLER:

James Bond

Debbie Bond

SCHEDULE 1.1

[Real Property Description]

A part of the Southeast Quarter of the Southwest Quarter (Pt. SE 1/4 SW 1/4) of Section Fourteen (14), Township Seven North (T-7-N), Range Seven West (R-7-W), more particularly described as follows, to-wit: Commencing at the Southeast Corner of said Section Fourteen (14) and run thence North 89 degrees 58 minutes 00 seconds West, 2,391.55 feet; thence North 04 degrees 55 minutes 00 seconds West, Forty (40.00) feet to the intersection of the North right-of-way line of Arkansas State Highway #367 (formerly State Highway #320) with the East right-of-way line of Higginson Street; thence continuing North 04 degrees 55 minutes 00 seconds West, along said East right-of-way line, 313.05 feet; thence North 05 degrees 05 minutes 00 second West , along said East right-of-way line, 195.50 feet for the point of beginning; thence North 06 degrees 53 minutes 05 seconds West, along said East right-of-way line, 200.00 feet; thence South 89 degrees 58 minutes 00 seconds East, 435.60 feet; thence South 06 degrees 53 minutes 00 seconds East, 200.00 feet; thence North 89 degrees 58 minutes 00 seconds West, 435.60 feet to the point of beginning. Containing Two (2.0) acres, more or less.