

RESOLUTION NO.

RESOLUTION

A RESOLUTION OF THE COUNCIL OF THE CITY OF KNOXVILLE AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS NECESSARY TO OBTAIN AN ASSIGNMENT OF A CONTRACT TO PURCHASE PROPERTY LOCATED AT 4328 OLD FRENCH ROAD, KNOXVILLE, TN 37920, CLT # 111-016, AND TO EXTEND THE INSPECTION PERIOD UP TO 90 DAYS AT A COST NOT TO EXCEED \$35,000.00.

RESOLUTION NO: _____

REQUESTED BY: Finance

PREPARED BY: Law

APPROVED: _____

APPROVED AS AN EMERGENCY MEASURE: _____

MINUTE BOOK: _____ PAGE _____

WHEREAS, the State of Tennessee (the "State") and the City of Knoxville (the "City") are parties to an Agreement Concerning Implementation of Lakeshore Master Plan ("Master Agreement"), dated October 15, 1999, pursuant to which the State has agreed to transfer certain buildings and property located at Lakeshore Park to the City for public recreational purposes as the State's use is abandoned or terminated with respect to the operation of a mental health facility; and

WHEREAS, pursuant to the Master Agreement, the City has certain obligations to the State and other considerations to pay in exchange for the grant of the property; and

WHEREAS, there are approximately 17.2 acres in Lakeshore Park reserved by the State for expansion of the Tennessee Veteran's cemetery, but due to concerns regarding the long term suitability of the site to meet the needs for the cemetery expansion based on current actuarial projections, the State is interested in exploring the possibility of expanding the cemetery to property located at 4328 Old French Road, Knoxville, TN 37920, CLT #111-016, comprised of approximately 68.05 acres (the "Property"); and

WHEREAS, in order to accomplish the cemetery expansion at the Property, the State and the City desire to explore a possible land swap transaction whereby the City purchases the Property and conveys it to the State, and in turn, the State conveys the 17.2 acres in Lakeshore Park to the City and grants the City certain additional considerations under the Master Agreement; and

WHEREAS, due to the fact that the transaction is presently in an exploratory stage and in order to provide the proper parties adequate time to evaluate the merit of the Property for its intended use, Thomas N. McAdams, 4823 Old Kingston Pike, Suite 300, Knoxville, TN 37919, (“McAdams”) made an earnest money deposit of \$25,000.00 and secured a contract to purchase the Property, which includes a 90 day inspection period that is to expire on October 31, 2009 unless otherwise extended (a copy of which is attached hereto as Exhibit A) (the “Sales Contract”); and

WHEREAS, McAdams is willing to assign the Sales Contract to the City, which by its terms allows an extension of the inspection for up to 90 additional days by increasing the earnest money deposit from \$25,000.00 to \$35,000.00; and

WHEREAS, in order to allow sufficient time for the State and the City to attempt to negotiate a transaction and reach definitive agreements to be presented for approval by the Knoxville City Council and the appropriate State authorities, the City desires to receive an assignment of the Sales Contract from McAdams and to extend the inspection period for up to 90 additional days by making a total earnest money deposit in the amount of \$35,000.00 to be applicable to the purchase price at closing, with the current \$25,000.00 earnest money deposit to be refunded to McAdams.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KNOXVILLE:

SECTION 1: The Mayor of the City of Knoxville is authorized to execute an assignment and assumption of the Sales Contract, in substantially the same form as attached hereto as Exhibit B, with Thomas N. McAdams to purchase property located at 4328 Old French Road, Knoxville, TN 37920, CLT # 111-016, and to extend the inspection period provided for in the Sales Contract for up to 90 additional days by making a total earnest money deposit in the amount of \$35,000.00 to be applicable to the purchase price at closing.

SECTION 2: This Resolution shall take effect from and after its passage, the welfare of the City requiring it.

Presiding Officer of the Council

Recorder

REAL ESTATE SALES CONTRACT

This contract entered into this 24th day of July 2009, by and between Suzanne H. Clark and Sandra Ray Monday and Josephine French Duncan, of Knox County, Tennessee, herein collectively referred to as "SELLER" and Thomas N. McAdams, Agent, of Knox County, Tennessee, herein referred to as "BUYER".

WITNESSETH

That subject to the terms and conditions hereinafter set forth, the Seller has contracted to sell to the Buyer and the Buyer hereby agrees to purchase approximately sixty-eight (68) acres of land on Old French Road in Knox County, Tennessee, as shown on Exhibit "A", said land having a tax description of Parcel 016 of Map 111.

PURCHASE PRICE AND PAYMENT: The purchase price for the said property is ONE MILLION AND FOUR HUNDRED THOUSAND DOLLARS (\$1,400,000) and is to be paid as follows: TWENTY- FIVE THOUSAND DOLLARS (\$25,000.00) paid within three (3) business days of the execution of this contract, as earnest money, which sum shall apply toward the purchase price, to be deposited in REALTY INVESTMENT SERVICES non interest-bearing Escrow Account until closing or until disbursement as set forth in the "Remedies" paragraph herein. The balance of the purchase price is to be paid as follows: cash at closing.

CLOSING AND POSSESSION: Closing to be held within ten days after the end of the inspection, with an estimated closing date of October 31, 2009 and with immediate possession at closing. Closing may be extended for up to ninety (90) additional days on the terms set forth in the attached addendum Exhibit B.

SEE ATTACHED ADDENDA FOR SPECIAL TERMS AND STIPULATIONS (Exhibit "B")

ACCEPTANCE: The Buyer's obligations under this contract are expressly contingent on acceptance by Seller on or before July 24, 2009 as evidenced by Seller's signature affixed hereto. Should the contract not be accepted and returned to Buyer by said date, then Buyer at his option may declare this contract null and void and receive a full refund of the earnest money.

DELIVERY OF DEED AND MARKETABLE TITLE: At closing, Seller agrees to convey to Buyer or Buyer's Order by a general Warranty Deed, a merchantable title to the property, free and clear of encumbrances. Deed for the premises above described shall be made as directed by Buyer. Seller shall also obtain, execute and deliver such additional documents as may be reasonably requested by Buyer or Buyer's title insurance agent in connection with the conveyance. Buyer will simultaneously deliver to Seller the balance of the purchase price specified above. Seller agrees not to take any action, without the written consent of Buyer, prior to closing, which will in any way adversely affect title to the property.

EXAMINATION OF TITLE: Examination of title will be at the option and expense of Buyer, provided, however, that if upon examination, title is found to be unacceptable to Buyer, Buyer

shall notify Seller of any objections by the end of the inspection period. If any such objections cannot be cured by Seller at Seller's expense to allow closing by the time specified herein, Buyer may elect to terminate this contract, in which event the earnest money shall be refunded to Buyer. Merchantable title, the parties hereby agree, shall mean title insurable by a well-qualified national title company without exceptions which would adversely affect the use or value of the Property.

TAXES ETC.: Property taxes shall be prorated between the parties as of the date of closing, and assumed by Buyer. If the closing shall occur before the tax rate and assessment are fixed, the apportionment of taxes at closing shall be upon the basis of the tax rate and assessment for the preceding year and shall be adjusted by the parties after closing when the rates and assessment are final.

RISK OF LOSS: The parties hereby agree that all risk of loss from damage to the property by any cause prior to closing is assumed by Seller, and Buyer shall have the right to terminate this contract in the event of any material change in the condition of the property. In the event of termination, Buyer shall be entitled to a refund of the earnest money.

CONDITION OF PROPERTY: The Seller warrants that to the best of its knowledge neither it, its tenants, nor its predecessors in title have disposed of any hazardous waste, as defined by current state and federal law, on or beneath the surface of the property, and that the property has never been used for the underground storage of liquids other than potable water and residential septic tanks.

Buyer, at its own expense, may conduct a Phase I environmental report. This report must show that there are no environmental hazards, defects, or violations on the premises that might require correction or clean-up by the Buyer. If, after receipt by the parties of the Phase I environmental report, it appears that additional environmental reports are necessary and/or expense will have to be made to clean-up the property, then the Seller shall, at its option, incur the expenses of the additional reports and remediation, or Buyer or Seller may terminate this agreement. If this agreement is terminated, the Buyer shall be entitled to a return of its earnest money deposit.

Except as specifically stated herein, Buyer agrees to accept the property and improvements thereon in their "AS IS" condition.

REMEDIES: If Buyer fails to carry out and perform the terms of this contract, except for some permissible reason specified herein or other reason satisfactory and acceptable to Seller, Buyer shall forfeit all amounts advanced as earnest money, and Seller shall receive and retain the earnest money as liquidated damages and as Seller's sole and exclusive remedy. If Seller defaults in the performance of this contract, Buyer may reclaim his earnest money payment and pursue any remedy available at law or in equity. In any action brought to enforce the provisions of this agreement the successful party shall be entitled to recover its reasonable attorney's fees incurred.

REAL ESTATE COMMISSION: It is further agreed that the Seller pay Seller's agent and Realty Investment Services, their commissions as agreed between Seller and Seller's agent.

ASSIGNABILITY: Buyer shall have the right to assign his rights and obligations under this contract, in full, and, upon the assumption of this contract by the assignee, Buyer shall be released from any further liabilities or obligations hereunder.

COSTS OF CLOSING: Seller shall pay for the preparation of the Warranty Deed, the release of any encumbrances and one-half of the closing fees charged by the title company. Buyer shall pay all remaining expenses related to purchase.

NOTICES: Any notices sent pursuant to this contract shall be hand delivered or sent by certified mail, return receipt requested or by reputable overnight courier service to the following addresses:

To Seller: Suzanne Clark
Sandra Ray Monday
Josephine French Duncan

To Buyer: Thomas N. McAdams, Agent
4823 Old Kingston Pike, Suite 300
Knoxville, TN 37919

ENTIRE AGREEMENT: Both Seller and Buyer agree that this contract constitutes the sole and only agreement including exhibits between them respecting the property and shall not be modified, except in writing, and shall be binding upon their heirs and assigns, or successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this instrument in duplicate, each of which is deemed to have the force and effect of the original, on the day and year first above written.

SELLERS:

SUZANNE H. CLARK

Suzanne H. Clark 7/23/09
Date

SANDRA RAY MONDAY

Sandra Ray Monday
Date 07-23-09

JOSEPHINE FRENCH DUNCAN

Josephine French Duncan
Date 7/22/09

BUYER:

THOMAS N. MCADAMS, AGENT

Thomas N. McAdams, Agent
7-22-09 Date

EXHIBIT A

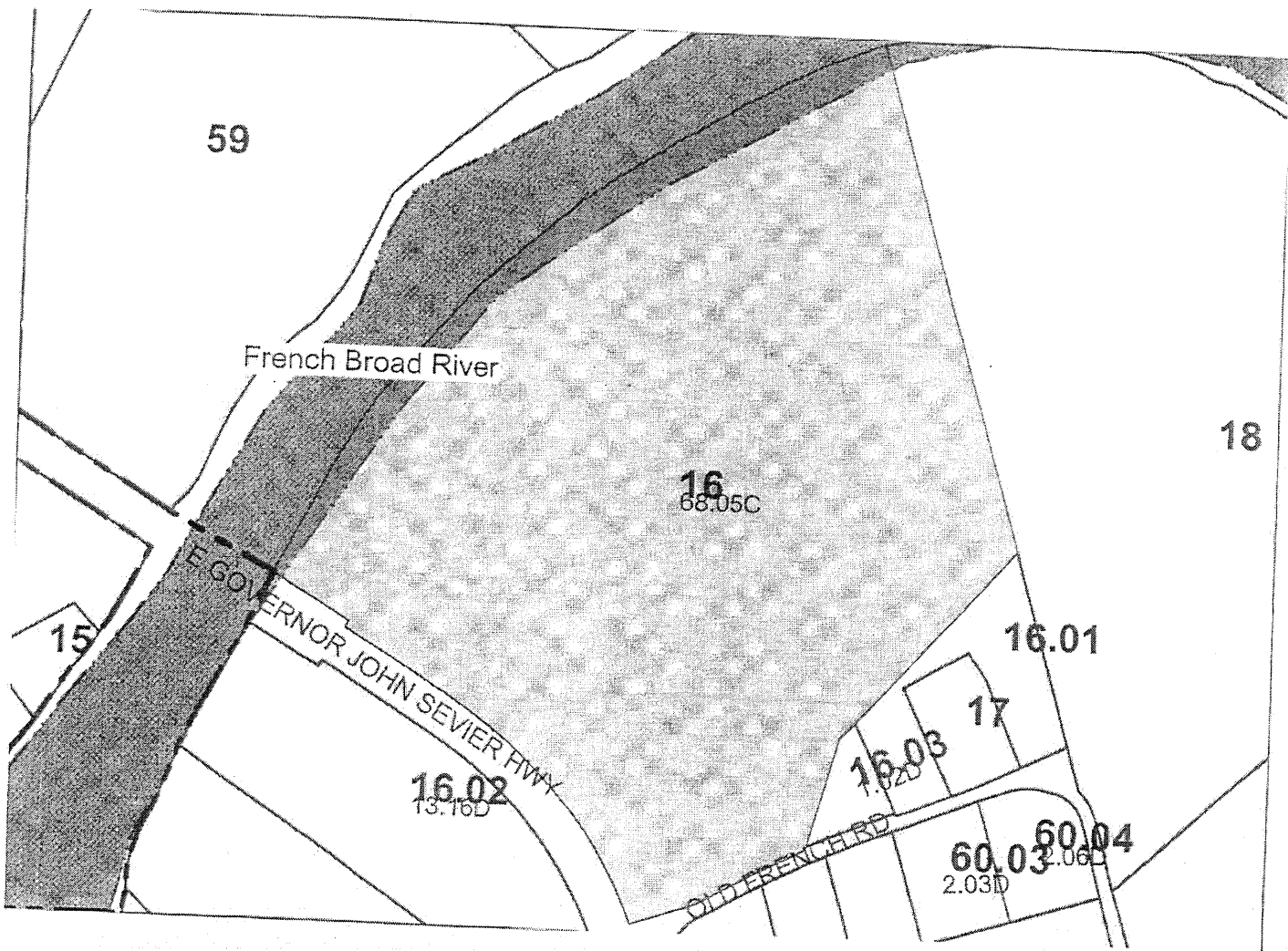


EXHIBIT B

SPECIAL TERMS AND STIPULATIONS

1. Between the date hereof and the end of the inspection period, Buyer shall have the right to conduct such tests, investigations and inspections concerning the property as Buyer in his sole discretion deems appropriate and shall repair any damages and indemnify Seller from any damages caused by such tests and inspections. Any testing sites on the property will be returned to pre-existing conditions upon completion of tests. Buyer will ensure that all vendors working on its behalf to inspect the property are insured or bonded and have Seller named as additional insured and will provide proof of such insurance to Seller before conducting any work on the property.
2. Buyer or his assigns, in their sole and absolute discretion and for any reason whatever may cancel this contract before the end of the inspection period, as extended, and receive a refund of all earnest money deposits.
3. The inspection period shall expire on October 31, 2009, unless extended. Buyer shall have the right to extend the inspection period for up to ninety (90) additional days by increasing the earnest money to \$35,000, which shall be applicable to the purchase price at closing but shall not be refundable if Buyer elects to not purchase the property.

ASSIGNMENT AND ASSUMPTION OF REAL ESTATE SALES CONTRACT

THIS ASSIGNMENT AND ASSUMPTION OF REAL ESTATE SALES CONTRACT (the "Assignment") is made this _____ day of _____, 2009, between THOMAS N. McADAMS, 4823 Old Kingston Pike, Suite 300, Knoxville, TN 37919 ("Assignor"), and the CITY OF KNOXVILLE, a municipal corporation organized and existing under the laws of the State of Tennessee ("Assignee").

Assignor desires to assign its interest in that certain Real Estate Sales Contract dated July 24, 2009, by and among Suzanne H. Clark and Sandra Ray Monday and Josephine French Duncan (the "Seller"), and Thomas N. McAdams pertaining to the parcel of land described therein (the "Sales Contract"), and Assignee desires to assume Assignor's obligations, responsibilities and liabilities under the Sales Contract;

IN CONSIDERATION of the sum of Twenty Five Thousand Dollars (\$25,000.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Assignor hereby assigns, transfers and conveys to Assignee, all of Assignor's right, title and interest in, to and under the Sales Contract.

2. Assignee does hereby accept the foregoing assignment and does hereby assume, and agrees to perform and be bound by, all of the covenants, conditions, obligations and liabilities, heretofore accrued and hereafter accruing, of Assignor under the Sales Contract.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment and Assumption of Lease as of the date and year first above written.

ASSIGNOR:

By: _____
THOMAS N. McADAMS

ASSIGNEE:

CITY OF KNOXVILLE:

By: _____
BILL HASLAM
MAYOR