

Bill No. 13792

Ordinance No. 24-029

Sponsor: Bill Otto

AN ORDINANCE AUTHORIZING THE PURCHASE OF A PORTION OF THE PROPERTY LOCATED AT 1701 NORTH SECOND STREET FOR \$200,000.00 AND CLOSING COSTS NOT TO EXCEED \$5,000.00 FOR A TOTAL AMOUNT NOT TO EXCEED \$205,000.00, AND GRANTING CONTINUING AUTHORITY TO EXECUTE DOCUMENTS NECESSARY TO CARRY OUT THE INTENT OF THIS ORDINANCE.

Be It Ordained by the Council of the City of St. Charles, Missouri, as Follows:

SECTION 1. The purchase of a portion of the real property located at 1701 North Second Street identified on the attached Exhibit 1 is authorized for a total amount not to exceed \$205,000.00, inclusive of closing costs.

SECTION 2. The Mayor is authorized to execute the Real Property Purchase and Sale Agreement substantially the same in form and content as attached hereto and identified as Exhibit 2. The Mayor is granted continuing authority to perform all acts necessary to carry out the intent of this ordinance and to execute additional documents necessary to carry out the intent of this ordinance, including all closing documents.

SECTION 3. This Ordinance shall be in full force and effect from and after the date of its passage and approval.

March 19, 2024
Date Passed

Vince F. Ratchford
Vince Ratchford, Presiding Officer

3-20-24
Date Approved by Mayor

Daniel J. Borgmeyer
Daniel J. Borgmeyer, Mayor

Approved as to Form:
Michael P. Cullen 2/21/24
Michael P. Cullen, City Attorney Date

Attest:
Kimberly Hudson
City Clerk



CERTIFICATE OF DIRECTOR OF FINANCE

I certify that the expenditure contemplated by this document is within the purpose of the appropriation and the work program contemplated thereby, and that there is a sufficient unencumbered balance in the appropriation account and in the proper fund to pay the obligation.

Jim Olson 2-22-24
Director of Finance Date

EXHIBIT A
LEGAL DESCRIPTION
(NOT OFFICIAL)

1701 North Second Street

A tract of land in City Square No. 53 of the city of St. Charles, Missouri, being more particularly described as follows: Commencing at the intersection of the Eastern line of Third Street with Southern line of Wilkinson Street; thence Eastwardly with the Southern line of Wilkinson Street 150 feet, more or less, to the centerline of an alley; thence Southwardly with said alley center line 128.33 feet, more or less, to the East-West centerline of said Block 53; thence Westwardly parallel with Wilkinson Street 150 feet, more or less, to the Eastern line of Third Street; thence Northwardly with the Eastern line of Third Street 128.33 feet, more or less, to the place of beginning.

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "Agreement"), is made and entered as of the last date signed below by and between CITY OF ST. CHARLES, MISSOURI, a constitutional charter city and political subdivision of the State of Missouri ("Purchaser"), and TFO PROPERTIES LLC ("Seller"). The words "party," "parties," "Party" or "Parties" refers to Seller or Purchaser, or both.

1. **Property.** Subject to the terms and conditions of this Agreement, in consideration of the mutual covenants and agreements herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound upon the execution by the Parties, Seller agrees to sell and convey and Purchaser agrees to purchase the following (collectively, the "Property"):

1.1. A portion of the real property commonly referred to as 1701 North Second Street with a parcel ID 6-006D-B053-00-0002.0000000, and located in the City of St. Charles, Missouri, and as more specifically identified as set forth on **Exhibit A** hereto. Notwithstanding the foregoing, it is agreed and understood that the description of the land attached hereto is sufficient for purposes of this Agreement creating binding obligations of the parties hereunder;

1.2. All buildings, structures and improvements on such real property, if any, and Seller's interest in and to any fixtures and equipment affixed or attached thereto;

1.3. All rights and appurtenances pertaining to such real property, including without limitation any appurtenant easements; and

1.4. Any and all water, oil, gas and other minerals lying within or which are appurtenant to the property and any rights with respect thereto.

2. **Purchase Price.** Subject to the terms and conditions hereof, on the Closing Date (as hereinafter defined), the Seller shall sell to Purchaser and Purchaser shall purchase from Seller, the Property for the purchase price in the amount of TWO HUNDRED THOUSAND AND 00/100 DOLLARS (\$200,000.00) ("Purchase Price"). The Purchase Price shall be paid in United States

Dollars. At Closing, Purchaser shall pay the Purchase Price, subject to prorations and adjustments described in Section 3 herein, by bank check, cashier's check or by wire transfer.

3. **Adjustments to Purchase Price; Taxes and Utilities.** All real estate taxes and special assessments, if any, levied or assessed on or against the Property shall be prorated between the Parties as of the Closing Date. At the Closing, the Purchaser shall receive a credit against the Purchase Price equal to all accrued and unpaid taxes and assessments as of the Closing Date (including, without limitation, any taxes and assessments attributable to any period prior to the Closing but not payable until after the Closing). The credit for accrued taxes and assessments for which bills have not been issued as of the Closing Date shall be based on the then most recent taxes and assessments. Seller shall bear responsibility for and shall pay all utility costs incurred with respect to the Property for periods prior to the Closing Date. For purposes of calculating the prorations provided for in this Agreement, Purchaser shall be deemed the owner of the Property on the Closing Date. Any such proration that cannot be determined as of the Closing Date is to be estimated as of the Closing Date, with such estimates to be included in the Purchase Price. Final determinations are to be made as soon thereafter as is possible.

4. **Property Sold "As Is."** Excepting for the performance of a Phase 1 environmental site assessment, the satisfactory acceptance of which shall be in Purchaser's sole discretion, and those warranties and representations in Section 9, the Property is otherwise being conveyed to Purchaser without any warranties of any kind except as set forth in this Agreement.

5. **Closing.** The closing of the purchase and sale of the Property contemplated herein (the "Closing") is to occur at the offices of Old Republic Title Company of St. Louis, Inc. ("Title Company"), located at 7421 Mexico Road, St. Peters, Missouri. The Closing shall take place within 30 days of Purchaser's receipt of the Phase 1 environmental site assessment as provided in this Agreement or upon such other date and time which the Parties may mutually agree (the "Closing Date"). At the Closing, Seller is to deliver to Purchaser a general warranty deed duly executed and acknowledged by Seller conveying to Purchaser good and marketable title to the Property free and clear of all liens and encumbrances (the "Deed"), and Purchaser is to deliver to Seller the Purchase Price in accordance with Section 2 herein.

6. **Expenses.** Unless otherwise provided for herein, Purchaser shall pay all miscellaneous closing costs, including recording fees. Each Party shall pay its own legal fees and expenses.

7. **Title.** In addition to the conditions set forth in Section 8 herein, the obligations of Purchaser under this Agreement are contingent upon Purchaser's receipt, at Purchaser's expense, of a title commitment (and copies of all instruments reflected as exceptions thereon) in a form and substance satisfactory to Purchaser based upon a reasonable person test (collectively, the "Title Commitment") covering all of the Property. Purchaser will endeavor to obtain the Title Commitment within thirty (30) days after the execution of its counterpart of this Agreement. Promptly after receiving the Title Commitment showing all exceptions noted, Purchaser shall provide Seller with written objections, if any, to title within fifteen (15) days of receipt of the Title Commitment. Seller shall have fifteen (15) days thereafter in which to notify Purchaser regarding whether it will attempt to cure such objections and, if so, thirty (30) days from such notice in which to cure all such objections. Any title encumbrances or exceptions set forth in the Title Commitment that Purchaser does not object to will be deemed permitted exceptions to Seller's title (the "Permitted Exceptions"). If any of Purchaser's objections are not cured by removal, disposal, endorsement over, or otherwise, or if Seller is unable or unwilling to cure such objections following its election to attempt to cure same, within ten (10) days following either such notice or failure to cure, Purchaser may elect, by written notice to Seller, either to (a) waive the objections not cured at which point such objections shall become Permitted Exceptions, or (b) terminate this Agreement such that the Parties shall have no further obligations hereunder.

8. **Conditions.**

8.1. Seller's Conditions. All of the obligations of Seller hereunder are subject to the satisfaction of every one of the conditions precedent set forth in this paragraph 8.1 unless, and only to the extent, Seller waives in writing the following obligations and conditions of Purchaser: (i) the representations and warranties of Purchaser herein are true and correct as of the Closing Date; (ii) the covenants, agreements and undertakings of

Purchaser herein have been complied with in all material respects; and (iii) Purchaser delivers the Purchase Price in accordance with Section 2 at the Closing.

8.2. Purchaser's Conditions. All of the obligations of Purchaser hereunder are subject to the satisfaction of every one of the conditions precedent set forth in this paragraph 8.2 unless, and only to the extent, Purchaser waives in writing the following obligations and conditions of Seller: (i) the representations and warranties of Seller herein are true and correct as of the Closing Date; (ii) the covenants, agreements and undertakings of Seller herein have been complied with in all material respects; and (iii) at the Closing, Seller has tendered to Purchaser the Deed. In addition, Purchaser's obligations hereunder are subject to Purchaser's acceptance, in its sole discretion, of the environmental site assessment as referenced in detail in Section 11.

9. **Representations and Warranties of Seller.** Seller makes to Purchaser the following representations and warranties:

9.1. Seller has the legal capacity and authority to execute, deliver and perform this Agreement and all documents and instruments or transactions contemplated hereby or incidental hereto; and this Agreement and the other documents required of Seller hereunder are or shall be, as the case may be, binding on and enforceable against the Seller. There are no other approvals from any other party whatsoever needed to authorize Seller to sign this Agreement and to consummate the transactions contemplated hereunder.

9.2. The execution, delivery and performance by Seller of this Agreement shall not constitute or cause a default or breach of any agreement or undertaking of Seller or concerning the Property.

9.3. To the best of Seller's knowledge, there are no unrecorded or non-public liens encumbering the Property caused by Seller or unpaid bills owed by Seller in connection with the Property which are unpaid past any applicable due date.

9.4. To the best of Seller's knowledge, there exists no pending action, suit or proceeding (or threat thereof) against Seller, which could in any manner inhibit the transactions contemplated in this Agreement or otherwise have an impact on the Property.

9.5. At all times Seller has held title to the Property, to the best of its ability Seller (1) maintained the Property (including the land, surface water, groundwater and

improvements to the land) free from all contamination, including the following (referred to herein as "Hazardous Materials"): (a) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976, as amended from time to time, and regulations promulgated thereunder, together with all applicable state and local laws and regulations; (b) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended from time to time, and regulations promulgated thereunder, together with all applicable state and local laws and regulations; and (c) any substance regulated under applicable federal state or local laws or regulations including gasoline and asbestos containing materials ("other regulated substances"); and (2) maintained the Property in full compliance with all other federal, state and local environmental laws.

9.6. Seller is of sound mind, unimpaired and fully understands and comprehends the nature of this Agreement, the transaction contemplated by this Agreement and Seller's duties, responsibilities, and representations hereunder.

10. **Representations of Warranties of Purchaser.** Purchaser makes to Seller the following representations and warranties:

10.1. Purchaser has the legal capacity and authority to execute, deliver and perform this Agreement and all documents and instruments or transactions contemplated hereby or incidental hereto; and this Agreement and the other actions and documents required of Purchaser hereunder are or shall be, as the case may be, binding on and enforceable against Purchaser.

10.2. The execution, delivery and performance by Purchaser of this Agreement shall not constitute or cause a default or breach of any agreement or undertaking of Purchaser or of which Purchaser is a party.

11. **Purchaser's Access to the Property – Inspections.** For a period of thirty (30) days after the execution of this Agreement (the "Inspection Period"), Purchaser may access the Property for purposes of inspecting the physical condition thereof, including the performance of a Phase 1 environmental site assessment at Purchaser's cost. To the extent permitted by applicable law, Purchaser shall indemnify, defend, and hold Seller harmless from and against any and all

claims, damages, actions, or amounts that may be paid by Seller arising from or related to Purchaser's inspections or access to the Property, regardless whether caused by Purchaser or Purchaser's agents, engineers, contractors, or other representatives. Purchaser's obligations under the preceding sentence shall survive any expiration or termination of this Agreement. At Seller's option, Seller may elect to have a representative of Seller present when Purchaser or its representatives enter the Property.

12. **Broker Fees.** Neither Party has had any contract or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any licensed real estate broker or other person who can claim a right to commission or finder's fee from the other Party as a procuring cause of the sale contemplated herein. In the event that any broker or finder perfects a claim, the Party through whom the broker or finder makes his claim shall indemnify, save harmless and defend the other Party from said claim and all costs and expenses (including reasonable attorneys' fees) incurred by the other Party in defending against the same.

13. **Casualty or Condemnation.** If, prior to the Closing, any portion of the Property is damaged, destroyed or lost by fire or other casualty, or if condemnation or eminent domain proceedings are proposed, threatened or commenced against any portion of the Property, Seller will immediately notify Purchaser of such event. Purchaser may elect to terminate his obligations under this Agreement by written notice to Seller within ten (10) days after Purchaser receives such notice from Seller, whereupon neither Party shall have any further obligation hereunder, or elect to close the purchase and sale contemplated herein and receive any and all insurance or condemnation proceeds or awards payable as a result of such casualty or proceeding.

14. **Notices.** Any notices provided for in the Agreement may be given by sending such notice by U.S. mail, and a notice so sent shall be deemed to have been given as of the day of mailing, if addressed as follows:

To Seller:	TFO Properties LLC Attn: Thomas F. Ostertag 210 Howard Street
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	St. Charles, MO 63301
To Purchaser:	City of St. Charles, Missouri Director of Administration, Larry Dobrosky 200 North Second Street St. Charles, Missouri 63301
With a Copy to:	City Attorney, Michael Cullen 200 North Second Street, Rm 401B St. Charles, Missouri 63301

15. **Miscellaneous.**

15.1. Entire Agreement. This Agreement constitutes the entire agreement among the Parties pertaining to the subject matter hereof and supersedes all prior agreements, letters of intent, understandings, negotiations and discussions of the Parties, whether oral or written. All of the Exhibits attached to this Agreement are deemed incorporated herein by reference.

15.2. Amendment and Modification. No amendment, modification, supplement, termination, consent or waiver of any provision of this Agreement, nor consent to any departure herefrom, will in any event be effective unless the same is in writing and is signed by the Party against whom enforcement of the same is sought. Any waiver of any provision of this Agreement and any consent to any departure from the terms of any provision of this Agreement is to be effective only in the specific instance and for the specific purpose for which given.

15.3. Assignments. No Party may assign or transfer any of its rights or obligations under this Agreement to any other person without the prior written consent of the other Parties.

15.4. Successors and Assigns. All provisions of this Agreement are binding upon, inure to the benefit of and are enforceable by or against the Parties and their respective heirs, executors, administrators or other legal representatives and permitted successors and assigns.

15.5. Counterparts. It is agreed that this Agreement may be executed in counterparts, that any Party may sign any counterpart, that the Agreement will be effective when all Parties hereto sign a counterpart and that a set of counterparts bearing the signatures of each Party hereto will constitute the Agreement as fully as if the Parties

executed a single document. The Parties agree that a document (or signature page thereto) signed and transmitted by facsimile machine, telecopier or other electronic transmission, including portable document file (PDF) is to be treated as an original document. The signature of any Party thereon, for purposes hereof, is to be considered as an original signature, and the document transmitted is to be considered to have the same binding effect as an original signature on an original document.

15.6. Further Assurances. The Parties will execute and deliver such further instruments and do such further acts and things as may be required to carry out the intent and purpose of this Agreement.

15.7. Legal Fees. All legal and other costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby are to be paid by the Party incurring such costs and expenses. In the event any Party brings suit to construe or enforce the terms of this Agreement, the prevailing Party is entitled to recover its reasonable attorneys' fees and expenses.

15.8. Governing Law and Venue. This Agreement and the rights and obligations of the Parties hereunder are to be governed by and construed and interpreted in accordance with the laws of the State of Missouri applicable to contracts made and to be performed wholly within Missouri, without regard to choice or conflict of laws rules. Further, the parties agree to submit themselves to the venue of the 11th Judicial Circuit Court of the State of Missouri.

15.9. Approval of City Council. Notwithstanding anything herein to the contrary, this Agreement will not become binding upon the City of St. Charles, Missouri until it has been approved by an affirmative majority vote of the City Council, executed by the Mayor and attested to by the City Clerk.

[Remainder of page intentionally blank with signature page to immediately follow.]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed, as of the day and year first above written.

SELLER:

TFO PROPERTIES LLC

Thomas Ostertag
By: Thomas F. Ostertag

Date: 1/23/2024

PURCHASER:

CITY OF ST. CHARLES, MISSOURI

Daniel J. Borgmeyer
By: Daniel J. Borgmeyer
Mayor

Date: 3-28-24

Attest:



Kimberly Pearson
City Clerk

EXHIBIT A
LEGAL DESCRIPTION
(NOT OFFICIAL)
1701 North Second Street

A tract of land in City Square No. 53 of the city of St. Charles, Missouri, being more particularly described as follows: Commencing at the intersection of the Eastern line of Third Street with Southern line of Wilkinson Street; thence Eastwardly with the Southern line of Wilkinson Street 150 feet, more or less, to the centerline of an alley; thence Southwardly with said alley center line 128.33 feet, more or less, to the East-West centerline of said Block 53; thence Westwardly parallel with Wilkinson Street 150 feet, more or less, to the Eastern line of Third Street; thence Northwardly with the Eastern line of Third Street 128.33 feet, more or less, to the place of beginning.

RCA FORM (OFFICE USE ONLY)

Bill # 13792

MEETING/DATE: 3/5/2024

Regular Special Work Session

ATTACHMENT: YES NO

Report Resolution Ordinance

Request for Council Action

Ward(s): 1

Sponsor(s): Bill Otto

Description:

Authorizing the purchase of a portion of the property at 1701 North Second Street for \$200,000.00 and closing costs not to exceed \$5,000.00 for a total amount of purchase not to exceed \$205,000.00.

Contract Extension/Renewal: Yes No

Information Paper Attached: Yes No

Staff Recommendation: Approve Disapprove

Board/Committee/Commission Recommendation: Approve Disapprove

Summary:

The City's offer to purchase a portion of 1701 North Second Street from TFO Properties LLC, the owner, is \$200,000.00. Old Republic Title Company will handle the closing at which time TFO Properties LLC must deliver a general warranty deed to the property. The closing costs are estimated at \$5,000.00, making the total amount of purchase not to exceed \$205,000.00.

Budget Impact: (revenue generated, estimated cost, CIP item, etc.)

Fiscal Impact: \$ 205,000.00 N/A

Account #: 410-100-101-871-101

Project #: 20ENG1

RCA prepared by: Legal Dept. Dir. HEM for MRC Finance Dir. Qaw Dir. of Admin. 4