

**BILL NO. 12-14**

**ORDINANCE NO. 2144**

**AN ORDINANCE TO AUTHORIZE THE MAYOR TO SIGN A REAL ESTATE PURCHASE AGREEMENT BETWEEN THE CITY OF WARRENTON, MISSOURI AND THE INDUSTRIAL DEVELOPMENT AUTHORITY**

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF WARRENTON MISSOURI, AS FOLLOWS:

SECTION I: That the Mayor is hereby authorized to execute on behalf of the City of Warrenton a real estate purchase agreement with The Industrial Development Authority. A copy of said agreement is attached hereto as Exhibit "A" and made a part hereof by reference.

SECTION II. If any section, subsection, sentence, clause, phrase or portion of this amendment is for any reason held invalid or unconstitutional by a judgment of a court of competent jurisdiction, as to which not further appeal right exists, such portion shall be deemed separate, distinct and independent provision and such holding shall not affect the validity or remaining portions hereof.


SECTION III. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

SECTION IV. This Ordinance shall take effect and be in full force from and after passage and approval thereof.

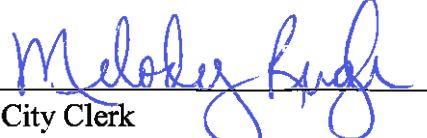
READ TWO TIMES AND PASSED by the Board of Aldermen of the City of Warrenton, Missouri, this 10<sup>th</sup> day of February, 2014.

  
\_\_\_\_\_  
President of the Board of Aldermen

APPROVED BY THE MAYOR of the City of Warrenton, Missouri, this 10<sup>th</sup> day of February, 2014.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk



**REAL ESTATE**  
**PURCHASE AGREEMENT**

This Purchase Agreement is entered into as of February 10, 2014 (the "Effective Date"), by and between the Industrial Development Authority of the City of Warrenton, Missouri, a Missouri Corporation of Warren County, Missouri ("Seller") and the City of Warrenton, Missouri, a municipal corporation of the fourth class having a City Hall address at 200 West Booneslick, Warrenton, MO 63383 ("Purchaser").

**Article I. Agreement to Sell and Purchase**

1.1 Seller shall sell and convey to Purchaser, and Purchaser shall purchase from Seller, the parcel of real property described in Exhibit A, attached hereto and incorporated herein by this reference, together with all improvements, easements, rights (including rights to any adjacent road to be vacated), rights of way, hereditaments, and appurtenances thereto, all of which are hereinafter referred to as the "Property," according to the terms, covenants, and conditions set forth herein. For so long as this Real Estate Purchase Agreement (the "Agreement") remains in effect, Seller shall not lease, option, convey, or otherwise transfer or encumber, or agree to do any of same, all or any portion of the Property. The Property is currently subject to a Lease Agreement, by and between Buyer and Seller (the "Lease"), which has been attached hereto as Exhibit B and is incorporated herein by this reference. Upon closing on the Property under the terms of the Agreement, all rights and obligations of Buyer and Seller shall terminate.

**Article II. Purchase Price**

2.1 The Purchase Price for the Property is TEN DOLLARS AND ZERO CENTS (\$10.00), payable by Purchaser to Seller at closing in cash, bank or cashier's check, or wire transfer, after taking into consideration any adjustments for closing costs and prorations. The Seller, through its board of directors, has previously found and hereby confirms that this action is in furtherance of the purposes for which the Industrial Development Authority of the City of Warrenton, Missouri was incorporated and is done in accordance with §349.050 RSMo.

**Article III. Due Diligence Period**

3.1 Purchaser and Developer hereby agree that no Due Diligence Period is necessary or is a part of this transaction.

**Article IV. Survey and Title Insurance**

4.1 Purchaser shall order and pay for any survey and a title commitment for an owner's title policy that Purchaser deems necessary.

**Article V. Conditions Precedent to Closing**

5.1 Purchaser's obligation to purchase the Property is subject to the satisfaction or written waiver by Purchaser, in its sole discretion, of the following conditions precedent prior to closing:

(a) Seller shall deliver good and marketable title subject only to encumbrances agreed upon by Purchaser in writing.

(b) That Purchaser is satisfied, in Purchaser's sole and absolute discretion, that the Property is satisfactory for Purchaser's intended development and use.

5.2 If the conditions set forth in Section 5.1 are not timely satisfied or waived in writing by Purchaser, then this Agreement may be terminated by Purchaser.

#### **Article VI. Closing and Possession**

6.1 Unless Purchaser has exercised its right to terminate this Agreement, closing and settlement shall occur on: May 15, 2014 at 12:00 P.M., or any other date that both parties agree in writing. Purchaser will close at Northeast Missouri Title, 111 West Booneslick, Warrenton, Missouri, the title company which provides the title insurance. Full and exclusive possession of the Property shall be given to Purchaser on: May 15, 2014 at 12:00 P.M. but in no event prior to closing as set forth above. This contract shall remain valid until 12:00 P.M. on February 28, 2014. If the offer is not accepted by this date and time it shall be withdrawn and revoked by seller.

6.2 At closing, Seller shall convey to Purchaser good and marketable title to the Property by good and sufficient general warranty deed satisfactory to Purchaser, subject only to those liens, encumbrances, conditions, easements, restrictions, assessments, clouds, and defects, current taxes and other matters approved in writing by Purchaser.

6.3 The expenses of closing shall be paid by Purchaser, except that Seller shall pay any costs it incurs.

6.4 All current rental income (if rental income producing property), utilities and real estate taxes shall be prorated as of the date of closing, and if the amount of such taxes is not then ascertainable, the prorating shall be on the basis of the amount of the most recent ascertainable taxes. A recalculation of the real estate tax proration will be made when the actual taxes are known to the parties, if the actual taxes for the year(s) in question are different from the estimated amount thereof. If the Property has been classified under any designation authorized by law to obtain a special low ad valorem tax rate or receive either an abatement or deferment of ad valorem taxes which, in such case, will result in increased, additional, or catch-up of ad valorem taxes in the future in order to recover the amount previously abated or deferred, or if the transfer of the Property to Purchaser by Seller shall cause any such increased, additional, or catch-up of ad valorem taxes, then Seller shall be responsible for any such taxes. If, prior to closing, the Property or any part thereof is affected by a special assessment or assessments (the "Assessment(s)"), even if for improvements made previously or presently committed to be made in the future, Seller shall pay such Assessment(s) in full at closing. Notwithstanding the foregoing, Purchaser shall be responsible for paying any and all Assessments solely and exclusively arising after closing.

6.5 Seller shall execute any and all documents and perform any and all acts proper, customary or reasonably necessary to consummate this transaction or to vest in Purchaser absolute title to the Property, including, without limitation, tax declarations, a nonforeign person affidavit and a seller's affidavit regarding parties in possession and mechanic's liens. All documents required to be signed by Seller shall be properly signed (and witnessed and notarized, as required) and delivered to Purchaser at least three (3) business days before closing.

#### **Article VII. Warranties and Representations**

7.1 Seller hereby covenants, warrants, and represents as of the Effective Date and the date of closing:

(a) Seller is the true and lawful owner of the Property and has the ability to transfer good and marketable title thereto as required hereby, and there will be at closing no parties in possession of any part of the Property as either lessees, tenants at sufferance, or trespassers.

(b) Seller has full authority to enter into this Agreement and to execute all documents contemplated hereby, and Seller's execution, delivery and performance of this Agreement will not violate the provisions of any agreement to which Seller is a party or by which it is bound, and there are no agreements to which Seller is a party or otherwise bound (whether oral or written) restricting development, construction, or operation of the Property.

(c) There exist no facts or physical condition of the Property which would prevent the development, construction, or operation thereon required for Purchaser's use known to seller.

(d) (i) the Property is not contaminated with any hazardous substance; (ii) Seller has not caused and will not cause, and there never has occurred, the release of any hazardous substance on the Property; (iii) the Property is not subject to any federal, state, or local lien, proceedings, claim, liability, or action, or threat or likelihood thereof, for the clean-up, removal, or remediation of any such hazardous substance from the Property or from any other real property adjacent to or nearby the Property and owned or controlled by Seller or in which Seller has any interest, legal or equitable; (iv) there is no asbestos on the Property, and no asbestos has previously been removed from the Property; (v) there is no underground storage tank on the Property and no such tanks have been removed from the Property; (vi) by acquiring the Property, Purchaser will not incur or be subjected to any liability for the clean-up, removal, or remediation of any hazardous substance from the Property or any liability, cost, or expense for the removal of any asbestos or underground storage tank from the Property; and (vii) the Property does not include any wetlands.

7.2 Except as otherwise expressly provided herein, the covenants, representations and warranties of Seller set forth in this Agreement are also conditions of Purchaser's obligations hereunder and are true as of the date of mutual execution hereof and shall be true on the date of closing as if those representations and warranties were made on and as of such time.

#### **Article VIII. Default**

8.1 If this transaction fails to close as a result of a default by Purchaser of any of the terms of this Agreement, Seller's sole and exclusive remedy for such default shall be the right to cancel and terminate this Agreement, in which event each party shall be released from all duties or obligations contained herein.

8.2 If Seller breaches any of its covenants, warranties, or representations set forth herein, Purchaser may, at its option, elect to terminate this Agreement, in which event neither party shall have any further rights or obligations hereunder.

8.3 No waiver of any covenant or condition or the breach of any covenant or condition of this Agreement shall be taken to constitute a waiver of any subsequent breach of any such covenant or condition, or to justify or authorize the non-observance on any other occasion of the same or any other covenant or condition hereof.

**Article IX. Brokers**

9.1 Seller and Purchaser each represent and warrant that they have not engaged the services of a real estate agent, broker or salesperson in connection with the instant sale and that no commission, finder's fee or broker's fee is due to any firm, person or entity.

**Article X. Miscellaneous Provisions**

10.1 All notices provided for herein shall be in writing and addressed as follows:

**As to Purchaser:**

The City of Warrenton  
Attn: Terri Thorn  
200 West Booneslick Road  
Warrenton, MO 63383  
Phone: 636.456.3535  
Fax: 636.456.8135

with copy to: Christopher B. Graville  
130 S. Bemiston, Suite 303  
Clayton, MO 63105  
Phone: 636.778.9810  
Fax: 636.778.9812

**As to Seller:**

President  
Industrial Development Authority of the City of Warrenton  
200 West Booneslick  
Warrenton, MO 63383  
Phone: 636.456.3535  
Fax: 636.456.8135

with copy to: City Clerk  
City of Warrenton  
200 West Booneslick  
Warrenton, MO 63383  
Phone: 636.456.3535  
Fax: 636.456.8135

All notices shall be personally delivered, faxed, or sent by United States Mail (certified mail, return receipt requested) or by independent overnight delivery service such as Federal Express, United Parcel Service, United States Postal Service Express Mail, or Airborne Express. Except for personal delivery (which will be effective upon receipt), all notices will be effective on the date faxed, or three days after delivery to United States Post Office depository for certified mail, or one business day after delivery to an independent overnight delivery service, as the case may be. Either party shall have the right to designate a new address for the receipt of notices by giving written notice as herein provided, but notwithstanding the foregoing, such notice of a new address shall not be effective until actually received by the other party.

10.2 This Agreement is entered into by Purchaser and Seller in consideration of the premises and the mutual promises and agreements of the parties hereto, one to another given, receipt and sufficiency of which is hereby acknowledged by each of them, and the parties hereby express their intention to be legally bound by the terms hereof. Upon mutual execution and delivery of this Agreement, this Agreement shall be binding on the parties and be given full force and effect. All understandings and agreements heretofore had between the parties hereto are merged in this Agreement which alone fully and completely expresses the agreement of the parties hereto. The terms of this Agreement shall survive closing and shall not be merged with the deed. This Agreement is entered into only after full investigation of the transaction by both parties, neither party having relied on any statement or representation not embodied in this Agreement. This Agreement shall not be changed or terminated orally. In computing any period of time pursuant to this Agreement, the day of the act or event from which the designated period of time will run shall not be included. Any time period provided for herein which shall end on Saturday, Sunday or legal holiday shall extend to 6:00 p.m. of the next business day. This Agreement shall be construed in accordance with the laws of the State of Missouri.

10.3 Purchaser shall have the right to assign this Agreement or to identify a nominee to be the grantee in the deed of conveyance, with the prior written consent of Seller. Upon any such

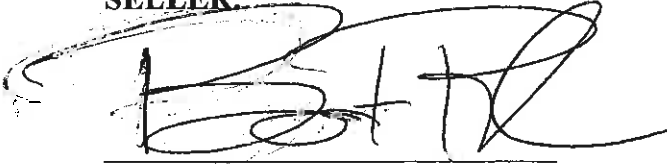
assignment, Purchaser shall be released of all its obligations arising thereafter under this Agreement, provided the assignee assumes such future obligations.

10.4 Risk of loss up to and including the date of closing will be borne by Seller. In the event of any damage or destruction to any portion of the Property, or in the event of any taking or threat of taking by condemnation (or any conveyance in lieu thereof) of any portion of the Property by any person or entity exercising the right of eminent domain, Seller will notify Purchaser within five (5) days of such event, and Purchaser will, by written notice delivered to Seller within thirty (30) days after receipt of written notice from Seller of such event, elect to: (i) terminate this Agreement, in which case the parties shall be released from all further obligations to the other under this Agreement; or (ii) consummate the transactions contemplated herein. If Purchaser does not elect to terminate this Agreement as set forth herein, then Seller on the date of closing will pay to Purchaser all insurance proceeds or condemnation awards and compensation, as the case may be, actually received by Seller. In addition, Seller will transfer and assign to Purchaser, in form reasonably satisfactory to Purchaser, all rights and claims of Seller with respect to payment of damages and compensation on account of such damage, destruction or taking receivable by Seller.



IN WITNESS WHEREOF, intending to be legally bound hereby, Seller has hereunder set its hands on January 13, 2014.

**SELLER:**



Industrial Development Authority

STATE OF MISSOURI

SS:

COUNTY OF WARREN

Personally appeared before me, the undersigned, a Notary Public in and for said County and State, Warren County, Missouri, who executed the foregoing instrument and acknowledged that the same is their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Warrenton, Missouri, this 13<sup>th</sup> day of January 2014.

  
Notary Public

B. WALTERS  
Notary Public - Notary Seal  
State of Missouri  
Commissioned for Lincoln County  
My Commission Expires: Dec. 27, 2014  
COMMISSION #10128170

IN WITNESS WHEREOF, intending to be legally bound hereby, Purchaser's representative has hereunder set his hands on February 10, 2014.

**PURCHASER:**

**THE CITY OF WARRENTON, MISSOURI**

By: Jerry Dyer  
Jerry Dyer  
In his capacity as Mayor of the City of Warrenton, Missouri

STATE OF MISSOURI

SS:

COUNTY OF WARREN

Personally appeared before me, the undersigned, a Notary Public in and for said County and State, Jerry Dyer, who executed the foregoing instrument and acknowledged that the same is his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Warrenton, Missouri, this 10<sup>th</sup> day of February, 2014.

B. WALTERS  
Notary Public - Notary Seal  
State of Missouri  
Commissioned for Lincoln County  
My Commission Expires: Dec. 27, 2014  
COMMISSION #10128170

B. Walters  
Notary Public