

BILL 4735

ORDINANCE 4735

AN ORDINANCE OF THE CITY OF WEST PLAINS, MISSOURI, (THE "CITY") AUTHORIZING THE MAYOR OR CITY ADMINISTRATOR TO EXECUTE A REAL ESTATE CONTRACT FOR THE CONVEYANCE OF REAL ESTATE (THE "REAL ESTATE") CURRENTLY OWNED BY CITY AND KNOWN AS LINCOLN PARK OR LINCOLN SCHOOL TO CROCKETT W. OAKS AND TONYA OAKS (THE "OAKS") SUBJECT TO CERTAIN RESTRICTIONS.

WHEREAS, City currently owns and maintains an existing lot and building referred to locally as "Lincoln Park" or "Lincoln School" with the Real Estate being acquired from Land Clearance for Redevelopment Authority of the City of West Plains, Missouri, a corporation, on July 6, 1981, and

WHEREAS, there is located on the Real Estate an existing structure known as Lincoln School that has cultural and historical value, and

WHEREAS, Oaks desire to preserve and promote the cultural and historical significance of the Real Estate with the existing structure for the betterment and education of the citizens of West Plains and beyond., and

WHEREAS, the Real Estate shall be maintained in accordance with all city codes and used primarily for educational, informational, and community purposes and activities with activities to be geared toward raising cultural awareness in the greater West Plains region.

WHEREAS, conditions and restrictions will be placed in the deed conveying the Real Estate to Oaks to insure that the Real Estate will be used for the purposes referenced above and if not used for such purposes, City shall have the opportunity to reacquire the Real Estate, and

WHEREAS, the City Council has determined that the conveyance of the Real Estate to Oaks will benefit the residents of West Plains and the surrounding area and be in their best interest.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST PLAINS, MISSOURI, AS FOLLOWS:

Section 1: The Mayor or City Administrator is authorized to execute the attached Real Estate Contract in substantially the same form as attached and incorporated as a part of this ordinance.

Section 2: This Ordinance shall be in full force and effect from and after the date of its passage and approval.

PASSED AND APPROVED THIS ____ DAY OF _____, 2023.

CITY OF WEST PLAINS, MISSOURI

By: _____
MICHAEL TOPLIFF, Mayor

ATTEST:

ALLISON SKINNER, City Clerk

REAL ESTATE CONTRACT

THIS CONTRACT (the "Contract") made and entered into as of this ____ day of February, 2023, by and between **CITY OF WEST PLAINS, MISSOURI**, a duly organized and existing municipality, ("Seller"), and **CROCKETT W. OAKS and TONYA OAKS**, a married couple (referred to collectively as "Buyer").

WITNESSETH:

WHEREAS, Seller is desirous of selling to Buyer, and Buyer is desirous of purchasing, in its present condition, real estate owned by Seller, located in Howell County, Missouri, as more particularly described on Exhibit A; and

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. **Real Estate**. Seller agrees to sell, and Buyer agrees to purchase the real estate along with existing improvements owned by Seller in Howell County, Missouri, more particularly described on attached Exhibit A (the "Real Estate") and commonly known as Lincoln Park. Title to the Real Estate will be subject to the conditions as shown in Paragraph 10 (5) below in addition to the other terms of this Contract.

2. **Price and Manner of Payment**. The purchase price for the Real Estate is One Thousand 200 Dollars (\$1,200.00) (the "Real Estate Purchase Price"). The sum of Two Hundred Dollars (\$200.00), as earnest money (the "Earnest Money"), will be deposited by Buyer upon the signing of this Contract, as provided in Section 3, with the balance to be paid by Buyer to Seller, at Closing, in cash or by wire transfer, in good funds, to a bank account designated by Seller.

3. **Earnest Money**. The Earnest Money shall be paid by Buyer to Wiles Title Company Escrow Account, as escrow agent (the "Escrow Agent"), upon the execution of this Contract. The Earnest Money shall be non-refundable, except as otherwise expressly provided.

4. **Seller's Representations**. Seller represents to Buyer as follows:

(a) Seller is a Missouri municipality and has all requisite power and authority to fulfill its obligations under this Contract, and this Contract has been approved by its governing body.

(b) To the knowledge of Seller, Seller has not received any notice of investigation, action or proceeding pending or threatened which, if determined adversely to Seller, would adversely affect the use or value of the Real Estate or question the validity of this Contract.

(c) To the knowledge of Seller, Seller has not received any notice alleging any violations of law or other legal requirements with respect to any portion of the Real Estate.

5. **Condition of Premises**. Buyer acknowledges that the Real Estate is being sold to Buyer on an "AS-IS, WHERE-IS" BASIS, WITH ALL FAULTS. FURTHER, SELLER MAKES NO WARRANTY, AND EXPRESSLY DISAFFIRMS AND DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, AS TO THE ADEQUACY, CONDITION OR USEFULNESS OF ANY IMPROVEMENTS AS TO HABITABILITY OR CONDITION OF ANY EQUIPMENT, FIXTURE, IMPROVEMENT, OR BUILDING, AND NO WARRANTY AS TO THE CONDITION OR AS TO THE

FITNESS OF THE REAL ESTATE INCLUDING, BUT NOT LIMITED TO, ANY EQUIPMENT, FIXTURES, IMPROVEMENTS, OR BUILDINGS THEREON, FOR ANY PARTICULAR PURPOSE.

In addition, Buyer acknowledges that they are knowledgeable purchasers of real estate and are relying solely on their own expertise and that of Buyer's consultants in purchasing the Real Estate and that Buyer shall rely solely on their inspections and inquiries of the Real Estate to determine the condition of the Real Estate; provided, however, and notwithstanding anything else herein to the contrary, Seller represents and warrants to Buyer that Seller has made no efforts to conceal or otherwise hide from Buyer, any known or unknown flaw, aspect or other condition of the Real Estate, and Seller, to the best of its knowledge, has delivered to Buyer true and accurate copies of all material information which Seller has in connection with the Real Estate. Buyer further acknowledges that Buyer is obligated to verify and confirm all information respecting the Real Estate in connection with their purchase of the Real Estate. Buyer also acknowledges and agrees, except as expressly set forth in this Contract, there are no oral or written agreements, warranties, or representations, collateral to or affecting the Real Estate by Seller or any agent of Seller or any third party. The terms and conditions of this Section shall expressly survive Closing and shall not be merged with the provisions of any closing documents. Buyer has fully reviewed the disclaimers and waivers in this Contract and has had the opportunity to consult with counsel of their choosing and understand the significance and effect of this Section. Buyer further acknowledges and agrees that the disclaimers and other agreements set forth in this Contract are an integral part of this Contract, and that Seller would not have agreed to sell the Real Estate to Buyer upon the terms contained in this Contract without the disclaimers and other agreements set forth in this Section.

6. **Inspections.** Buyer acknowledges that Buyer has been provided ample opportunity to inspect the Real Estate. Upon the signing of this Contract, Buyer shall have the right to further inspect the Real Estate.

7. **Environmental Audit.** To the best of Seller's knowledge, no investigation having been made, no environmental contamination or hazardous substances exist on the Real Estate which might create a health risk, or which Buyer may be legally required under existing laws or regulations to remediate or remove. Buyer shall have the right before the Closing of this Contract to obtain, at Buyer's expense, environmental audits or assessments of the Real Estate. In the event such audits or assessments reveal the existence of any waste disposal site, dump site, hazardous waste or hazardous substance or any spillage of any petroleum, crude oil or any fractions thereof on the Real Estate (the "Hazardous Substances"), if Seller does not clean-up and remediate, prior to the Closing, such Hazardous Substances to Buyer's satisfaction, then Buyer shall have the option, exercisable at Buyer's sole election, to terminate this Contract, whereupon the Earnest Money shall be returned to Buyer and none of the parties shall have any further rights or obligations. Seller shall not be required to provide to Buyer any environmental site assessments whatsoever.

8. **Routine Maintenance Pending Closing.** Seller covenants and agrees to be responsible for any routine maintenance required between the date of this Contract and Closing to maintain the Real Estate in its existing condition, normal wear and tear excepted.

9. **Existing Tenants.** Seller shall be responsible for cancelling all existing leases pertaining to the Real Estate.

10. **Title Insurance.** No later than _____ () days prior to Closing, Buyer shall obtain commitments ("Title Commitments"), together with copies of all instruments shown as exceptions on the Title Commitments, through Wiles Title Company from a title insurance company licensed to conduct business in the State of Missouri (the "Title Company") for issuance by the Title Company to Buyer of a ALTA Owner's Policy of Title Insurance with respect to the Real Estate (the "Title Policy"), in the amount

of the Real Estate Purchase Price, showing Seller to be the owner of good and marketable fee simple title to the Real Estate in accordance with the Title Examination Standards of the Missouri Bar. Seller will provide to Buyer all abstracts and prior title insurance policies in its possession pertaining to the Real Estate, if any. The Title Policy shall be subject only to the following encumbrances, exceptions, or conditions to the title of the Real Estate (the "Permitted Exceptions"):

(1) Easements, public and private, of record and easements not of record, which would be clearly apparent to an ordinary person on an ordinary inspection of the Real Estate, including, but not limited to, all roads, drainage ditches, and utilities, whether of record or not.

(2) Restrictive covenants of record and mineral interests/rights in favor of third parties.

(3) Encroachments, overlaps, boundary line disputes, and any other matters which would be disclosed by an accurate survey and inspection of the Real Estate and any other standard title exceptions of the Title Company. Buyer acknowledges that a survey is not being procured or furnished by Seller or any other party, and that the boundaries of the Real Estate have been established to the satisfaction of Buyer.

(4) Any item contained in the Title Commitment to which Buyer does not object during the Title Review Period, as defined herein.

(5) Buyer and Seller acknowledge the Real Estate, including the existing structure, has significant cultural and historical value and Buyer desires to preserve and promote such significance for the betterment of and education of the citizens of West Plains and beyond. In light of this mutual understanding, the Real Estate will be conveyed from Seller to Buyer with certain conditions and restrictions that will be referenced in the deed conveying title to the Real Estate to Buyer. Such restrictions shall be as follows and shall not constitute a defect in the title to the Real Estate:

a. The Real Estate shall be used primarily for educational, informational, and community purposes and activities with activities to be geared toward raising cultural awareness in the greater West Plains region.

b. The Real Estate and structure known as Lincoln School shall be maintained in accordance with all city codes.

c. The conveyance by Buyer of the Real Estate to a not-for-profit entity, foundation, or similar organization in order to facilitate the above purposes shall not be considered a violation of the terms of the conveyance of the Real Estate to Buyer. However, any conveyance by Buyer will be subject to the above terms and conditions. If the above terms are breached at any time in the future, Seller shall have the right to initiate legal action to set aside the conveyance of the Real Estate to Seller and the prevailing party in such action shall have the right to recover its legal fees and court costs incurred in regard to such legal action.

d. The Real Estate shall not be sold by Seller for a period of ten (10) years from the date of closing and any such attempted sale shall result in title to the Real Estate automatically reverting to Seller. After ten (10) years from closing, any sale of the Real Estate shall be subject to a Right of Refusal by Seller to purchase the Real Estate at a price to be agreed upon by the parties. If a price cannot be agreed upon, the price shall equal a bona fide written offer from a third party.

11. **Title Review Period.** Buyer shall have _____ () days (the "Title Review Period") after obtaining or receiving the Title Commitment and legible copies of all instruments referred to in the

schedules of the Title Commitment, to notify Seller in writing, of any objections that Buyer may have to anything contained in the Title Commitment. Any item to which Buyer does not object during the Title Review Period shall be deemed to be acceptable to Buyer. In the event Buyer notifies Seller of objections to title on or prior to the expiration of the Title Review Period, within ____ () days thereafter (unless such time is extended in writing by Buyer), Seller shall notify Buyer as to whether Seller intends to satisfy such objections by either (i) curing, correcting or removing such objections, (ii) having such unpermitted exceptions removed from the Title Commitment, or (iii) having the Title Company commit to insure against loss or damage as may be occasioned by such exceptions. If Seller so notifies Buyer, it shall, within a reasonable time thereafter, so satisfy said objections.

In the event that Seller is unwilling or unable to or fails to satisfy such objections to title, Buyer may, at its option, either (i) terminate this Contract (with the Earnest Money and all accrued interest thereon to be returned to Buyer), in which event both parties shall be relieved of any further liability hereunder, except that the parties shall pay the costs and expenses as provided herein theretofore incurred by the parties, or (ii) waive such objections (in which event said exception(s) shall be considered a Permitted Exception); provided, however, that the waiver of objections to the title of the Real Estate by Buyer shall not be construed as constituting a waiver of any other provision of this Contract.

12. **Transfer of Real Estate.** At the Closing, Seller shall convey the Real Estate (including Seller's interest in any mineral interests or rights) by a duly executed and acknowledged special warranty deed conveying to Buyer good and marketable fee simple title to the Real Estate, free and clear of all liens, claims, and encumbrances, except for the Permitted Exceptions.

13. **Taxes.** All general real estate taxes for the time prior to Closing will be the responsibility of Seller with Buyer assuming responsibility for all real estate taxes accruing after Closing.

14. **Closing Date.** The Closing shall occur on, or before, February 27, 2023 (the "Closing Date"), and shall take place at the offices of Wiles Title Company in West Plains, Missouri (or such other time and place as may be mutually agreed-to by the parties), at which time, all monies and documents required, pursuant to the terms hereof, shall be delivered/transferred, as applicable. Buyer shall take possession upon the Closing Date.

15. **Closing Costs.** Closing costs shall be allocated and paid, as follows:

(a) Seller and Buyer shall each pay their own fees incurred with their respective attorneys.

(b) Buyer shall pay all fees required to record the Buyer's Deed and costs associated with any financing required by Buyer.

(c) Seller and Buyer shall each pay one-half (1/2) of the cost of any title searches, the updated title commitment, the owner's Title Policy and any closing fees incurred by the Title Company, other than for any costs or expenses associated with any lender's title policy, and any endorsements on either the owner's Title Policy or any lender's title policy, all of which shall be borne by Buyer.

16. **Default and Remedies.** In the event of default in the performance or observance of any material provision of this Contract by a party, the parties agree as follows:

(a) **Buyer's Default and Seller's Remedies.** In the event (i) Buyer shall fail to make the payments required of Buyer as set forth in Section 2, or (ii) Buyer shall fail to perform any of Buyer's other obligations to be performed by Buyer on or before Closing, except as excused in writing by Seller or by

Seller's default, Seller shall make written demand upon Buyer for such performance, and if Buyer fails to comply with such written demand within ten (10) days after receipt, Buyer shall be in default. Upon such default by Buyer, Seller shall retain the Earnest Money deposited by Buyer with the Escrow Agent as liquidated damages and not as a penalty, and the parties agree that the amount of the Earnest Money constitutes a genuine pre-estimate of the damages Seller will sustain in the event of any such default by Buyer

(b) **Seller's Default and Buyer's Remedies.** In the event Seller shall fail to perform Seller's obligations to be performed by Seller on or before Closing, except as excused in writing by Buyer or by Buyer's default, Buyer shall make written demand upon Seller for performance, and if Seller fails to comply with such written demand within ten (10) days after receipt, Seller shall be in default. Upon such default by Seller, Buyer may pursue such legal relief against Seller as may be available to Buyer, including, but not limited to, specific performance. Alternatively, Buyer may elect to terminate this Contract, in which event the parties shall be discharged from any further obligation and the Earnest Money deposited by Buyer shall be delivered to Buyer.

17. **Destruction of Premises.** If, before Closing, all or any part of the Real Estate is destroyed or materially damaged by fire, flood, or other casualty, Seller shall promptly provide written notice to Buyer of any such event and this Contract shall terminate with both Seller and Buyer being released from further liability under this Contract with the Earnest Money being returned to Buyer.

18. **Lead-Based Paint Disclosure.** Every purchaser of any interest in residential property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. Seller of any interest in residential real property is required to provide Buyer with any information on lead-based paint hazards from risk assessments or inspections in Seller's possession and notify Buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase. Seller warrants that it has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing. Buyer waives the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

19. **Attorneys' Fees.** In the event either party is required to bring an action to enforce any provision or right under this Contract, the prevailing party as determined by a court of competent jurisdiction shall be entitled to its reasonable costs incurred in connection with such litigation, including reasonable attorney fees, and the unsuccessful party covenants and agrees to pay to the prevailing party the same.

20. **Survivability of Agreement.** It is expressly understood that the terms of this Contract are not merged with and extinguished by the documents of the sale and transfer, but this Contract shall be a part of and survive the documents transferring ownership of the described Real Estate, and that all terms of this Contract shall remain in effect and shall be enforceable by the parties until all terms have been satisfied in full unless specifically waived or agreed upon in writing.

21. **Real Estate Broker.** Seller and Buyer acknowledge that neither has used a real estate broker in this transaction. Seller and Buyer each represent to the other that there are no claims for brokerage commissions or finders fees in connection with the sale of the Real Estate pursuant to the terms of this Contract as a result of the action of either party, and Seller and Buyer do each agree to indemnify the other

for any such claims (including, without limitation, attorneys' fees) which may result of a breach by Seller or Buyer of the representations contained in this paragraph.

22. **Escrow.** The parties agree that the Earnest Money to be paid into escrow, as provided in Section 3, shall be deposited as specifically set forth in Section 3.

(a) The Escrow Agent, as escrow agent, shall deposit, as provided herein, such funds in an escrow account, pending:

(1) The Closing of this transaction; or

(2) The mutual written agreement of Buyer and Seller authorizing the release of the funds from escrow or a final court order of a court of competent jurisdiction directing the disposition of such funds.

(b) If a dispute arises between the parties with respect to the disbursement of the escrow funds, Escrow Agent, as escrow agent, shall be authorized to interplead the escrow funds into a court of competent jurisdiction and in such event shall be reimbursed for all reasonable expenses which it incurred by reason of such interpleader action and shall be relieved of all liability as Escrow Agent, except as otherwise provided herein.

23. **Binding Effect.** This Contract shall be binding upon, and inure to the benefit of, the parties, their heirs, personal representatives, successors. Neither party shall assign its rights and obligations hereunder without the consent of the other party, which consent shall not be unreasonably withheld, delayed, denied, or conditioned.

24. **Governing Law.** This Contract shall be construed and interpreted in accordance with, and governed by, the laws of the State of Missouri.

25. **Notices.** All notices, demands, and requests required or permitted to be given under the provisions of this Contract shall be in writing and shall be deemed given (i) when personally delivered to the party to be given such notice or other communication; (ii) on the business day that such notice or other communication is sent by facsimile, email or similar electronic means, which communication shall promptly be confirmed by written notice; (iii) on the third business day following the date of deposit in the United States mail if such notice or other communication is sent by certified or registered mail with return receipt requested and postage thereon fully prepaid; or (iv) on the business day following the day such notice or other communication is sent by reputable overnight courier, to the following:

If to Seller:

Sam Anselm

1910 Holiday Lane

West Plains MO 65775

Telephone: 417-256-7166

Email: sam.anselm@westplains.gov

If to Buyer:

Crockett W. Oaks

West Plains MO 65775

Email: CrockettOaks@MissouriState.edu

The foregoing addresses of Buyer and Seller may be changed at any time, and from time-to-time, by notice to the other in the manner stated above, setting-out such change.

26. **Waiver.** Either party may waive any requirement, covenant, contingency, condition or obligation to be performed by the other party, provided that such waiver shall be in writing and executed by the party waiving the requirement, covenant, contingency, condition or obligation, and shall be specifically designated as a waiver with reference to the applicable Section and paragraph of this Contract. Except as otherwise provided, a waiver by a party of any breach of any term, covenant, or condition to be performed by a party, or the delay forbearance, indulgence or failure of a party in exercising any right on account of such breach, or the partial exercise of such right, shall not be deemed a waiver of any subsequent breach of the same term or any other term, covenant, contingency or condition.

27. **Counterpart/Facsimile Execution.** This Contract may be executed in counterparts, all of which together constitute one agreement. For purposes of executing this Contract, a document signed and transmitted by facsimile machine or email 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 or an original document. At the request of any party, any facsimile or emailed document is to be re-executed in original form by the parties who executed the facsimile or emailed document. No party may raise the use of a facsimile machine or email or the fact that any signature was transmitted through the use of a facsimile machine or email as a defense to the enforcement of this Contract or any other document executed in compliance with this Section.

28. **Time is of the Essence.** Time is of the essence with respect to the obligations and responsibilities of the parties under this Contract.

29. **Construction of Agreement.** If a court of competent jurisdiction determines it necessary to construe this Contract, or any provision herein, to aid in the determination as to the obligations of the parties, this Contract shall not be construed more strictly against one party than against the other party by virtue of the fact that it may have been prepared by one of the parties or its attorneys, it being recognized that both parties have contributed substantially and materially to the preparation of this Contract.

30. **Advice of Counsel.** The parties state, acknowledge and agree that they have read this Contract, they have sought the advice of counsel, are aware of the terms, conditions and restrictions contained herein, and they have signed this Contract as their free act and deed.

31. **Further Actions.** At any time after the Closing Date, upon the request of Buyer, Seller will take any and all reasonable action to execute and deliver, instruments or conveyances as may be necessary to more fully and effectively convey to, transfer to, and invest in, Buyer, title to, and to put Buyer in possession and control of the Real Estate.

34. **Limitations on Rights of the Parties.** Except as otherwise set forth in Section 23, nothing expressed or implied in this Contract is intended or shall be construed to confer upon or give any person, firm or corporation other than the parties any rights or remedies under or by reason of this Contract.

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this document the date first above written.

SELLER:

CITY OF WEST PLAINS, MISSOURI

By: _____

BUYER:

CROCKETT W. OAKS

TONYA OAKS

Exhibit A

Real Estate Legal Description