

BILL NO. 2764

ORDINANCE NO. 2580

AN ORDINANCE AUTHORIZING THE EXPENDITURE OF PARK BOND FUNDS TO PURCHASE APPROXIMATELY 30.41 ACRES OF LAND NEEDED TO EXPAND AN EXISTING PARKS FACILITY

WHEREAS, the City of Chesterfield, wants to provide future recreational facilities for the use of the residents and has discussed the acquisition of land to allow for expansion of existing facilities at the CVAC Park; and

WHEREAS, the City of Chesterfield, by and through its Department of Planning and Public Works, has negotiated for the purchase of suitable land for a future park expansion; and

WHEREAS, the owners of the land are willing to make a significant contribution to the City for part of the purchase price; and

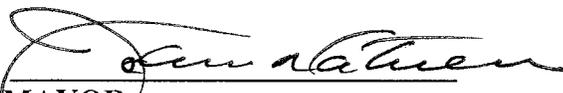
WHEREAS, Park Bond Funds are available to use for the City's costs to expand the Park.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHESTERFIELD, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:

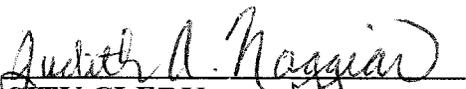
Section 1. The City Administrator of the City of Chesterfield is hereby authorized to sign a contract, in a form substantially similar to that attached hereto marked Exhibit 1 and made a part hereof as if fully set out herein, to acquire approximately 30.41 acres of additional property for a future park expansion and to expend up to Three Million Seven Hundred Fifty Thousand Dollars (\$ 3,750,000.00) of Park Bond Funds to purchase approximately 30.41 acres of land and undertake all other actions as are needed to fulfill the City's obligations under the contract.

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

Passed and approved this 7th day of December, 2009.


MAYOR

ATTEST:


CITY CLERK

FIRST READING HELD: 12/7/09

SALE CONTRACT

THIS SALE CONTRACT (“Contract”) is made and entered into as of this 9th day of December, 2009 (the “Effective Date”) by and between DANA HOLTZMAN POHLMAN F/K/A DANA HOLTZMANFELDMAN, AS TO AN UNDIVIDED 1/3 INTEREST, LOUIS BARTFIELD HOLTZMAN, AS TO AN UNDIVIDED 1/3 INTEREST AND JILL ANN STARR AS TO AN UNDIVIDED 1/3 INTEREST having an address at 9741 Litzinger Road, St. Louis, MO 64124 (collectively “Seller”) and the CITY OF CHESTERFIELD, MISSOURI, an incorporated municipality of the State of Missouri, having an address at 690 Chesterfield Parkway West, Chesterfield, Missouri 63017 (“City”).

B A C K G R O U N D:

A. Seller is the owner of a certain parcel of real estate containing approximately 30.409 acres located in Chesterfield, Missouri, shown on Exhibit “A” and described on Exhibit “B” attached hereto (the “Property”).

B. Seller desires to sell the Property to City, and City desires to purchase the Property from Seller, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

1. **Agreement to Sell and Purchase.**
 - a) Seller agrees to sell and convey by special warranty deed, in a form acceptable to City and City’s title insurer, and City agrees to purchase and accept, the Property together with the appurtenances thereto belonging for the purchase price of Three Million Seven Hundred Fifty Thousand and 00/100 Dollars (\$3,750,000) adjusted as provided in Section 3 (the “Purchase Price”), in accordance with and subject to the terms and conditions hereof. The parties hereto acknowledge that said Purchase Price is below fair market value. The City further acknowledges that Seller will take a deduction for a charitable gift equal to the difference between the fair market value and the Purchase Price.
 - b) The Property is being sold subject to all covenants, conditions and restrictions of record (the “Title Exceptions”) and all building codes, zoning, subdivision and other applicable governmental rules, regulations and laws (collectively “Applicable Laws”). City shall upon Closing be bound by the terms of the Title Exceptions, and Applicable Laws and shall perform all obligations and make all payments set forth therein which pertain to the Property.
 - c) If this transaction is not closed due to a breach on the part of either party hereunder, then the non-breaching party shall have the right to seek any and all legal and equitable remedies, including, without limitation, specific performance.

2. **Closing and Possession.** The closing of the purchase and sale contemplated by this Contract (the "Closing") shall occur on December 15, 2009 or such later date as mutually agreed upon by City and Seller. Closing shall take place at the offices of U.S. Title Company. Possession of the Property shall be transferred by Seller to City at Closing, free and clear of all leases, liens and other encumbrances except as specifically permitted by the terms of this Contract.

3. **Purchase Price Adjustments.** Subject to Section 14 hereof, the full amount of the Purchase Price shall be paid at Closing in cash, by wire transfer or cashier's check subject to adjustment for all general and special property taxes, including state, county, municipal, school district, levee district and similar real estate taxes (collectively "Real Estate Taxes"), utilizing the most current available assessments and tax rates. Such adjustments shall be made on the basis of a year of twelve (12) months, thirty (30) days to the month.

4. **City's Contingencies.**

The City's obligation to purchase the Property pursuant to this Contract is contingent upon the following, all or any of which may be waived by the City.

a) The City's obtaining within one (1) week from the date of this Contract such soil tests and engineering studies of the Property as, in the reasonable exercise of the City's judgment, are necessary to determine if there are any soil, topographical or other physical conditions in or about the Property which would render its development uneconomic, and the City, in the reasonable exercise of the City's judgment, being satisfied that no such conditions exist. If, by December 12, 2009, Seller receives a written notice from City that describes unacceptable structural defects or health or environmental hazards revealed by the inspection(s), or supported by the written opinion(s) of the qualified professional(s) who inspected the Property, this Contract shall be cancelled. If Seller does not receive written notice from the City prior to the end of the stated period that the inspection(s) were unacceptable, then the condition contained in this paragraph four (4) shall be waived.

b) Upon full execution of this Contract by all parties, City shall order (i) a survey of the Property, and (ii) a title insurance policy covering the Property naming the City as the insured. Upon receipt of the surveys and title insurance commitments by the City, the City shall have until the earlier to occur of: (i) seven (7) days from the date of receipt of the surveys and title insurance commitments or (ii) December 12, 2009 to object in writing addressed to Seller to any problems with the survey and exceptions in the commitment. If no such notice is given prior to the end of the stated period, then the City will accept title to the Property in accordance with the terms hereof. If the City does object to any survey problems or title exceptions, then Seller, as the case may be, shall have, at Seller's option, thirty (30) days to satisfy the City's objections (and the date for Closing shall be extended accordingly if necessary to accommodate such time period). If the City's objections cannot be cured (or if Seller elects not to cure such objections), the City may, within five (5) days after the expiration of such thirty (30) day cure period (or after receipt of notice from Seller that Seller elects not to cure such objections), either elect (i) to terminate this Contract, (ii) extend the time to cure such objections pursuant to an agreement between the City and Seller or (iii) waive the objection and close subject to such objection.

c) During the term of this Contract, the City, its agents, employees, contractors and engineers shall have the right from time to time to enter upon the Property at their risk for the purpose of inspecting the same and conducting surveys, engineering studies, borings, soil tests, investigations, feasibility studies and the like. To the extent that it is practical to do so, all such entries shall be made in such a manner as to minimize interference with Seller's present use and occupancy of the Property. Within a reasonable time after such entries City shall, to the extent practicable, restore the Property to its prior condition. The City agrees to indemnify, defend and hold Seller harmless from all claims, damages, losses, cost and expenses arising from or related to such entries and any investigations, studies or surveys conducted pursuant to this Contract.

d) The City shall use reasonable diligence and act in good faith to seek fulfillment of the contingencies set forth in this paragraph four (4).

5. **Site Information Provided by Seller.** City acknowledges that all copies of documents, plans, reports or other information provided to City concerning the Property have been provided to City gratuitously and without any representation by Seller. Seller shall have no liability to City in connection with the providing of such material and information, the contents thereof, or Purchaser's reliance thereon.

6. **Seller's Representations, Warranties and Covenants.** Seller represents, warrants and covenants, the following to Purchaser, all of which will be effective at Closing:

- a) Seller is the legal owner of the Property and no other person or entity has any legal or equitable interest in the Property or any rights to consent to or approve the sale of the Property.
- b) Seller is not a foreign person as defined in Section 1455 of the Internal Revenue Code.

7. **Disclaimer of Other Representations and Warranties.** City accepts and approves the Property, subject to the contingencies outlined in Paragraph 4 above, with respect to both the physical condition of the Property and the presence of Hazardous Substances (defined herein) and agrees to purchase the Property in its "WHERE IS," "AS IS" and "WITH ALL FAULTS" condition, with all patent and latent defects, if any, with no representation or warranty by the Seller as to its fitness, suitability, habitability, or usability, including, but not limited to (a) the quality or condition of the Property, (b) the compliance of the Property with Applicable Laws, and (c) the nature and extent of any servitudes, rights-of-way, leases, possession, liens, encumbrances, licenses, reservations, conditions or otherwise. Except as otherwise set forth in this Contract, City acknowledges that it is not relying upon any representation, warranty, statement or other assertion with respect to the Property's condition made by the Seller and accepts the Property's condition under the express understanding that there are no express or implied warranties made by the Seller with respect to the condition or value of the Property. City is experienced in the ownership, development, and operation of properties similar to the Property and therefore acknowledges that it will rely solely on its own investigation and examination of the Property, which it is qualified to make.

The term "Hazardous Substance(s)" shall mean any hazardous or toxic material, substance or waste which is defined, or for which the production, processing, sale, handling and/or disposal thereof is regulated, as a hazardous or toxic material, substance or waste under any applicable statute, law, rule or regulation of any federal, state or local governmental authority.

8. **Closing Documents.** At or prior to Closing, Seller shall deliver to the Title Company the following documents, duly authorized and executed, to be held in escrow by the Title Company subject to completion of all Closing requirements:

- a) Special Warranty Deed, in a form acceptable to the City, conveying to City good and marketable fee simple title to the Property subject to real estate taxes and assessments for the current calendar year which are a lien on the Property but which are not yet due and payable, Title Exceptions and all Applicable Laws;
- b) Closing Statements; and
- c) Any affidavits or certificates customarily executed in St. Louis County, Missouri by Seller in connection with the sale of property similar in nature to the Property.

9. **Closing Costs and Adjustments.** In accordance with customary practice in St. Louis County, Missouri, the parties shall pay all recording and documentary fees and taxes, and shall equally share the cost of all title company services. All other pro rata items shall also be apportioned based on customary practices.

10. **Notices.** All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be given

To Seller: 9741 Litzinger Road
St. Louis, MO
64124

With a copy to: William B. Remis
DosterUllom, LLC
17107 Chesterfield Airport Road
Chesterfield, MO 63005

To City: City of Chesterfield, Missouri
690 Chesterfield Parkway West
Chesterfield, MO 63017-0760
Attention: Michael G. Herring, City Administrator

With a copy to: Robert M. Heggie, Esq.
Stewart, Mittleman, Heggie & Henry, LLC
222 South Central Avenue, Suite 501
St. Louis, MO 63105

Any notices required or permitted to be given hereunder shall be in writing and shall be deemed given when (i) delivered personally, (ii) delivered by telegram or facsimile, or (iii) one day after delivery to a nationally recognized courier service (such as Federal Express) for overnight delivery.

11. **Real Estate Brokers.** Seller and City each represent to the other that, there are no brokers or similar commissions or fees to be paid in connection with the transaction contemplated hereby. Seller and City shall each be solely responsible for claims by any other broker with whom they have dealt in connection with the Property.

12. **Like Kind Exchange.** The parties acknowledge that Seller may desire to sell the Property as part of a like-kind exchange ("Exchange") pursuant to §1031 of the Internal Revenue Code (the "Code"). City agrees to cooperate with Seller and its qualified intermediary/third-party facilitator in connection with any such Exchange, provided, however, in no event shall Closing hereunder be delayed or affected by reason of an Exchange, nor shall consummation of an Exchange be a condition precedent or subsequent to any obligations of the Seller under this Contract. City shall not be required to incur any cost or expense, or to acquire or hold title to any real property, for purposes consummating an Exchange at the request of Seller. In addition, City shall not, by this Contract or acquiescence to an Exchange by Seller, have its rights or obligations hereunder affected in any manner, or be deemed to have warranted to Seller that such Exchange in fact complies with the Code.

13. **Miscellaneous Provisions.**

- a) Time is of the essence with respect to each and every provision of this Contract.
- b) The captions in the various sections of this Contract are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Contract nor the intent of any provision hereof.
- c) If any date for the occurrence of an event or act under this Contract falls on a Saturday, Sunday or legal holiday in the State of Missouri, then the time for the occurrence of such event or act shall be extended to the next succeeding business day.
- d) This Contract shall be governed by and interpreted in accordance with the Laws of the State of Missouri.
- e) This Contract, together with all exhibits attached hereto and incorporated by reference herein, constitutes the entire understanding between the parties hereto and supersedes any and all prior agreements, arrangements and understandings between the parties hereto. This Contract may be amended only by a writing signed by both City and Seller.
- f) This Contract may be executed in one or more counterparts, each of which shall constitute an original.

- g) This Contract shall be binding upon and inure to the benefit of the parties hereto and their respecting heirs, executors, administrators, personal representatives, successors and assigns.
- h) In the event either party hereto fails to perform any of its obligations under this Contract, the defaulting party shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees.
- i) This Contract shall not be assigned by City.
- j) Seller and City shall each execute such additional documents and take such further actions as may reasonably be required to carry out the provisions and objectives of this Contract.
- k) This Contract may not be recorded.

14. **Charitable Gift.** The City acknowledges that Seller will take charitable deductions for the difference between the fair market value and the Purchase Price of the Property. While the Seller believes that the fair market value of the Property is at least Six Million Two Hundred Fifty Thousand and 00/100 Dollars (\$6,250,000), Seller has ordered an appraisal of the fair market value of the Property and will provide a copy for review to City (provided, however, City's obligations hereunder are not contingent upon receipt of such appraisal or the results contained therein). Seller will rely upon said appraisal in determining the amount of the charitable deduction. City acknowledges that Seller intends to claim this sale as a bargain sale for charitable purposes, and City agrees to sign the property receipt acknowledgement on Form 8283 acknowledging the gift of the difference between the appraised value and the Purchase Price of the Property for each of Sellers' federal income tax returns.

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and year first above written.

CITY

**CITY OF CHESTERFIELD,
MISSOURI**

By: _____
Michael G. Herring
City Administrator

SELLER

Dana Holtzman Pohlman

Louis Bartfield Holtzman

Jill Ann Starr

EXHIBIT B

Parcel 1:

A tract of land in U.S. Survey 419, Township 45 North, Range 3 East, St. Louis County, Missouri and being a part of Lot 1 of the subdivision of the Spencer Tyler Estate being more particularly described as follows: Beginning at an old iron pipe in the West line of said Lot 1, said pipe being the Northeast corner of a 2.40 acre tract now or formerly of Peter V. Danna thence Southwardly along the West line South 12 degrees 00 minutes 00 seconds East 290.79 feet to an old iron pipe at its intersection with the Northern line of new U.S. Highway 40; thence Eastwardly along said Northern line, South 84 degrees 10 minutes 55 seconds East 78.78 feet to a point; thence Northwardly and parallel with the aforementioned West line of said Lot 1 North 12 degrees 00 minutes 00 seconds West 414.90 feet to a point; thence South 78 degrees 00 minutes 00 seconds West 75.00 feet to a point in the said West line of said Lot 1; thence Southwardly along said West line South 12 degrees 00 minutes 00 seconds East 100.00 feet to the point of beginning.

Parcel 2:

A tract of land in U.S. Survey 150, 102 and 419 Township 43 North Range 3 East St Louis County Missouri being more particularly described as follows; Beginning at an old iron pipe in the East line of Lot 2 of the Subdivision of the Spencer Tyler Estate distant north 12 degrees 00 minutes 00 seconds West 2063.36 feet from the North line of old U.S. Highway 40 T.R.; said pipe being also the Northeast corner of a 2.40 acre tract now or formerly of Peter V. Danna thence Northwardly along said East line of said Lot 2 North 12 degrees 00 minutes 00 seconds West 1863.47 feet to a point on the North line of the Monarch Chesterfield Levee District; thence Westwardly along said North line North 89 degrees 49 minutes 57 seconds West 684.14 feet to an old iron pipe in said North line; thence Southwardly and parallel with the aforementioned East line of Lot 2 South 12 degrees 00 minutes 00 seconds East 2007.66 feet to an old iron pipe at the Northwest corner of the aforementioned Danna tract; thence Eastwardly along the North line of said Danna tract North 78 degrees 00 minutes 00 seconds East 668.78 feet to the point of beginning.

LESS AND EXCEPTING THEREFROM that portion taken out by Condemnation Suit #98CC2709 by the State of Missouri recorded in Book 12008 Page 1591.

LESS AND EXCEPTING THEREFROM that portion taken out by Condemnation Suit #0300000638 by Monarch-Chesterfield Levee District recorded in Book 15202 Page 618.