

Bill No. 4968

Ordinance No. _____

Requested by: Ryan Graham

Sponsored by: Joe Brazil

AN ORDINANCE AUTHORIZING THE COUNTY EXECUTIVE TO EXECUTE A REAL ESTATE SALE AGREEMENT BETWEEN THE NEW MELLE FIRE PROTECTION DISTRICT AND ST. CHARLES COUNTY, MISSOURI

WHEREAS, the St. Charles County Parks Department was contacted by the New Melle Fire Protection District in late 2020 regarding purchasing approximately 5.8032 acres of property owned by the County near the intersection of Mo. Route Z and Foristell Road in New Melle to build a new fire station; and

WHEREAS, the county acquired ownership of this property as a donation in conjunction with its acquisition of 400 Foristell Road, which is the former home of Barbara Apted, now called the Landhaus; and

WHEREAS, this property is not contiguous to the park, is considered excess property, and was always intended to be sold; and

WHEREAS, in anticipation of the sale, the property was appraised in December 2020 and valued at \$325,000; and

WHEREAS, the New Melle Fire District has agreed to pay \$325,000 for the purchase of this property; and

WHEREAS, the sale of real estate is authorized in accordance with Article II, Section 2.518 of the Charter of St. Charles County, Missouri.

WHEREAS, Chapter 70, Revised Statutes of Missouri (RSMo), authorizes an intergovernmental agreement between political subdivisions for the purposes herein set out.

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

Section 1. The County Executive is hereby authorized to execute the Real Estate Sale Agreement between St. Charles County, Missouri and the New Melle Fire Protection District.

Section 2. The Real Estate Sale Agreement shall be substantially the same in form and content as that attached hereto and incorporated herein as **EXHIBIT A**.

Section 3. Compliance with all the terms of the Real Estate Sale Agreement shall be the responsibility of the St. Charles County Parks Department.

Section 4. This ordinance shall be in full force and effect from and after the date of its passage and approval and such Agreement shall be valid upon its execution by each governmental entity entering into such agreement as

required by Chapter 70 of the Revised Statutes of the State of Missouri.

DATE PASSED

DATE APPROVED BY COUNTY EXECUTIVE

CHAIR OF THE COUNCIL

COUNTY EXECUTIVE

ATTEST:

COUNTY REGISTRAR

EXHIBIT A

REAL ESTATE SALE AGREEMENT

THIS REAL ESTATE SALE AGREEMENT (“Agreement”) is entered into as of the Effective Date as defined below, by and between **NEW MELLE FIRE PROTECTION DISTRICT** (referred to herein as “Purchaser”); and **ST. CHARLES COUNTY, MISSOURI** (referred to herein as “Seller”).

For and in consideration of the mutual covenants herein set forth, it is agreed as follows:

1. Agreement to Sell and Convey

Seller hereby agrees to sell and convey to Purchaser and Purchaser hereby agrees to purchase from Seller, subject to the terms and conditions hereinafter set forth, all of the following parcels of land lying and being situated in the City of New Melle, St. Charles County, Missouri, along and near Foristell Road (the “Premises”):

(a) County Assessor Parcel Identification Number 3-0048-S026-00-0009.0000000 containing approximately 4.00 acres, more or less, of unimproved land owned by St. Charles County, Missouri, including all water rights, mineral rights, easements, rights-of-way and appurtenances pertaining to the Premises; and

(b) County Assessor Parcel Identification Number 3-0029-S023-00-0022.4000000 containing approximately 1.80 acres, more or less, of unimproved land owned by St. Charles County, Missouri, including all water rights, mineral rights, easements, rights-of-way and appurtenances pertaining to the Premises.

2. Purchase Price

Seller shall convey to Purchaser, and Purchaser shall purchase from Seller, the Premises for a purchase price (“Purchase Price”) of **Three Hundred Twenty-five Thousand and xx/100 Dollars (\$325,000.00)**. Payment of the Purchase Price, less any deductions herein authorized, shall be by wire transfer or cashier’s check from Purchaser or on Purchaser’s behalf, delivered to the Settlement Agent (hereinafter defined) at Settlement (hereinafter defined), with disbursement to Seller on the date of Settlement.

Any existing liens on the Premises will be paid out of the Purchase Price, and any net proceeds to be paid to the Seller will be reduced accordingly. No deposit is required under this Agreement.

3. Survey

Purchaser shall, within thirty (30) days of the effective date of this Agreement and at Purchaser’s expense, commission a licensed surveyor to complete a survey and provide one or more legal descriptions for the parcels of land comprising the Premises. Purchaser shall deliver a

copy of such survey to Seller. The parties agree to utilize such legal description(s) in the deed(s) contemplated in this transaction.

4. **Seller's Ownership; Leases**

Seller warrants and represents that it is the sole fee simple owner of the Premises described herein and has all necessary authority to sell the Premises. There are no other contracts for sale or options involving the Premises; no other party has any right, title or interest in the Premises; and there are no leases affecting or relating to the Premises. Between the date Seller executes this Agreement and Settlement, Seller shall not subject the Property to or consent to any leases, liens, encumbrances, covenants, conditions, restrictions, easements, right of way, or agreements, or take any other action affecting or modifying the status of title or otherwise affecting the Property, without the written consent of the Purchaser.

5. **Actions or Suits**

Seller warrants and represents that there are no actions or suits, in law or equity, or proceedings by any governmental agency now pending or, to the knowledge of the Seller, threatened against Seller, in connection with the Premises, and there is no outstanding order, writ, injunction or decree of any court or governmental agency affecting the Premises.

6. **Other Adverse Facts**

Between the date Seller executes this Agreement and Settlement, Seller will notify Purchaser in writing of any events which occur or any facts of which it becomes aware which would make any of its representations or warranties false or misleading. Except as otherwise permitted by Purchaser in writing, in its sole discretion, each of the warranties or representations made in this Agreement by Seller shall be true and correct as of the date of Settlement.

7. **Settlement**

(a) The closing of the transaction contemplated by this Agreement ("Settlement") shall take place on a date to be agreed upon by the parties that is no later than sixty (60) days after the Effective Date, or such other date as the parties mutually agree. Settlement shall be held at the offices in St. Charles County of a title insurance company to be selected by Purchaser (the "Settlement Agent"), or at such other place as the parties mutually agree. Possession of the Premises shall be delivered to Purchaser at Settlement.

(b) The Premises shall be in substantially the same condition at Settlement as on the date Seller executes this Agreement.

(c) At the Settlement, Seller shall execute and/or deliver the following: (i) special warranty deeds("Deed") conveying fee simple title to the Premises to Purchaser substantially in the form attached hereto as **Exhibit 1**; (ii) evidence of Seller's respective authority and related customary documents as may be reasonably required by the Title Company; (iii) affidavits as to rights of parties in possession, mechanics' liens and claims, as may be reasonably required by the

Settlement Agent in order to issue to Purchaser an owner's policy of title insurance with mechanics' lien coverage if Purchaser determines to purchase such title insurance policy; (iiv) a settlement statement; and (v) any other documents reasonably requested by the Settlement Agent to consummate the transaction contemplated by this Agreement.

(d) At the Settlement, Purchaser shall execute and/or deliver the following: (i) the Purchase Price; (ii) Purchaser's share of the closing costs, prorations and any other expenses provided to be paid by Purchaser by this Agreement; (iii) evidence of Purchaser's authority and related customary documents as may be reasonably required by the Settlement Agent; (iiii) a settlement statement, and (iv) any other documents reasonably requested by the Settlement Agent to consummate the transaction contemplated by this Agreement. If Purchaser delivers the Purchase Price by wire transfer, Purchaser shall initiate said wire transfer by 10:00 a.m. on the date of Settlement, and Seller acknowledges that the precise timing of the receipt of such wire transfer by the Settlement Agent is beyond Purchaser's control.

8. Title

(a) The Premises shall be sold free from all mortgages, deeds of trust, liens, security interests and other monetary encumbrances. Title shall be good, marketable and, insurable, without exception at regular rates by a title insurance company of the Purchaser's choice, subject, however, to those covenants, easements, conditions and restrictions of record as of the date Seller executed this Agreement, and encroachments shown on the survey commissioned by Purchaser or otherwise visible upon inspection of the Premises. Without affecting the foregoing requirements, Purchaser may elect not to obtain title insurance.

(b) If Seller is unable because of any defect in title to deliver acceptable title as aforesaid at Settlement and Purchaser is unwilling to waive such defect, Purchaser may either: (i) request Seller to correct the defect if same can be done within a reasonable time not to exceed thirty (30) days from the date of the Seller's receipt of notice of the defect, or (ii) immediately terminate this Agreement. If Seller is unwilling or unable or fails to timely remedy the defect, Purchaser may immediately terminate this Agreement upon written notice to Seller and no party shall have any further liability hereunder, except as otherwise provided herein.

9. Expense of Settlement

(a) At Settlement, Purchaser shall pay the Settlement Agent's closing fee, the title commitment fee if not already paid, the premium for Purchaser's title insurance, if any, the recording fee for the Deeds and escrow fees, and all other closing costs except for those charges Seller is to pay as listed below.

(b) Seller shall pay for Seller's attorney's fees incurred in connection with this transaction, and at Settlement Seller shall pay existing liens (recorded and unrecorded) and existing loans on the Premises, if any, and the recording fee for any release thereof.

10. Risk of Loss

All risk of loss or damage to the Premises shall be borne by Seller until Settlement. However, in the event of any damage to the Premises prior to Settlement, Purchaser shall have the option, in its sole discretion, to: (i) terminate this Agreement or (ii) proceed to Settlement as required hereunder, without decrease in the Purchase Price, conditioned upon Seller assigning all its interest in insurance or other payments for loss or damage to the Premises. In the event of condemnation or threat of condemnation by an entity other than Seller of any part of the Premises prior to Settlement, Purchaser shall have the option, in its sole discretion, to: (i) terminate this Agreement or (ii) proceed to Settlement without decrease in the Purchase Price conditioned upon any condemnation award being paid, credited, or assigned, as appropriate, to Purchaser at Settlement.

11. Condition of Premises; Environmental Assessment; Inspections

(a) Seller makes no representations or warranties as to the condition of the Premises or any improvements thereon, and the Purchaser agrees to accept the Premises and all improvements in “as is, where is” condition, with all defects which may exist, if any.

(b) Purchaser agrees to commission, at its expense and as soon as is practicable after execution of this Agreement, a Phase One Environmental Assessment of the Premises. For a period of ten (10) days following receipt of such report, Purchaser shall have the right to terminate this Agreement, without penalty, by providing a complete copy of said report to Seller along with a written notice to Seller that Purchaser is not satisfied with the findings of the report which notice shall contain the specific reasons for Purchaser’s dissatisfaction, failing which the report shall be deemed satisfactory to Purchaser.

(c) Seller agrees that for a period of sixty (60) days from the Effective Date, the Purchaser, or the Purchaser’s designated agent, shall have full access to the Premises during normal business hours, including the right, at Purchaser’s own risk, cost and expense, to enter upon the Premises for the purpose of: (i) making physical and topographic surveys; and (ii) conducting such tests, investigations and studies, including environmental studies, as Purchaser may desire. Purchaser hereby agrees to indemnify, defend and hold Seller harmless from and against any and all losses, damages, liabilities and expenses (including reasonable attorneys’ fees, court costs and litigation expenses) which Seller may suffer, sustain or incur in connection with or arising from any such entry of the Premises, and such obligations of Purchaser will survive Settlement and any termination of this Agreement. In the event Purchaser does not purchase the Premises, Purchaser shall, at its expense, promptly restore the Premises to its prior condition to the extent of any changes made by its agents or representatives. If Purchaser is not satisfied for any reason whatsoever with any results of the tests, investigations and studies performed pursuant to this paragraph, Purchaser shall provide a copy of such results to Seller and immediately advise Seller in writing of its intention not to proceed to Settlement under the terms of this Agreement, and in such event, this Agreement shall automatically be terminated and no party shall have any liability hereunder, except as otherwise provided herein. Purchaser’s right to terminate this Agreement with respect to the Phase One Environmental Assessment of the Premises is governed by the provisions of the preceding subsection (b), not the provisions of this subsection (c).

12. **Default**

In the event of any default, the non-defaulting party shall be entitled to pursue any remedies at law or in equity in connection with the default of the other party. The election to terminate this Agreement under the terms hereof shall not constitute a default. Nothing in this Agreement shall be construed as a waiver of the sovereign immunity of Seller.

13. **Agency**

Seller and Purchaser each represent that neither has engaged a real estate broker to assist in this sale of the Premises and each hereby agrees to defend, indemnify and hold the other harmless in the event any claim is made against any claim for a brokerage fee as a result of a contract therefore entered into by an indemnifying party hereunder. The provisions of this paragraph shall survive the settlement and transfer of legal title to the Premises or, as to the warranties, representations and indemnifications set forth in this paragraph, the termination of this Agreement as herein provided.

14. **Prior Agreements; Merger**

This Agreement supersedes any and all prior understandings and agreements between the parties and constitutes the entire agreement between them with respect to the Premises. No representations, warranties, conditions or statement, oral or written, not contained herein shall be considered a part hereof. This Agreement may not be amended, altered, or modified except by an instrument in writing signed by the party sought to be charged therewith.

15. **Miscellaneous**

Subject to the provisions hereof, this Agreement shall bind and enure to the benefit of the parties hereto, their heirs, personal representatives, successors and permitted assigns. No assignment of this Agreement shall be permitted except with the written consent of the other party, which consent shall not be withheld unreasonably.

16. **Notices**

Any notices required or permitted to be given hereunder shall be deemed to have been properly given if sent by United States certified or registered mail, return receipt requested, postage prepaid, reputable national overnight courier service guaranteeing next business day deliver, or personal delivery, addressed as follows:

If to Seller: St. Charles County, Missouri
Attn: County Counselor
100 N. Third Street, Suite 216
St. Charles, Missouri 63301

If to Purchaser:

or to such other persons or addresses as a party may hereafter direct by written notice. Notices shall be deemed delivered upon receipt by the addressee or refusal of delivery.

17. Governing Law

Notwithstanding the place where this Agreement may be executed by any of the parties hereto, the parties expressly agree that all terms and provisions hereof shall be construed and enforced in accordance with the laws of the state of Missouri.

18. Effective Date

The date upon which this Agreement shall be finally executed by the authorized representatives of Purchaser and Seller shall be the effective date ("Effective Date") hereof.

19. Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile or electronic transmission of the accepted Agreement shall constitute one acceptable method to provide notice of acceptance between Purchaser and Seller, and each agree to deliver executed originals of the Agreement thereafter.

20. Headings

The headings of the sections and all subsections of this Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Agreement.

[Signatures appear on following page]

SIGNATURE PAGE TO
REAL ESTATE SALE AGREEMENT

IN WITNESS WHEREOF, the parties have entered into this Agreement on the last date written below.

SELLER:

ST. CHARLES COUNTY, MISSOURI

By: _____
Steve Ehlmann
County Executive

Date: _____, 2021

PURCHASER:

NEW MELLE FIRE PROTECTION DISTRICT

By: _____
[Insert Name and Title Here]
DANIEL CASEY
FIRE CHIEF

Date: 4/22/2021, 2021

Space Above Line Reserved For Recorder's Use

SPECIAL WARRANTY DEED

This SPECIAL WARRANTY DEED (“**Deed**”), made and entered into as of [], 2021, by and between **St. Charles County, Missouri (“Grantor”)**, having a mailing address of 100 N. Third Street, Suite 216, St. Charles, MO 63301, Attn: County Counselor; and **New Melle Fire Protection District (“Grantee”)**, having a mailing address of 3705 Mill Street, New Melle, MO 63365.

WITNESSETH, that said Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration paid by said Grantee, the receipt and sufficiency of which is hereby acknowledged, does by these presents Bargain, Sell, Convey and Confirm unto said Grantee all of Grantor’s right, title and interest in the following real estate situated in the County of St. Charles, State of Missouri, to wit (the “Real Property”):

See legal description attached as **Exhibit A** hereto.

[]

Tax Parcel ID Nos. 3-0048-S026-00-0009.0000000 & 3-0029-S023-00-0022.4000000

Subject to all easements, restrictions and conditions of record.

Subject to the further restrictions that the Grantee shall not use or permit the use of the parcels conveyed, as described herein, for a period of fifty (50) years [WHAT WAS CLOSING DATE OF OUR PURCHASE?] after the date of this Deed, for any of the following uses unless such use is expressly approved, in a duly authorized written instrument suitable for recording in the land records, by the Fiddlestix Homeowners' Association or its successor entity: (a) construction of any buildings or roads within twenty-five feet (25') of the property line adjoining

the common ground parcel immediately to the west of the subject property, which is then adjacent to the private road parcel known as Cooperwyck Road; or (b) use as a gas or other type of motor vehicle fueling station, or vehicle service station.

TO HAVE AND TO HOLD said Real Property, together with all rights and appurtenances to the same belonging, unto said Grantee and to Grantee's successors and assigns forever. The Grantor hereby covenants that said Grantor, and its successors and assigns, shall and will warrant and defend the title to said Real Property unto said Grantee and to Grantee's successors and assigns forever, against the lawful claims of all persons claiming by, through or under the Grantor, but none other.

IN WITNESS WHEREOF, the said Grantor has executed these presents as of the day and year first above written.

Grantor: **ST. CHARLES COUNTY, MISSOURI**

By: _____
Steve Ehlmann,
County Executive

STATE OF MISSOURI)
)
COUNTY OF ST. CHARLES) SS.

On this ____ day of _____, 2021, before me appeared Steve Ehlmann, County Executive of St. Charles County, Missouri, personally known to me to be the person who executed the foregoing instrument and acknowledged to me that he executed the same with all necessary authority and as the free act and deed of St. Charles County, Missouri.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Notary Public

My Commission Expires:

EXHIBIT A
to Special Warranty Deed

Legal Description