

## MINUTES OF MEETING HELD SEPTEMBER 11, 2017

The Common Council of the City of Somerset, Kentucky met in a regular meeting on Monday September 11, 2017, at 7:00 p.m. with the following present: Council Members; Jim Mitchell, John Adams, Amanda Bullock, Tom Eastham, David Burdine, Brian Dalton, Jerry Wheeldon, Jimmy Eastham, Jerry Girdler, Mike New, Donna Hunley, and John Minton and Mayor Eddie Girdler, City Attorney Carrie Weise, and City Clerk Nick Bradley.

Mr. Wheeldon moved to approve the minutes of the regular meeting held on August 28, 2017 along with reports as mailed. Mr. T. Eastham seconded the motion. Upon roll call the following Council Members voted "Aye": Mr. Mitchell, Mr. Adams, Mrs. Bullock, Mr. T. Eastham, Mr. Burdine, Mr. Dalton, Mr. Wheeldon, Mr. J. Eastham, Mr. Girdler, Mr. New, Mrs. Hunley, and Mr. Minton.

Mr. Wheeldon moved to approve the Real Estate Purchase Contract for property at 100 East Somerset Church Road between the City of Somerset and the Somerset Board of Education in the amount of \$300,000. Mr. New seconded the motion.

Mr. Adams moved to amend the Real Estate Purchase Contract between the City of Somerset and the Somerset Board of Education. Mr. Mitchell seconded the motion. Upon roll call the following Council Members voted "Aye": Mr. Mitchell, Mr. Adams, Mrs. Bullock, Mr. J. Eastham, and Mr. Minton. "No" Mr. T. Eastham, Mr. Burdine, Mr. Dalton, Mr. Wheeldon, Mr. Girdler, Mr. New, and Mrs. Hunley. Motion failed.

<p style="text-align: center;"><b>John Adams</b> <b>5 Hillandale Place</b> <b>Somerset, Kentucky 42501</b> <b>(606) 305-3895</b></p> <p><b>Summary of Adams Amended Changes:</b></p> <ul style="list-style-type: none"><li>- If amendment to contract was made the contract would go back to the school board (i.e. Counter Offer)</li><li>- Therapy pool would have to be open to public at minimum 4 hours a day for 5 days a week not Sunday.</li><li>- Competition pool:<ul style="list-style-type: none"><li>o 2 hours a day for 5 days a week not Sunday for a "USA Swimming/KY Swimming" team (USA/KY Swimming is to swimming, what "AAU" is to basketball.) (Past team has been called the "Hurricanes").</li><li>o 2 hours per day for 5 days except Sundays for public swimming.</li><li>o NO requirement of other schools use.</li><li>o Competition pool season, mid-September to mid-May (approximate school calendar.)</li><li>o If no actual demand for use, then the Somerset Schools does not have to keep pools open.</li></ul></li><li>- Clear damages/relief provision to avoid litigation. (Liquidated damages of \$700,000 based upon City's recent appraisal.) Specific performance, so the court can make the open them.</li></ul>	<p><b>Motion to Amend:</b> John Adams moves to amend the Real Estate Purchase Contract presented to the City Council by Somerset Independent Schools Board in August 2017, by inserting the following substantial language in total as an additional item of the contract which would require acceptance by the School Board, the text and summary has been given to the Council</p> <p><b>"Purchaser's Covenant of Limited Public Use:</b></p> <p>This contract provision shall survive closing, shall not be subject to the doctrine of merger, and will be memorialized in the conveying deed (including applicable time, covenants, and relief &amp; damages).</p> <p><b>Consideration:</b> The parties agree the subject real property has a market value greater than the sale price paid herefor and that difference (a discount to the Purchaser) shall serve as consideration as well as the consideration for these covenants.</p> <p><b>Applicable Time:</b> The parties agree that the Purchaser shall for a period of 15 years after conveyance and no longer, or until a facility is opened providing equal or greater access to the same aquatic at similar pricing to the general public in Pulaski County: the Purchaser agrees to the following covenants.</p> <p><b>The Covenants:</b></p> <ol style="list-style-type: none"><li>1. Within 360 days of the conveyance of the subject property, the subject property's therapy pool shall be open to for therapeutic exercise and public wellness daily excluding Sunday's and holidays for not less than 4 hours a day, between 6:00 AM and 8:00 PM, for 5 of the 6 days between Sundays. Nothing in this provision shall limit leasing the pool to a medical, wellness, or private of public health entity to meet this provision. If the therapy pool is leased to separate entity having no connection with the Purchaser for public therapy and wellness, then the days and hours provisions are waived and shall be freely determined by the leasing entity. The cost and times shall be reasonable as defined below.</li><li>2. Within 360 days of the conveyance of the subject property, the subject's competition pool shall be open for public use in the following manner:<ol style="list-style-type: none"><li>a. Reasonable Availability (in time and cost) for 2 hours per day except Sundays, between 6:00 AM and 8:00 PM, for 5 of the 6 days between Sundays for use by a USA Swimming/Kentucky Swimming, Inc. (or comparable governing body) member swimming team whose participants shall not be restricted by school district assignment, between August 15<sup>th</sup> and May 15<sup>th</sup> of each year.</li><li>b. Availability for 2 hours per day except Sundays, between 6:00 AM and 8:00 PM, for 3 of the 6 days between Sundays for use by the general public, between August 15<sup>th</sup> and May 15<sup>th</sup> and</li><li>c. Available for Regular classes for new swimmer instruction and lifeguarding at reasonable prices and times.</li></ol></li></ol> <p>Nothing in the foregoing requires the Purchaser to rehab or use the outdoor pool at the real property.</p>
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Nothing in the foregoing requires the Purchaser to open the pool if there is no market demand or use for the programs above. Demand shall be determined by past lack of actual use or public requests or petition.

Reasonableness in terms of time and costs shall be determined by comparable facility offerings within a 300 mile radius of Somerset. The individual comparable offerings value to determine reasonableness shall include community size and demography to Somerset, Kentucky as well as facility type.

#### Relief and Damages:

Failure of the Purchaser to meet or observe the covenants shall include liquidated damages to the seller, specific performance, and equitable relief, subject to the following:

- a. Both parties of the contract recognize and agree for the purposes of liquidated damages that the subject property's "as-is" value is estimated at 3 Million Dollars based upon the appraisal July 18, 2017 (Date of Valuation) report of William A. Benkey, Jr. of Stugages Valuation Group, LLC. Hence the parties hereto agree, the market value minus the purchase price herein constitutes a fair, reasonable and expected liquidated damages value of \$700,000. Purchaser waives all arguments of liquidated damages determination and application.
- b. The parties agree that heretofore the subject property was operated openly to the public as a "YMCA type" facility. And the parties agree, and waive all legal and equitable arguments to the contrary, the Purchaser's purchase of the property will limit that public use. Whereas, Somerset and Pulaski County have no other indoor competition pools or therapy pools, purchase by the Purchaser without provision for public use of the indoor pools causes the public served by the seller specific harm for the purposes of equitable relief and specific performance. Therefore, the parties agree the seller may enforce the use covenant by specific performance or equitable relief."

Upon roll call the following Council Members voted "Aye" to the original Real Estate Purchase Contract: Mr. T. Eastham, Mr. Burdine, Mr. Dalton, Mr. Wheeldon, Mr. J. Eastham, Mr. Girdler, Mr. New, and Mrs. Hunley. "No". Mr. Mitchell, Mr. Adams, Mrs. Bullock, and Mr. Minton.

#### REAL ESTATE PURCHASE CONTRACT

THIS REAL ESTATE PURCHASE CONTRACT, made and entered into this 11<sup>th</sup> day of September, 2017, by and between the City of Somerset, of 306 East Mt. Vernon Street, Somerset, KY 42503, hereinafter referred to as "Party of the First Part" or "Seller," and Somerset Independent Board of Education, of 305 College Street, Somerset, KY 42503, hereinafter referred to as "Party of the Second Part" or "Purchaser."

**WITNESSETH:** That for and in consideration of the mutual promises, covenants, conditions, and terms as set forth herein, and the desire of the Seller to sell and the Purchaser to buy a certain parcel of real estate located at 100 East Somerset Church Road, Somerset, KY 42503, being Parcel #06d-9-1-55.4, now, therefore, the Parties hereto do agree as follows:

1. **Purchase Price.** The proposed purchase price/offer to purchase for the aforesaid realty is THREE HUNDRED THOUSAND DOLLARS (\$300,000.00). Said purchase price includes all of the real estate, all appurtenances, and all fixtures to said appurtenances (defined as all articles so attached or built in which, if removed, would leave the premises in a damaged, incomplete, or unfinished condition).
2. **Additional Assets:** The following additional items of personal property shall be transferred from Seller to Purchaser: all City-owned furnishings, window treatments, security system and cameras, weights, cardio equipment, and other fitness equipment, all pool equipment, tools, chemicals and supplies, if any. Seller shall provide to the Buyer the following documents: (a) any plans, drawings, etc. completed by the City's architects and engineers, (b) any pool inspector's recommendations to assist in repairing the facility; (c) any site survey and

appraisal; (d) any geotechnical survey (if completed); (e) the recent roof inspection report; and (f) any information on current leases, rental agreements, and any other obligations pertaining to the premises which might be transferred by Seller to Purchaser.

3. **Earnest Money.** As evidence of good faith to bind this contract, the sum of ONE HUNDRED DOLLAR (\$100.00), by check from Purchaser to Seller, is deposited herewith as earnest money to be held by Seller and credited to Purchaser at the time of closing herein. This earnest money deposit shall be retained by Seller as liquidated damages in the event of default hereunder by Purchaser.
4. **Approval by Kentucky Department of Education.** The entire purchase is subject to approval by Kentucky Department of Education, and any earnest money deposit should be refunded if Kentucky Department of Education refuses to approve.
5. **Allocation of Costs and Fees.** Purchaser agrees to pay all costs and prepaid items at the time of closing, including all lender requirements, except that Seller shall pay for the deed preparation, as well as any costs and fees necessary to cure any title defect (see paragraph 8).
6. **Utilities.** Seller agrees to negotiate a rate that achieves parties' mutual objectives.
7. **Risk of Loss.** All risk of loss or damage to the premises by fire or other casualty or cause shall remain with Seller until closing. If, prior to closing, the premises shall be so damaged that the cost of repair is less than 10% of the purchase price herein, Seller shall, at their cost, promptly repair said damage in a good and workmanlike manner. If the costs of said repairs exceed 10% of the purchase price herein, in that event, Purchaser shall have the option to declare this contract null and void and

receive a refund of the earnest money deposit, or, Purchaser may complete the closing, accepting the premises as damaged together with the proceeds of any insurance payable as a result of such damage.

8. **Exclusion of Warranties.** The parties hereto agree that the property to be conveyed herein is sold "as is," without any warranty of any kind, except for General Warranty of Title. The Purchaser hereby acknowledges that it has had ample opportunity to inspect and cause to be inspected the real estate and appurtenances thereunto, including the opportunity for a physical inspection, and title examination. It is specifically understood and agreed that the purchase price set forth herein has fully and completely taken into consideration the condition of the premises, with the understanding that the Purchaser assumes all risk and responsibility for repairs, remodeling, and the Purchaser accepts the premises in its condition as of the date of execution of this contract.

Seller does represent that all heating, cooling, plumbing, electrical systems, and the appliances which are to remain with the premises are presently in good operating condition, but only to the extent of its present knowledge.

9. **Closing and Title.** This transaction shall be closed on or before January 1, 2018, unless extended by mutual written agreement of the parties hereto. At closing, an unencumbered, marketable title to the property shall be conveyed to Purchaser by Seller by deed of general warranty, free and clear of all liens and encumbrances except (a) such liens and encumbrances as Purchaser may specifically approve and (b) easements and restrictions which are visible or of record, and as set forth in any planning and zoning code.

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Should any defect in title of the property appear, in that event, Seller shall have fourteen (14) days after receipt of written notice from Purchaser of such defects within which to remedy the same at Seller's cost, and the closing of this transaction shall be extended accordingly. If Seller does not so cure, then this contract shall terminate and the earnest money deposit paid by Purchaser to Seller refunded. If the parties to this contract desire that any term of this agreement survive the closing and transfer of deed to Purchaser, an agreement must be executed prior to closing acknowledging such intent or the term must be included in the Deed of Conveyance.

10. **Possession.** Possession of the above-described property shall be delivered with deed at closing.
11. **Public Use.** The Purchaser agrees, in consideration of the terms and provisions hereof, to permit the public to use and enjoy the facilities to the greatest extent commensurate with the Purchaser's own needs and resources.
12. **Right of First Refusal.** After closing, if the Purchaser desires to sell the real estate, prior to any sale, the Purchaser shall give Seller the right of first refusal to meet the terms of the offer. The right of Seller to purchase on those terms shall be and remain irrevocable for a period ending at 11:59 A.M. local time at the Purchaser's principal office, on the 20<sup>th</sup> day following the date the offer is given to the Seller by the Purchaser. At any time during the offer period, the Seller may exercise the right by giving written notice to the Purchaser of its acceptance. If the Seller exercises this right, then a closing date for the purchase, which shall not be earlier than ten, nor more than 90, days after the expiration of the offer. If Seller fails to exercise this


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timely manner as specified herein, then Purchaser is free to sell to the original offeror on those terms.

13. **Entire Agreement.** This contract represents the entire agreement between the parties, and the parties hereto agree that no one is relying on any other representation not otherwise expressed herein. This agreement may be modified only by mutual written consent of the parties hereto.

**IN TESTIMONY WHEREOF,** witness the signatures of the parties hereto, this the day and year as indicated by the respective signatures.

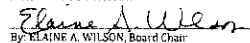
**SELLER:**  
**CITY OF SOMERSET**

  
By: **EDDIE GIRDLER, Mayor**

Attest:   
**KYLE B. LIVEZEY, Secretary**

Action approved at a duly convened meeting on the 11<sup>th</sup> day of September, 2017.

**PURCHASER:**  
**SOMERSET INDEPENDENT BOARD OF EDUCATION**

  
By: **ELAINE A. WILSON, Board Chair**

Attest:   
**KYLE B. LIVEZEY, Secretary**

Action approved at a duly convened meeting on the 28<sup>th</sup> day of August, 2017.

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Mr. T. Eastham moved to approve the following Resolution No 17-11: Support for the Separation of the County Employees Retirement System from the Kentucky Retirement System. Mr. Mitchell seconded the motion. Upon roll call the following Council Members voted "Aye": Mr. Mitchell, Mr. Adams, Mrs. Bullock, Mr. T. Eastham, Mr. Burdine, Mr. Dalton, Mr. Wheeldon, Mr. J. Eastham, Mr. Girdler, Mr. New, Mrs. Hunley, and Mr. Minton.

**RESOLUTION 2017  
CITY OF SOMERSET, KENTUCKY**

**WHEREAS**, The City of Somerset has employees invested in the County Employees Retirement System;

**WHEREAS**, the County Employees Retirement System is currently funded at 82 percent, a higher funded ratio than it was prior to passage of SB2;

**WHEREAS**, the Kentucky Employees Retirement System is the worst funded system in the U.S. and was noted by R.V. Kuhns, Inc. as being set to undergo financial hurdles of "persistent funding shortfalls, elevated contribution levels, unsustainable payout ratios and in the worst-case scenario, the potential for the complete depletion of the asset base";

**WHEREAS**, total assets of the County Employees Retirement System are about \$12 billion, 75 percent of the total Kentucky Retirement Systems' assets;

**WHEREAS**, administrative costs for the Kentucky Retirement Systems have increased 245 percent since 2000, and the County Employees Retirement System pays 83 percent of those costs;

**WHEREAS**, the County Employees Retirement System is on an upward funding trajectory and an independent actuary predicts it will be 100 percent funded by FY 2043, without any structural changes to the plan;

**WHEREAS**, separation of the County Employees Retirement System would result in the creation of a new nine-member board whose sole responsibility would be the management of the County Employees Retirement System;

**WHEREAS**, the current 17-member Kentucky Retirement Systems Board of Trustees has only six seats for County Employees Retirement System representatives;

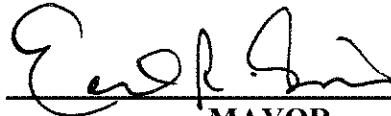
**WHEREAS**, separation of the County Employees Retirement System from the Kentucky Retirement Systems would mean local control of local pensions and would ensure the needs of the County Employees Retirement System are met so it can continue its current path of growth for years to come;

**NOW, THEREFORE, BE IT RESOLVED** That the City Council of the City of Somerset supports maintaining the current structure and benefits of the County Employees Retirement System while separating it from the Kentucky Retirement Systems.



There being no further business the meeting adjourned.

APPROVED: \_\_\_\_\_



MAYOR

ATTEST: \_\_\_\_\_



CITY CLERK