

Introduced by _____

First Reading _____

Second Reading _____

Ordinance No. _____

Council Bill No. B 236-13

AN ORDINANCE

authorizing a contract for sale of real state with Nauser Investments, LLC for property located on Paris Road; and fixing the time when this ordinance shall become effective.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. The City Manager is hereby authorized to execute a contract for sale of real estate with Nauser Investments, LLC for property located on Paris Road. The form and content of the agreement shall be substantially as set forth in "Attachment A" attached hereto and made a part hereof as fully as if set forth herein verbatim.

SECTION 2. This ordinance shall be in full force and effect from and after its passage.

PASSED this _____ day of _____, 2013.

ATTEST:

City Clerk

Mayor and Presiding Officer

APPROVED AS TO FORM:

City Counselor

REAL ESTATE SALES CONTRACT

This Real Estate Sales Contract (the "**Contract**") is made between the City of Columbia, Missouri, a municipal corporation, (the "**Seller**") and Nauser Investments, LLC, a Missouri limited liability company, or assigns, (collectively, the "**Buyer**"), and is effective as of the ____ day of _____, 2013 (the "**Effective Date**"):

WHEREAS, on April 19, 2010, the City entered into a Contract for the Sale of Real Estate with Geoffrey V. Henrikson, Trustee of the Harold Lee Henrikson and Dixie Sutter Henrikson Inter Vivos Trust and Robinsons Farms, LLC, a Missouri limited liability company, (the "**Optionors**") for the purchase of approximately 214 acres of land located on Waco Road and Route B (the "**Sutter Property**"), and recorded in the land records at Book 3628 at Page 77 of Boone County (the "**Sutter Option Contract**"); and

WHEREAS, pursuant to the terms of the Sutter Option Contract, Seller has the right to exercise an option to accelerate the purchase of parts of the Sutter Property by providing written notice to Optionors; and

WHEREAS, Buyer owns and operates a warehouse facility currently employing 35 people at 6000 Paris Road, which is adjacent to the Sutter Property; and

WHEREAS, Buyer has a need to expand such facility and has made an offer to purchase approximately 4.3 acres of the Sutter Property from Seller for such expansion; and

WHEREAS, the Columbia City Council has determined that it is in the public interest to sell the property to Buyer; and

WHEREAS, the parties desire to provide for the acquisition of approximately 4.3 acres of the Sutter Property by Seller and the subsequent sale of such 4.3 acres to Buyer;

NOW THEREFORE, the parties agree as follows:

1. **PROPERTY:** Seller agrees to acquire, sell and convey the Property to Buyer by Special Warranty Deed (the "**Deed**") and Buyer agrees to purchase from Seller the real estate legally described in **Exhibit A** attached hereto and mapped as illustrated in **Exhibit B** attached hereto consisting of unimproved land in the amount of approximately 4.3 acres (the "**Property**") on the terms and conditions herein set out herein.
2. **SURVEY AND ADMINISTRATIVE PLAT:** Seller has obtained a survey and administrative plat to determine the final legal description and boundaries of the tract to be conveyed. Prior to the Closing, Seller will cause the Administrative Plat of Sutter Industrial Plat No. 2 in substantially the same form as prepared by David T. Butcher, Professional Land Surveyor and dated July 2, 2013 to be approved and recorded in the land records of Boone County, Missouri. The cost of such survey and administrative plat shall be paid by Seller; however, in the event Buyer does not purchase the Property from Seller under this contract, Buyer shall reimburse Seller for the all costs to prepare the survey and administrative plat.
3. **PURCHASE PRICE:** The "**Purchase Price**" of the Property shall be One hundred ninety-three thousand five hundred dollars (\$193,500.00) Upon receipt of Buyer's acceptance of the Purchase Price, Seller shall notify Optionors that Seller is exercising its option to accelerate Seller's purchase of the Property under the Sutter Option Contract and Buyer's right to terminate this Contract shall be at an end with the sole exception of Buyer's right to cancel for default of Seller. In the event

Buyer does not purchase the Property from Seller under this Contract, Buyer shall reimburse Seller for all costs and expenses related to preparation of the survey and platting by David T. Butcher, Professional Land Surveyor.

4. **ESCROW DEPOSIT:** The Buyer agrees to deposit Ten Thousand Dollars (\$10,000.00) at the signing of this Contract to be deposited within 72 hours after the Effective Date, in the escrow account of Boone Central Title Company (the "**Escrow Agent**"), to be held and disbursed in accordance with the terms of this Contract (the "**Escrow Deposit**"). The Escrow Agent shall deposit the Escrow Deposit in a bank or other federally insured institution in an interest bearing account. The Escrow Agent shall hold the Escrow Deposit until the closing date or until Buyer or the Seller notifies the other party and the Escrow Agent that it is terminating the Contract.

5. **CLOSING AND POSSESSION DATE(S):** Subject to all the provisions of this Contract, the closing of this Contract (the "**Closing**") shall take place at the offices of Boone Central Title Company on the date (the "**Closing Date**") that is the earlier of: (i) fifteen (15) days after the Seller receives title to the Property from the Optionors, or (ii) upon such other date by mutual written agreement of the parties. Possession shall be delivered upon Closing.

6. **TAXES AND ASSESSMENTS/PRORATIONS:** All such taxes and installments of special assessments becoming due and accruing during the calendar year of Closing shall be prorated between Seller and Buyer as of Closing. If the amount of any tax or special assessment cannot be ascertained at Closing, proration shall be computed on the amount for the preceding year's tax or special assessment. Buyer shall assume and pay all such taxes and installments of special assessments accruing after the Closing.

7. **TITLE INSURANCE:** Seller shall deliver and pay for an owner's ALTA title insurance policy insuring marketable fee simple title to the Land in Buyer in the amount of the total Purchase Price as of the time and date of recording of Seller's Special Warranty Deed (the "**Deed**"), subject only to the Permitted Exceptions. Seller shall, as soon as possible and not later than twenty (20) days after the Effective Date, cause to be furnished to Buyer a current commitment to issue the title policy (the "**Title Commitment**"), to be issued through Boone Central Title Company (the "**Title Company**"). Buyer shall have five (5) days after receipt of the Title Commitment (the "**Title Review Period**") in which to notify Seller in writing of any objections Buyer has regarding any matters which Buyer believes may adversely affect Buyer's intended use of the Property. Any matters which are set forth in the Title Commitment and to which Buyer does not object within the Title Review Period shall be deemed to be permitted exceptions to the status of Seller's title (the "**Permitted Exceptions**").

8. **INSPECTIONS:** Buyer acknowledges it has had the opportunity to inspect the Property and waives any right to further inspect the Property. Seller sells the Property "as is" with no representations or warranties relating to the physical condition of the Property.

9. **REPRESENTATIONS:** Buyer acknowledges that neither Seller nor any party on Seller's behalf has made, nor do they hereby make, any representations as to the past, present or future condition, income, expenses, operation or any other matter or thing affecting or relating to the Property, except as expressly set forth in this Contract. Buyer agrees to assume full responsibility for completing Buyer's due diligence in such a manner as to answer all questions necessary to make the decision to purchase the Property.

10. **REAL ESTATE BROKER:** Seller and Buyer each represents that they have not retained any real estate broker(s) in connection with this transaction. Any party to this Contract through whom a claim to any broker's, finder's or other fee is made, contrary to the representations

made above in this paragraph, shall indemnify, defend and hold harmless the other party to this Contract from any other loss, liability, damage, cost or expense, including without limitation, reasonable attorney's fees, court costs and other legal expenses paid or incurred by the other party, that is in any way related to such a claim. The provisions of this paragraph shall survive Closing or termination of this Contract.

11. CLOSING AND RECORDING FEES: The parties agree to use Boone Central Title Company as their closing agent. Buyer and Seller shall each pay one-half of the closing service charge of the title company for closing services. Buyer shall pay the recording fee for recording the General Warranty Deed.

12. DELIVERY OF DEED; PAYMENT; DISBURSEMENT OF PROCEEDS: At or before Closing, Seller agrees to properly execute and deliver into escrow the Deed and all other documents and funds necessary to complete the Closing. The Deed shall convey to Buyer marketable fee simple title to the Property, free and clear of all liens and encumbrances, other than the easements shown on the plat of Lot 1 of Sutter Industrial Plat and the Permitted Exceptions. At or before the Closing, Seller and Buyer each agree to deliver into escrow a cashier's check or guaranteed funds sufficient to satisfy their respective obligations under this Contract. Seller understands that, unless otherwise agreed, disbursement of proceeds will not be made until after the Deed or the instrument of conveyance, and, if applicable, the mortgage/deed of trust have been recorded and the Title Company can issue the title policy with only the Permitted Exceptions.

13. FOREIGN INVESTMENT: Seller represents that Seller is not a foreign person as described in the Foreign Investment in Real Property Tax Act and agrees to deliver a certificate at Closing to that effect which shall contain Seller's tax identification number.

14. TERMINATION: This Contract may be terminated by either party prior to the acceptance or rejection of the Purchase Price by Buyer.

a. If Buyer terminates this Contract because of the Seller's failure to fulfill its obligations under this Contract, the Escrow Deposit, including any accrued interest thereon, shall be returned by the Escrow Agent to Buyer and this Contract shall be terminated.

b. If Seller fulfills its obligations under this Contract but Buyer fails to purchase the Property as agreed to under the terms of this Contract, the Escrow Deposit including any accrued interest thereon, shall be first applied to reimburse City for its costs of the survey and administrative platting, and then the balance shall be returned to Buyer.

15. DEFAULT AND REMEDIES: Seller or Buyer shall be in default under this Contract if either fails to comply with any material covenant, agreement or obligation within any time limits required by this Contract and such failure continues for more than ten (10) days after the defaulting party's receipt of written notice thereof from the non-defaulting party. The inability of Seller to obtain good and marketable title to the Property from Optionors shall not be deemed a default by Seller. Following a default by either Seller or Buyer under this Contract, the other party shall have the following remedies, in conformance with and subject to the provisions of the paragraph entitled "ESCROW DEPOSIT" in this Contract:

a. If Buyer defaults after Seller has obtained title to the Property from Optionors, Seller may (i) specifically enforce this Contract, or (ii) terminate this Contract by written notice to Buyer and, at Seller's option, pursue any remedy and damages available at law or in equity; provided that, the right to specific enforcement of this contract or damages in law or equity set forth in (i) and (ii) of this paragraph shall not apply to any failure of Buyer to

perform under the Contract which failure is beyond the control of Buyer. If Buyer elects to terminate this Contract due to default by Seller, the Escrow Deposit shall be returned to Buyer upon written demand.

b. If Buyer defaults prior to acquisition of the Property by Seller from Optionors and Seller is not required to acquire the Property from Optionors, Seller, as its sole and exclusive remedy in connection with such default by Buyer, may terminate this Contract by written notice to Buyer and obtain reimbursement for its out of pocket costs and expenses incurred, including, but not limited to, the cost of the survey and administrative plat, the title commitment.

16. ENTIRE AGREEMENT AND MANNER OF MODIFICATION: This Contract, and any attachments or addenda hereto, constitute the complete agreement of the parties concerning the Property, supersede all other agreements and may be modified only by initialing changes in this Contract or by written agreement.

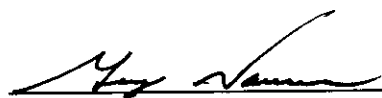
17. NOTICES: All notices, consents, approvals, requests, waivers, objections or other communications (collectively "**notices**") required under this Contract shall be in writing and shall be served by hand delivery, by prepaid U.S. Postal Service certified mail, return receipt requested, or by reputable overnight delivery service guaranteeing next-day delivery and providing a receipt. All notices shall be addressed to the parties at the respective addresses as set forth below, except that any party may, by notice in the manner provided above, change this address for all subsequent notices. Notices shall be deemed served and received upon the earlier of the third day following the date of mailing (in the case of notices mailed by certified mail) or upon delivery (in all other cases). A party's failure or refusal to accept service of a notice shall constitute delivery of the notice.

18. GOVERNING LAW: This Contract shall be construed and interpreted under and in accordance with the laws of the State of Missouri.

IN WITNESS WHEREOF, Seller and Buyer execute this Contract on the date(s), and at the time(s), indicated below their respective signatures.

BUYER:

NAUSER INVESTMENTS, LLC



Greg Nauser, Member

SELLER:

THE CITY OF COLUMBIA, MISSOURI

Mike Matthes, City Manager

Attest:

Sheela Amin, City Clerk

Approved as to form:

Nancy Thompson, City Counselor

EXHIBIT A

Legal Description of Property

Approximately 4.3 acres +/- located generally at 6000 Paris Road, Columbia, Missouri and tentatively described as follows:

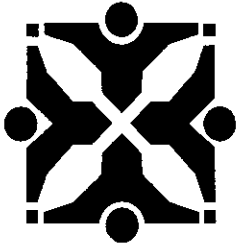
All of Lot 1B of Sutter Industrial Park, Plat No. 2, as shown by the Administrative Replat of Sutter Industrial Plat No. 2, a replat of Lot 1 of Sutter Industrial Subdivision, located in the East Half of Section 21, Township 49 North, Range 12 West, Columbia, Boone County, Missouri.

Exact legal description to be established by the final recorded administrative plat of Sutter Industrial Plat No. 2 as prepared by David T. Butcher, Professional Land Surveyor.

EXHIBIT B

Map of the Property

The unapproved administrative plat prepared by David T. Butcher, Professional Land Surveyor showing the general boundaries of the 4.3 acres, more or less, to be acquired are depicted on the attached drawing. The exact exterior boundaries of the Property shall be determined by the final approved and recorded administrative plat.



Source: Law

To: City Council

From: City Manager and Staff

Agenda Item No:

Council Meeting Date: Aug 19, 2013

Re: Sale of 4.3 acres of Sutter Industrial Park to Nausier Investments for Expansion of an Existing Business
Located at 6000 Paris Road

EXECUTIVE SUMMARY:

The ordinance would authorize the sale of 4.3 acres of Sutter Industrial park to Nausier Investments for \$193,500.00.

DISCUSSION:

In April of 2010, the City entered into a contract to acquire approximately 214 acres of land located on Waco Road and Route B from the Harold Lee Henrikson and Dixie Sutter Henrikson Inter Vivos Trust and Robinsons Farms, LLC, commonly referred to as the Sutter property. Purchase of 114 acres was delayed until June 1, 2015, subject to a right to accelerate the purchase of all or part of the tract prior to that date. The City's purchase price for the 114 acres is \$3,000,000 or approximately \$26,500 per acre.

Nausier Investments owns the property located at 6000 Paris Road and has made an offer to purchase 4.3 acres of the Sutter property immediately adjacent to the tract for \$45,000 per acre for a total purchase price of \$193,500. Nausier Investments seeks to acquire the land in order to expand the current warehouse facility of Nausier Beverage Company. According to the company, the expansion will nearly double the current size of the building (an additional 30,000 square feet) and is required for Nausier Beverage Company to retain a substantial distributorship from one of its major suppliers. Nausier Beverage has indicated it currently employs 35 above average income employees at an annual payroll of \$2,138,156 and will have the potential to add another three to five jobs with the expansion. If it is unable to acquire additional property to expand its operations at the current location, Nausier Beverage Company will be required to relocate to meet the space requirements of its supplier.

FISCAL IMPACT:

The City will sell the property for \$18,500 per acre more than it will spend to acquire the tract. In addition, the property tax base will be increased with the expansion of the building and business operations.

VISION IMPACT:

<http://www.gocolumbiainmo.com/Council/Meetings/visionimpact.php>

7.1 Goal: Columbia will attract, retain, and encourage the growth of new businesses by establishing a business-friendly climate, enhancing regional economic partnerships, and promoting reciprocal business relationships.

7.3 Goal: In the future, Columbia will have an employment base that is trained and qualified to work in a variety of industries. Employers will provide decent wages with benefits that provide opportunities for professional development, further education, good health, and quality of life.

SUGGESTED COUNCIL ACTIONS:

Passage of the ordinance.

FISCAL and VISION NOTES:					
City Fiscal Impact Enter all that apply		Program Impact		Mandates	
City's current net FY cost	\$0.00	New Program/ Agency?	No	Federal or State mandated?	No
Amount of funds already appropriated	\$0.00	Duplicates/Expands an existing program?	No	Vision Implementation impact	
Amount of budget amendment needed	\$0.00	Fiscal Impact on any local political subdivision?	No	Enter all that apply: Refer to Web site	
Estimated 2 year net costs:		Resources Required		Vision Impact?	Yes
One Time	\$0.00	Requires add'l FTE Personnel?	No	Primary Vision, Strategy and/or Goal Item #	7.1
Operating/ Ongoing	\$0.00	Requires add'l facilities?	No	Secondary Vision, Strategy and/or Goal Item #	7.3
		Requires add'l capital equipment?	No	Fiscal year implementation Task #	