

City Council Staff Report

April 20, 2016

Applicant: Central Bank

Location: Harvest Park
Clubhouse

Prepared by: Sean Conroy,
Community Development
Director

Public Hearing: N

Zone: SDP-1

Attachments:

1. REPC.

REQUEST

Consideration of a Resolution authorizing the Mayor to execute a Real Estate Purchase Contract (REPC) to acquire the Harvest Park Clubhouse Property (parcel #41:693:0014).

BACKGROUND AND PROJECT DESCRIPTION

Central Bank recently foreclosed upon several properties in the Harvest Park development. These include a .55 acre parcel containing the Harvest Park Clubhouse and approximately 25 acres of undeveloped property just south of the Maple Ridge Elementary School.

The approved development agreement for Harvest Park allows 144 units on the 25 acres recently acquired by Central Bank. The agreement also requires the applicant to submit 24 TDRs to the City.

The proposed REPC would transfer ownership of the clubhouse property to Mapleton City in exchange for the waiver of the requirement for the 24 TDRs for the undeveloped 25 acres. The REPC would also establish a Letter of Credit from Central Bank on behalf of Mapleton City for \$140,000. This money would be used to construct additional parking on the west side of the clubhouse. The City would then discount the Parks and Recreation Impacts fees associated with the development of the 25 acres south of the elementary school proportionate to the actual cost to construct the parking.

RECOMMENDATION

Adopt the attached Resolution.

RESOLUTION NO. 2016-

CONSIDERATION OF A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A REAL ESTATE PURCHASE CONTRACT (REPC) TO ACQUIRE THE HARVEST PARK CLUBHOUSE PROPERTY (PARCEL #41:693:0014).

WHEREAS, Central Bank is the fee simple owner of a .55 acre parcel in Mapleton City identified by the Utah County Recorder as parcel serial number 41:693:0014; and

WHEREAS, this parcel is developed with a clubhouse structure authorized under Mapleton City Building Permit #s 4562 and 4732; and

WHEREAS, the City desires to obtain the clubhouse property to be used as a community amenity; and

WHEREAS, the City also desires to increase parking adjacent to the clubhouse; and

WHEREAS, Central Bank is also the fee simple owner of three parcels in Mapleton City identified by the Utah County Recorder as parcel serial numbers 27:008:0044, 27:008:0045 and 27:008:0046 totally 25.14 acres; and

WHEREAS, these parcels are currently undeveloped; and

WHEREAS, parcels 41:693:0014, 27:008:0044, 27:008:0045 and 27:008:0046 are all part of the Harvest Park Specific Development Plan subject to the standards of Mapleton City Code Sections 18.56 and 18.56a as well as the Mapleton West (Harvest Park) Development Agreement adopted by Mapleton City Council Resolution 2003-53; and

WHEREAS, according to the Mapleton City Code and the Development Agreement, for every six units developed, one Transferable Development Right (TDR) must be surrendered by the developer to the City; and

WHEREAS, according to the Development Agreement, parcels 27:008:0044, 27:008:0045 and 27:008:0046 would be allowed a maximum of 144 residential units with the submittal of 24 TDRs; and

WHEREAS, the City agrees to waive the TDR requirement for parcels 27:008:0044, 27:008:0045 and 27:008:0046 in exchange for the clubhouse property; and

WHEREAS, Central Bank agrees to establish a Letter of Credit on behalf of the City for \$140,000. This money will be used to construct additional parking on the west side of the clubhouse; and

WHEREAS, the City agrees to discount the Parks and Recreation Impacts fees associated with the development of parcels 27:008:0044, 27:008:0045 and 27:008:0046 proportionate to the actual cost to construct the parking adjacent to the clubhouse.

NOW THEREFORE, BE IT RESOLVED that the City Council of Mapleton, Utah, authorizes the Mayor to execute a Real Estate Purchase Contract to acquire the Harvest Park Clubhouse Property (parcel #41:639:0014) as described in exhibit "A".

PASSED AND ORDERED PUBLISHED BY THE CITY COUNCIL OF MAPLETON, UTAH, This 20th Day of April, 2016.

Brian Wall
Mayor

ATTEST:

Camille Brown
City Recorder

Publication Date:
Effective Date:

REAL ESTATE PURCHASE CONTRACT

This is a legally binding contract. Utah law requires real estate licensees to use this form. Buyer and Seller, however, may agree to alter or delete its provisions or to use a different form. If you desire legal or tax advice, consult your attorney or tax advisor.

OFFER TO PURCHASE AND EARNEST MONEY RECEIPT

On this ____ day of April, 2016, ("Offer Reference Date"), Mapleton City (Buyer) offers to purchase the Property from Central Bank ("Seller"), described below.

Brokerage: N/A Phone Number _____

OTHER PROVISIONS

1. PROPERTY: Club House with Tax ID No. 41:693:0014 (0.55W). also described as: _____ City of Mapleton, County of Utah, State of Utah, Zip 84664 (the "Property").

2. Included Items. Included with this property are the items listed on Addendum 2.

3. PURCHASE PRICE. The Purchase Price for the Property is \$ _____. Except as provided in this Section, the Purchase Price shall be paid as provided in Sections 2(a) through 2(d) below. Any amounts shown in 2(b) and 2(d) may be adjusted as deemed necessary by Buyer and the Lender.

- (a) Earnest Money Deposit. Under certain conditions described in this Contract, THIS DEPOSIT MAY BECOME TOTALLY NON-REFUNDABLE.
(b) New Loan. Buyer agrees to apply for a new loan as provided in Section 2.3. Buyer will apply for one or more of the following loans: [] CONVENTIONAL [] FHA [] VA [] OTHER (specify) _____
(c) Seller Financing (see attached Seller Financing Addendum if applicable)
(d) Balance of Purchase Price in Cash at Settlement
\$ 0
\$ N/A
\$ N/A
\$ _____
\$ \$000,000.00* PURCHASE PRICE. Total of lines (a) through (f)

*See Addendum.

4. SETTLEMENT AND CLOSING.

4.1 Settlement. Settlement shall take place no later than the Settlement Deadline reference in Section 24(d), or as otherwise mutually agreed by Buyer and Seller agree in writing. "Settlement" shall occur only when Buyer and Seller have signed and delivered to each other or to the escrow/closing office all documents required by this REPC, by the title insurance and escrow/closing offices, by written escrow instructions (including any split closing instructions, if applicable), or by applicable law.

4.2 Prorations. All prorations, including, but not limited to property taxes for the current year, shall be made as of the Settlement Deadline reference in Section 24(d), unless otherwise agreed to in writing by the parties. Such writing could include the settlement statement. The provisions of this Section 4.2 shall survive the Closing.

4.3 Special Assessments. Any assessments for capital improvements as assessed by a municipality or special improvement district, prior to the Settlement Deadline shall be paid by: [] Seller [X] Buyer [] Split Equally Between Buyer and Seller [] Other (explain) _____ The provisions of this Section 4.3 shall survive Closing.

4.4 Fees/Costs/Payment Obligations. Unless otherwise agreed to in writing, Seller and Buyer shall each pay one-half (1/2) of the fee charged by the escrow/closing office for its services in the settlement/closing process. Tenant deposits (including, but not limited to, security deposits, cleaning deposits and prepaid rents) shall be paid or credited by Seller to Buyer at Settlement. Buyer agrees to be responsible for homeowners' association and private and public utility service transfer fees, if any, and all utilities and other services provided to the Property after the Settlement Deadline. The escrow/closing office is authorized and directed to withhold from Seller's proceeds at Closing, sufficient funds to pay off on Seller's behalf all mortgages, trust deeds, judgments, mechanic's liens and warrants. The provisions of this Section 4.4 shall survive Closing.

Seller's Initials [Signature] Date 4-7-16 Buyer's Initials _____ Date _____

has arising from Buyer's Due Diligence, as provided in Section 8.1(b), Buyer shall be deemed to have waived the Due Diligence Condition.

8.2 APPRAISAL CONDITION. Buyer's obligation to purchase the Property: IS IS NOT conditioned upon the Property appraising for not less than the Purchase Price. This condition is referred to as the "Appraisal Condition." If checked in the affirmative, Sections 8.2(a) and 8.2(b) apply; otherwise they do not.

(a) Buyer's Right to Cancel. If after completion of an appraisal by a licensed appraiser, Buyer receives written notice from the Lender or the appraiser that the Property has appraised for less than the Purchase Price (a "Notice of Appraised Value"), Buyer may cancel the REPC by providing written notice to Seller (with a copy of the Notice of Appraised Value) no later than the Financing & Appraisal Deadline referenced in Section 24(c); whereupon the Earnest Money Deposit shall be released to Buyer without the requirement of further written authorization from Seller.

(b) Failure to Cancel. If the REPC is not cancelled as provided in this section 8.2, Buyer shall be deemed to have waived the Appraisal Condition.

9. ADDENDA. There ARE ARE NOT addenda to the REPC containing additional terms. If there are, the terms of the following addenda are incorporated into the REPC by this reference: Addendum No. 1

10. HOME WARRANTY PLAN / AS-IS CONDITION OF PROPERTY.

10.1 Condition of Property/Buyer Acknowledgments. Buyer acknowledges and agrees that in reference to the physical condition of the Property: (a) Buyer is purchasing the Property in its "As-Is" condition without expressed or implied warranties of any kind; (b) Buyer shall have, during Buyer's Due Diligence as referenced in Section 8.1, an opportunity to completely inspect and evaluate the condition of the Property; and (c) if based on the Buyer's Due Diligence, Buyer elects to proceed with the purchase of the Property, Buyer is relying wholly on Buyer's own judgment and that of any contractors or inspectors engaged by Buyer to review, evaluate and inspect the Property.

11. FINAL PRE-SETTLEMENT WALK-THROUGH INSPECTION. No earlier than seven (7) calendar days prior to Settlement, and upon reasonable notice and at a reasonable time, Buyer may conduct a final pre-Settlement walk-through inspection of the Property to determine only that the Property is "as represented," meaning that the items referenced in Section 2 ("the items") are present. The failure to conduct a walk-through inspection or to claim that an item is not as represented shall constitute a waiver by Buyer of the right to receive, on the date of possession, the items as represented.

12. CHANGES DURING TRANSACTION. Seller agrees that from the date of Acceptance until the date of Closing, none of the following shall occur without the prior written consent of Buyer: (a) no changes in any leases, rental or property management agreements shall be made; (b) no new lease, rental or property management agreements shall be entered into; (c) no substantial alterations or improvements to the Property shall be made or undertaken; (d) no further financial encumbrances to the Property shall be made, and (e) no changes in the legal title to the Property shall be made.

13. AUTHORITY OF SIGNERS. If Buyer or Seller is a corporation, partnership, trust, estate, limited liability company or other entity, the person signing the REPC on its behalf warrants his or her authority to do so and to bind Buyer and Seller.

14. COMPLETE CONTRACT. The REPC together with its addenda, any attached exhibits, and Seller Disclosures (collectively referred to as the "REPC"), constitutes the entire contract between the parties and supersedes and replaces any and all prior negotiations, representations, warranties, understandings or contracts between the parties whether verbal or otherwise. The REPC cannot be changed except by written agreement of the parties.

15. MEDIATION. Any dispute relating to the REPC arising prior to or after Closing: SHALL MAY AT THE OPTION OF THE PARTIES first be submitted to mediation. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. The parties to the dispute must agree before any settlement is binding. The parties will jointly appoint an acceptable mediator and share equally in the cost of such mediation. If mediation fails, the other procedures and remedies available under the REPC shall apply. Nothing in this Section 15 prohibits any party from seeking emergency legal or equitable relief, pending mediation. The provisions of this Section 15 shall survive Closing.

16. DEFAULT.

16.1 Buyer Default. If Buyer defaults, Seller shall be entitled to, in addition to those set forth on the Addenda, pursue any other remedies available at law.

16.2 Seller Default. If Seller defaults, Buyer may cancel the REPC, as its sole remedy.

17. ATTORNEY FEES AND COSTS/GOVERNING LAW. In the event of litigation or binding arbitration to enforce the REPC, the

ACCEPTANCE/COUNTEROFFER/REJECTION

CHECK ONE:

ACCEPTANCE OF OFFER TO PURCHASE: Seller Accepts the foregoing offer on the terms and conditions specified above.

COUNTEROFFER: Seller presents for Buyer's Acceptance the terms of Buyer's offer subject to the exceptions or modifications as specified in the attached ADDENDUM NO. .

REJECTION: Seller rejects the foregoing offer.

[Signature] 4-7-16
(Seller's Signature) (Date) (Time)

(Seller's Signature) (Date)(Time)

Central Bank
(Seller's Names) (PLEASE PRINT)

75 N. University Avenue, Provo, UT 84601
(Notice Address)

(Zip Code)

801-375-1000
(Phone)

(Seller's Names) (PLEASE PRINT)

(Notice Address)

(Zip Code)

(Phone)

THIS FORM APPROVED BY THE UTAH REAL ESTATE COMMISSION AND THE OFFICE OF THE UTAH ATTORNEY GENERAL, EFFECTIVE SEPTEMBER 30, 1999. IT REPLACES AND SUPERSEDES ALL PREVIOUSLY APPROVED VERSIONS OF THIS FORM.

**Addendum No. 1
To Real Estate Purchase Contract**

This is an Addendum Counteroffer to that REAL ESTATE PURCHASE CONTRACT (the "REPC") with an Offer Referenced Date of 04-06-16 including all prior addenda and counteroffers, between Mapleton City as Buyer, and Central Bank as Seller, regarding the Property located at Harvest Park Clubhouse: Utah County Tax Parcel 41:693:0014, Mapleton, Utah. The following terms are hereby incorporated as part of the REPC:

1. TRANSFERRABLE DEVELOPMENT RIGHTS (TDRs). Seller will deed its interest in the Harvest Park Clubhouse (Property) to Buyer. In exchange, Buyer shall waive any and all TDRs otherwise required when the TDR land is developed. This waiver applies to Seller or Sellers' successors-in-interest or any who may petition Mapleton City for approval to develop the remaining residential subdivision lots on the approximately 25.14 acres of land (TDR Land) currently owned by Seller in the Harvest Park Master Planned Community. The TDR Land is identified by Utah County Tax Parcels 27:005:0044; 27:008:0048 & 27:008:0049
2. The subject Property consists of the Harvest Park Clubhouse in the condition as it now exists. Also included in the Purchase of the property are the items listed on EXHIBIT "A" attached hereto and made part hereby.
3. Buyer desires to build a parking lot on property adjacent to the land upon which the Harvest Park Clubhouse is built. Buyer shall credit Seller and Sellers' successor-in-interest in the amount of \$140,000.00 for impact fees associated with the TDR Land. Buyer recognizes, acknowledges and guarantees that Seller may transfer these prepaid impact fees to Seller's successors-in-interest.
4. In order to accommodate any time difference between when the impact fees are due and the completion of the improvements on the Clubhouse parking lot, Seller will issue to Buyer a Letter of Credit, a copy of which is attached hereto and made part hereby reference as EXHIBIT "B", in the amount of \$140,000. The Buyer may draw upon the Letter of Credit to pay for parking lot improvements and Seller may increase the sales price of the TDR Land to reflect the prepaid impact fees.

BUYER AND SELLER AGREE THAT THE CONTRACT DEADLINES REFERENCED IN SECTION 24 OF THE REPC WILL REMAIN UNCHANGED.

To the extent the terms of this ADDENDUM modify or conflict with any provisions of the REPC, including all prior addenda and counteroffers, these terms shall control. All other terms of the REPC, including all prior addenda and counteroffers, not modified by this ADDENDUM shall remain the same.

Seller Buyer shall have until 5 p.m. AM PM Mountain Time on April, 22 2016 (Date) to accept the terms of this ADDENDUM in accordance with the provisions of Section 23 of the REPC. Unless so accepted, the offer as set forth in this ADDENDUM shall lapse.


4-7-16
(Date)
(Time)

CHECK ONE:

ACCEPTANCE: Buyer hereby accepts the terms of this ADDENDUM

COUNTEROFFER: Buyer presents as a counteroffer the terms of attached ADDENDUM NO. _____

REJECTION: Buyer rejects the foregoing ADDENDUM.

Buyer Signature _____ (Date) _____ (Time) _____

Seller's Initials  Buyers Initials _____

EXHIBIT "A"

TO ADDENDUM 1

FURNITURE

- 1 Lounge Chair (white)
- 1 Couch (brown)
- 1 Love Seat (brown)
- 1 TV stand
- 4 Newer TV's
- 1 End Table
- Strings of Hanging Lights

BRIDES ROOM

- 1 Couch with Pillows
- 1 Vanity with Mirror
- 1 Chalk Board
- 1 Coffee Table
- 1 End Table
- 1 Arm Chair
- 1 Wall Mirror (floor length)
- 1 Vase

DOWNSTAIRS STORAGE ROOM

- 1 Lawn Mower
- 1 Ping Pong Table

JANITORS CLOSET

- 1 Vacuum
- 1 Mop Bucket with Mop
- Several Brooms and Cleaners

TABLES AND CHAIRS

- 50 + or - White Plastic Folding Chairs
- 200 + or - Mahogany Folding Chairs
- 25 Round Large White Tables
- 2 Rectangular Long Tables
- 1 Rectangular Short Table

GROOMS ROOM

- 1 Table and Mirror (older)

KITCHEN

- 1 Fridge
- 1 Stove
- 1 Microwave
- 2 Large Plastic Garbage Cans

DOWNSTAIRS OFFICE

- 1 Desk
- 1 Four Drawer Metal file Cabinet
- Security System Controls/Router

ALL OTHER

- 1 Trifold Back Drop (wood)
- 1 Large Wall Picture
- 1 Control Box for Sound
- 1 Desk (upstairs)
- 1 TV free standing (older)
- 2 Free standing Coat Trees

EXHIBIT "B"

TO ADDENDUM 1

April 1, 2016

Mapleton City Corporation
125 West 400 North
Mapleton, Utah 84664

RE: Harvest Park Clubhouse

This letter from Central Bank (Bank) is given to Mapleton City Corporation (City) to be held as an irrevocable letter of credit from the Bank for Additional Parking Improvements near the Harvest Park Clubhouse Building (Clubhouse), for and on behalf of the Bank and/or any potential future Buyer/Developer (Buyer) of approximately 25.14 acres of land (TDR Land) currently owned by Bank in the Harvest Park Master Planned Community. The TDR Land is identified by Utah County as Tax Parcels 27:008:0045; 27:008:0046 & 237:005:0044. This letter from Bank is to be held by the City as a warranty from Bank that certain additional Parking/Lighting improvements (Parking Lot) will be installed. The Parking Lot improvements will be installed by the City, the Buyer or the Bank as circumstances may require and in agreement with the parties concerned. This warranty to be released by the City following one calendar year from the date stated above (Warranty Period). The completion of the Parking Lot improvements is not to exceed a total of One Hundred Forty Thousand Dollars (\$140,000.00). The \$140,000 described herein may be drawn upon by Mapleton City only to pay for the parking lot improvements as installed.

On or before April 1, 2017 (Expiration Date), this letter may be called upon by the City if the Parking Lot improvements are not completed and or the warranty period goes beyond the Expiration Date. If improvements are not completed, or if the Warranty Period exceeds the Expiration Date, the City will, no later than 30-days before the Expiration Date, make a written demand upon the Bank, delivered to the address below, for an extension of this letter. Included in this demand will be an itemization of what improvements are not completed and or the expiration date of the Warranty Period. If no demand is made from the City upon this letter, it will expire on the Expiration Date.

If there are any questions or concerns in conjunction with this letter, please call 801-655-2155.

Respectfully,

Matt Packard
President
Central Bank
75 North University Ave
Provo, Utah 84601

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