

**BILL NO.:** 4488

**ORDINANCE NO.:** \_\_\_\_\_

**Introduced by: Council Present**

**AN ORDINANCE OF THE CITY OF BERKELEY, MISSOURI, AUTHORIZING AND DIRECTING THE MAYOR TO ENTER INTO AND EXECUTE THE ATTACHED CONTRACT FOR SALE FOR THE DONATED REAL PROPERTY IDENTIFIED AS 8434 ALDER AT ENTRANCE LANE, BERKELEY, MISSOURI**

**Now, Therefore, Be it Ordained by the City Council of the City of Berkeley, Missouri, as follows:**

**Section 1.** The Mayor is hereby authorized to enter into and execute the attached "Contract for Sale" accepting the property at 8434 Alder Drive, Berkeley, Missouri, **EXHIBIT A.**

**Section 2.** The attached "Contract for Sale" between the City of Berkeley and Ocwen Financial for \$0.00 is hereby incorporated as if fully set out herein.

**Section 3.** This Ordinance shall be in full force and effect from and after the date of its passage.

1<sup>st</sup> Reading this 19<sup>th</sup> day of September 2016

2<sup>nd</sup> Reading this \_\_\_\_\_ day of \_\_\_\_\_ 2016

3<sup>rd</sup> Reading, PASSED and APPROVED, this \_\_\_\_\_ day of \_\_\_\_\_ 2016

\_\_\_\_\_  
Theodore Hoskins, Mayor

ATTEST:

\_\_\_\_\_  
Deanna L. Jones, City Clerk

\_\_\_\_\_  
Approved As To Form:  
Donnell Smith, City Attorney

Final Roll Call:

Mayor Hoskins	Aye	___	Nay	___	Absent	___	Abstain	___
Councilwoman Hoskins	Aye	___	Nay	___	Absent	___	Abstain	___
Councilwoman Kirkland	Aye	___	Nay	___	Absent	___	Abstain	___
Councilwoman Mathison	Aye	___	Nay	___	Absent	___	Abstain	___
Councilman-at-Large McDaniel	Aye	___	Nay	___	Absent	___	Abstain	___
Councilwoman Mitchell	Aye	___	Nay	___	Absent	___	Abstain	___
Councilwoman Williams	Aye	___	Nay	___	Absent	___	Abstain	___

## CONTRACT OF SALE

This Contract of Sale ("Agreement") is made as of **25<sup>th</sup> August 2016** by **City of Berkeley, a Municipal Corporation** ("Purchaser") with an address of **8425 Airport Rd Berkeley MO 63134** and tax identification of **43-6000227 and Ocwen Financial** ("Seller").

- 1. Purchase.** Purchaser agrees to purchase the real property identified in Exhibit A (collectively, the "Properties") from Seller and Seller agrees to sell the Properties to Buyer for the total sum of **\$0.00** (the "Purchase Price"). Subject to Purchaser's payment of the Purchase Price to Seller, Seller conveys the Properties to Purchaser by Quitclaim Deed in all states except Texas; Properties located in Texas will be conveyed by Deed Without Warranty. Purchaser shall wire the Purchase Price to Seller within one (1) business day from receipt of a fully executed copy of this Agreement.
- 2. Purchaser Acknowledgment.** Purchaser hereby acknowledges that (i) the Properties are sold "AS IS", "WHERE IS" and "WITH ALL FAULTS"; (ii) Seller will not, prior or subsequent to the effective date of this Agreement, be responsible for the repair, replacement or modification of any deficiencies, malfunctions or defects in the material, workmanship or mechanical components of the structures, improvements or land including, without limitation, to any System; (iii) Purchaser is solely responsible for conducting due diligence on the Properties; (iv) Purchaser has been advised and has been given the opportunity to carefully inspect the Properties and to obtain inspection reports from qualified experts including, without limitation, reports of each System, prior to executing this Agreement; (v) Seller may be unaware of any latent or patent defects in the Properties or any appurtenant System or of any soil, geological or environmental condition; and (vi) in contracting to purchase the Properties, Purchaser has not relied upon any representation or warranty made by any of the Releasees (as defined below). "System" means heating, plumbing, air conditioning and electrical systems, fixtures, appliances, roofs, sewers, water connectivity, septic, foundation, pool or related equipment.
- 3. Purchaser's Responsibilities.** Purchaser accepts the Properties subject to all known and unknown liens, taxes, fines, fees and code violations that may be outstanding or become outstanding on the Properties and agrees to pay all costs and take any remedial action required to record each deed conveyed under this Agreement including, without limitation, paying past due and future expenses on the Properties related to taxes, water, sewer, survey costs and homeowner association dues and curing defects associated with the Properties.
- 4. Indemnification.** Purchaser shall indemnify, defend and hold harmless the Releasees from and against any and all actual and alleged claim, demand, action, cause of action, suit, debt, tax or other obligation, promise, agreement, cost, violation, fine, lien, damage, liability or judgment of any kind, nature or amount whether in law or equity, anticipated or unanticipated, liquidated or unliquidated, including any claimed or unclaimed compensatory damages, special, consequential or punitive damages, interest, costs, expenses and fees (including reasonable or actual attorneys' fees) (each a "Claim" and collectively, the "Claims") arising directly or indirectly from or out of or relating to (i) a breach of any obligation of Purchaser under this Agreement or (ii) the Properties. "Releasees" means Seller and Altisource Solutions S.à r.l., and their respective predecessors, principals, parents, heirs, successors, assigns, subsidiaries, affiliates, commonly controlled entities, companies, enterprises, ventures, partners, clients, insurers, investors, attorneys, officers, shareholders, directors, agents, representatives, employees, administrators, executors and personal representatives.
- 5. Warranty.** SELLER MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE IN RELATION TO THE PROPERTIES INCLUDING, WITHOUT LIMITATION, TO THE TYPE OF DWELLING OR STRUCTURE, IF ANY, LOCATED ON THE PROPERTIES.
- 6. Limitation of Liability.** IN NO EVENT WILL SELLER OR ITS REPRESENTATIVES OR AGENTS BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL (INCLUDING LOSS OF PROFITS, DATA OR BUSINESS) OR PUNITIVE DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, ARISING UNDER OR RELATING TO THIS AGREEMENT, REGARDLESS OF WHETHER THE LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, AND EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7. **Release.** Purchaser unconditionally, irrevocably, forever and fully releases, acquits and discharges the Releasees of and from any and all past, present and future Claims in any way related to the Properties.
8. **Waiver and Severability.** Neither party's failure to exercise or enforce any term or condition under this Agreement will constitute a waiver of such party's right to demand strict compliance of such term or condition in the future. If any provision of this Agreement is held to be invalid or unenforceable, for any reason, such provision will be conformed to prevailing law rather than voided, if possible, in order to achieve the intent of the parties and, in any event, the remaining provisions of this Agreement will remain in full force and effect and will be binding upon the parties.
9. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous correspondence, discussions, agreements, representations and understandings, oral or written, relating to said subject matter. Purchaser acknowledges that because it is not relying on any statements made by Seller to Purchaser, other than in this Agreement, Purchaser shall have no basis for bringing any claim for fraud or misrepresentation in connection with any such statements. No change to this Agreement will be valid unless in writing and signed by authorized representatives of both parties.
10. **Attorney Review.** The parties acknowledge that (i) each party has had the opportunity to consult with legal counsel regarding this Agreement (ii) this Agreement resulted from an "arms' length" negotiation and (iii) this Agreement will not be construed in favor of or against a party by reason of the identity of the drafter or the extent to which a party or its advisors participated in its preparation.
11. **Counterparts.** This Agreement may be executed by the parties in any number of counterparts, including by way of facsimile, and each of which shall be deemed to be an original and all of which, collectively, will be deemed to be one and the same instrument. This Agreement may also be executed by providing an electronic signature under the terms of the Electronic Signatures Act, 15 U.S.C. § 7001 et. seq., and may not be denied legal effect solely because it is in electronic form or permits the completion of the business transaction referenced herein electronically instead of in person.

Witness the parties hereto by their hands and seals in duplicate the day signed by Seller.

Signed, Sealed and Delivered  
in the presence of:

\_\_\_\_\_

Witness

\_\_\_\_\_

Purchaser

Date

\_\_\_\_\_

Witness

\_\_\_\_\_

Seller

Date

Exhibit A

RS Loan Nbr	Str Nbr	Street Name	City	St	Zip	Sale price
7091667126	8434	Alder Ave	SAINT LOUIS	MO	63134	0.00

Total: \$0.00