

PURCHASE AND SALES AGREEMENT

THIS PURCHASE AND SALES AGREEMENT, made and entered into this ^{13th} day of May, 2011 by and between the **CITY OF ASHEVILLE** ("Seller"), a municipal corporation organized and existing under the laws of North Carolina and the **ASHEVILLE HOCKEY LEAGUE**, a non-profit corporation organized and existing under the laws of the State of North Carolina ("Purchaser").

WITNESSETH THAT:

WHEREAS, the City of Asheville is responsible for the disposal of excess and obsolete personal property through the disposal of surplus; and

WHEREAS, the Civic Center has deemed the ice rink and associated equipment, which is being sold per this Agreement, as excess;

WHEREAS, North Carolina General Statute 160A-266 authorizes the City to dispose of personal property valued at \$30,000 or more by private negotiation or sales upon resolution of the City Council adopted at a regular meeting; and

WHEREAS, North Carolina General Statute 160A-279 authorizes the City to dispose of property by private sale to a non-profit agency that is carrying out a public purpose; and

WHEREAS, the Asheville Hockey League has presented a proposal to the City for maintaining the ice rink and associated equipment in Asheville for public use; and

WHEREAS, the Asheville City Council believes that the Asheville Hockey League's proposal fulfills a public purpose; and

WHEREAS, the negotiation of this Purchase Agreement and award and sale of the ice rink and associated equipment to the Asheville Hockey League has been authorized by the City Council of the City of Asheville at a meeting held on the 22nd day of February 2011; and

WHEREAS, The City of Asheville ("Seller") has authorized and approved the execution of this Agreement for the purposes herein specified; and

WHEREAS, the parties hereto have mutually agreed to the terms of this Purchase and Sales Agreement as hereinafter set forth;

NOW, THEREFORE, in consideration of the promises and covenants contained and the terms and conditions hereinafter set out, Seller hereby sells, transfers, assigns and sets over to Buyer, on an "as is, where is with all faults" basis, all Seller's right, title and interest in the **Civic Center Ice Rink and Equipment** more particularly described in **Exhibit "A"** attached hereto and incorporated herein by reference.

THE TERMS AND CONDITIONS OF THIS PURCHASE AND SALES AGREEMENT ARE AS FOLLOWS:

1. **Terms of Purchase**-Buyer agrees to purchase and Seller agrees to sell the Ice Rink and Equipment as listed in Exhibit A for the sum of FIFTEEN THOUSAND DOLLARS (\$15,000.00) ["Purchase Price"]. The Purchase Price shall be paid as follows: (a) FIVE THOUSAND DOLLARS (\$5,000.00) upon the execution of this Purchase Agreement; and (b) TEN THOUSAND DOLLARS (\$10,000.00) on or before May 31, 2011 prior to removal and transport of the equipment. Payment shall be made in the form of a Cashier's Check, Certified Check, or Company Check and shall be payable to the City of Asheville. Payments should be delivered to the Purchasing Division at 3 Hunt Hill, Asheville, NC 28802.
2. **Public Purpose**-Buyer acknowledges that a key requirement regarding the sale and purchase of the items and equipment, is that they be used for a public purpose. Buyer has presented the City with a proposed plan which outlines its intention to have the ice rink operational and open to the public within a three year period or by May 31, 2014. For purposes of this agreement, "open to the public" shall mean that the ice rink facility shall be for public use and that the ice rink will be available and accessible for use and enjoyment of the general public. More specifically, the City proposes that skating be offered on the weekends (Friday, Saturday, and Sunday) for at least 60% of time while the ice rink is operational, or such other days and times approved by the City on an annual basis, which approval shall not be unreasonably withheld. This plan proposal, along with biographical information of the current Asheville Hockey League board members, is attached hereto as **Exhibit B**.
3. **Reversion**-Buyer hereby agrees that if the ice rink is not operational and open to the public within the three year time period as described above, the City shall have the right to require the Buyer to return the ice rink and equipment to the ownership of the City. The terms of the reversion will be at the sole discretion of the City. Buyer agrees that it will be responsible for any costs associated with dismantling, removal and return of the equipment back to the City.
4. **Removal and Transport**-Buyer shall be responsible for the dismantling of the ice rink and associated equipment including disconnecting and all electrical, plumbing, and mechanical equipment with the approval of the Civic Center staff. **Buyer shall remove and move all purchased items from the City site no later than May 31, 2011.** Buyer will remove at its expense and assume all liability for itself, its agents and assigns, its property and City property during the removal from City premises. The removal schedule of all items is to be coordinated with the Civic Center Facility Manager, Dan Dover, who may be contacted at 828-259-5741.

5. **Insurance**-Buyer and/or transporter will be required to provide the City of Asheville with a copy of a current Certificate of Insurance with \$1,000,000 of General Liability with a \$2,000,000 Aggregate, Auto Liability of not less than \$500,000 (\$1,000,000 preferred) and Workers Comp Statutory Limit. The City of Asheville shall be the Certificate Holder and listed as Additional Insured.
6. **Indemnification**-The City of Asheville offers this property for sale “as is where is with all faults.” There are no warranties, representations or guarantees, either expressed or implied as to the quality, character or condition of this equipment. The implied warranties of merchantability and fitness for a particular purpose are expressly disclaimed. Purchaser acknowledges that it is its responsibility to inspect and test any and all items and equipment. Purchaser agrees to hold harmless and indemnify the City of Asheville from and against any and all claims or causes of action arising out of or related to the purchase, operation and use of the equipment purchased from the City of Asheville.
7. **Further Assurances**- The parties hereto consent and agree to execute such additional documents and take such further actions as shall be necessary or appropriate to effect the transactions contemplated hereby.
8. **Binding Effect**- This Agreement and all terms, provisions and conditions hereof shall be binding upon and inure to the benefit of and be enforceable by the respective legal representatives, heirs, successors and assigns of the Parties hereto.
9. **Counterparts**- This Agreement may be executed simultaneously in multiple counterparts, all of which together shall constitute one and the same instrument.
10. **Entire Agreement**-This Agreement sets forth the entire understanding of the Parties with respect to the subject matter hereof. Any previous agreements or understandings between the Parties regarding the subject matter hereof are merged into and superseded by this Agreement.
11. **Applicable Law**- This Agreement and the rights and obligations of the Parties hereunder shall be governed by, and construed and interpreted in accordance with, the laws of the State of North Carolina.
12. **Waiver**- Failure by a Party to enforce any provision of this Agreement shall not constitute a waiver of the provisions, nor shall a waiver once granted be construed to waive a subsequent breach of the same or other provision.
13. **Authorship and Construction**- This Agreement has been negotiated by the Parties. In the event of any dispute over the interpretation of this Agreement, there shall be no rule of construction requiring that this Agreement be construed in favor of or against the Party drafting this Agreement.

14. **Time-** Time is and shall be of the essence with respect to all dates and times in this Agreement.

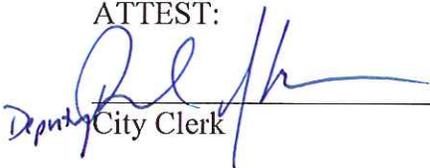
15. **Severability-**The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement.

IN WITNESS WHEREOF, the Seller has caused this document to be executed by its duly authorized officers and its corporate seal hereunto affixed, and the Buyer has here unto set its hand and seal, or if corporate, has caused this document to be executed by its duly authorized officers and its corporate seal hereunto affixed, the day and year first above written.

CITY OF ASHEVILLE, SELLER

BY: 
Gary W. Jackson, City Manager

ATTEST:


Deputy City Clerk

ASHEVILLE HOCKEY LEAGUE, PURCHASER

BY: 
THOMAS H. BERN S, PRESIDENT

EXHIBIT A:

ITEMS TO BE PURCHASED

- **Refrigeration Plant:**

Burley's Rink Supply
Model – BRS240x60PG
Serial – 0301-98-320
Voltage – 480 volts – 60 hertz – 3 phase
R – 22 System
(4) – 60 Ton Compressors

- **Spare Parts:** (1) 60 Ton Compressor and (1) Condenser Pump (complete with motor and pump)

**The glycol pipe system is PVC and will need to be removed by the Purchaser.

- **Ice Resurfer:**

Zamboni
Model 400
Serial Number – 4085

- **Ice Edger:**

Thomsen Mfg.
Model – T-1B
Serial Number 434

- **Hockey Goal Nets and Pads**

- **Ice Skates; 560 Pair**

Sizes	Children		Adult	
	Figure Skates	Hockey Skates	Figure Skate	Hockey Skates
1	10	8		
2	10	8		
3	12	10		
4	13	10		
5	14	9		
6	29	16	29	16
7	4	16	48	16
8	4	4	48	20
9	4	4	34	14
10	4	6	25	11
11	6	6	12	11
12	8	6	12	12
13	9	6	8	8

- **Skate Sharpener:**

Mfg – GUS PRO Inc.
Blade Master
Model – BR902XF
Serial Number 6361199
Voltage – 220/110 single phase
Hz – 60

EXHIBIT A (Continued)

- **Jet Ice Paint System:**

The package includes:

Calibrated Mixing Tank

Spray Paint Applicator

Electric Paint Mixer

Spray Pump System (gasoline driven pump)

100 Feet of Hose

- **Ice Floor Cover – 460 pcs – 4' x 8'**

Manufacturer; Arena Deck

Type 1" x 4' x 8' Waffle Board #AD896WAFFLEXT

460 4' x 8' pcs plus cut pcs for the end radius

(8) Storage Carts

EX. B

ASHEVILLE HOCKEY LEAGUE – EXECUTIVE BOARD

Hutch Kerns, AHL President, 2010-present

Hutch Kerns, President of the Asheville Hockey League has been involved with every aspect of league organization, policy, and operations since June 2010. As President, Hutch presides over monthly Executive Board meetings, upholds and enforces League By-laws and Rules, and serves on all sub-committees, including the current ICE Rink Steering Committee and the League Disciplinary Review Committee. Hutch is also active in the league as an adult hockey player, referee for the Adult and Youth Leagues, and as a youth coach.

Hutch Kerns is the founder of Kerns Landscape Architecture and has been practicing landscape Architecture and land planning for 17 years. He has been guiding the firm towards a responsive practice by adhering to a design process and providing a high level of detail to each of the firm's projects. Hutch's experience in personnel organization and careful project management has provided for the firm a steady growth path, and clients with exceptional design and service.

EDUCATION

Bachelor of Landscape Architecture
present
Auburn University

ORGANIZATIONS + ACTIVITIES

Recreation Board Member, City of Asheville, , 2009-

PROFESSIONAL AFFILIATIONS

Registered Landscape Architect, State of North Carolina

Jason Sampler, AHL Vice President, 2010-present

Jason Sampler, Vice-President of the Asheville Hockey League serves the League and its members as Referee-In-Charge; scheduling our referees for the Adult and Youth Leagues and communicating all rule and guideline changes to the membership. In addition to serving the league as a referee for the Adult and Youth Leagues, Jason is our IT specialist, managing the AHL's technology and communications infrastructure, including our website, email, domain administration, and online registrations. Jason is also active in the league as an adult hockey player and referee for the Adult and Youth Leagues.

Robert Dungan, AHL Treasurer, 2010-present

Robert Dungan, Treasurer of the Asheville Hockey League reviews league financial reports, prepares annual reports and tax returns and advises the Executive Board on legal matters. Robert is also active as an adult hockey player.

Robert is Principal, along with four associate attorneys, in The Dungan Law Firm, P.A. with offices in Asheville, North Carolina; Robert established his law practice in July, 1985 and his firm concentrates in Community Associations, Employment, Construction, Corporate, Personal Injury, and Real Estate; both transactional and trial practice in state and federal courts.

PROFESSIONAL AFFILIATIONS

Member North Carolina Bar
Georgia Bar
North Carolina Bar Association,
Community Association Institute.

Tadd Cole, AHL Youth Commissioner, 2010-present

Tadd Cole, Youth Hockey Commissioner for the Asheville Hockey League, operates our Youth Inline Hockey Leagues. Through his efforts the youth league has seen 400% growth in just over two seasons. With his ability to organize volunteers and create enthusiasm amongst players and youth parents, the league has experienced "new life" and is on a sturdy footing for future seasons. Tadd is also active as an adult hockey player and as a youth coach.

YOUTH HOCKEY EXPERIENCE

USA Hockey Certified LEVEL 3 Coach 1 year (ages 5- to high school)

Asheville Hockey League

ICE Rink Steering Committee-2011

Youth Commissioner 2009-present

Youth Ice Hockey Ass't Coach-2008

Youth League Volunteer-2009

USA Hockey One-Goal Program - AHL Coordinator

USA Hockey Try Hockey for Free Day (National Event) - AHL Coordinator

Jim Gelleny, AHL Ice Commissioner, 2006-present

Jim Gelleny, Ice Commissioner for the Asheville Hockey League, has been involved in every facet of League operations since its inception. Having travelled across the southeast and in Canada touring numerous rink facilities, Jim brings valuable knowledge of rinks and their operations, including required staffing, room layout, necessary equipment, etc.

YOUTH HOCKEY EXPERIENCE

USA Hockey Level 4 Coach (1999-2011 Ice Hockey)

Greenville Hockey Association (SC) - Coach/Asst Coach for Youth Travel Teams

PeeWeeU12/BantamU14/MidgetU16/MidgetU18 over 7 years from 2002 - 2009

Everblades Hockey (Florida)

Coach/Asst Coach Youth Ice Hockey Travel Team 1998-2000 MiteU8/SquirtU10

Asheville Hockey League

Youth Ice Hockey Commissioner 2006-2011

President 2009/2010, Board 2007-2010,

Ice Hockey Scheduler 2006-2009 (Youth & Adult)

Youth Ice Hockey Recreational Coach 2006-2009

Youth Ice Hockey High School Coach 2008-2010,

New Rink Committee 2006-2011

USA Inline Hockey Level 2 Coach

AHL recreation league coach (u12/U14/U16/U17) 2002-2008

AHL youth travel team coach 2002-2004

Naples Roller Hockey League-recreation and travel team coach 1996-1998

North Naples Little League - baseball youth coach 1995-1998