



Huntsville, Alabama

308 Fountain Circle
Huntsville, AL 35801

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 10/26/2023

File ID: TMP-3529

Department: Urban Development

Subject:

Type of Action: Approval/Action

Resolution authorizing the Mayor to enter into a Facade Easement and Redevelopment Agreement between the City of Huntsville, Alabama, and 222 Washington Commercial, L.L.C., and 222 Washington Huntsville, L.L.C., respecting the redevelopment of the Old Lewter Hardware Building and preservation of its facade.

Resolution No.

Finance Information:

Account Number: Please reference the Internal Notes in the Details section

City Cost Amount: \$150,000.00

Total Cost: \$150,000.00

Special Circumstances:

Grant Funded: N/A

Grant Title - CFDA or granting Agency: N/A

Resolution #: N/A

Location: (list below)

Address: N/A

District: District 1 ☐ District 2 ☐ District 3 ☐ District 4 ☐ District 5 ☐

Additional Comments:

N/A

RESOLUTION NO. 23-

WHEREAS, the City has been actively involved in the development of downtown Huntsville, including areas containing buildings and elements of public and private infrastructure that are architecturally significant to the cultural history of the City and which the City deems an important location for planned, mixed-use urban development consisting of multi-family housing, commercial and retail enterprises, restaurants, and other businesses and establishments if developed and improved in accordance with elevated standards typical of successful urban redevelopment observed in other areas; and

WHEREAS, 222 Washington Commercial LLC, a Delaware limited liability company (the “Commercial Developer”), and 222 Washington Huntsville LLC, a Delaware limited liability company (the “Townhome Developer” and, together with the Commercial Developer, the “Developers”) collectively hold legal fee simple title to that portion of land located in downtown Huntsville described in the Facade Easement Agreement hereinafter defined and authorized as the “Redevelopment Site”; and

WHEREAS, the Commercial Developer proposes to construct on the Redevelopment Site a mixed-use building contain office, retail, courtyard, parking uses and associated amenities, and the Townhome Developer proposes to construct on the Redevelopment Site a “work-live” townhome development, together with associated common areas and amenities; and

WHEREAS, the City recognizes the architectural value and significance of the Old Lewter Hardware Facade, and the City has an interest in causing the Old Lewter Hardware Facade Restoration to be conducted in accordance with the Old Lewter Hardware Facade Restoration Standards (as defined in the Facade Easement Agreement) and agreeing to grant a façade easement related thereto to the City, all as more particularly described and set forth in the Facade Easement Agreement; and

WHEREAS, in order to pay the cost of acquiring the aforesaid facade easement and the other rights of the City granted under the Facade Easement Agreement, the City has agreed to make payments to the Commercial Developer in amounts equal to Fifty Thousand and No/100 Dollars \$50,000.00 a year for three (3) years, all subject to and in accordance with the terms and conditions set forth in the Facade Easement Agreement; and

WHEREAS, the Council hereby determines that (i) the project described in the Facade Easement Agreement conforms with the overall vision and goals of the City’s effort in the redevelopment of the downtown core, and (ii) that the Redevelopment Site is located within the downtown central business district of the City;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Huntsville, Alabama (the “Council”), that the Council hereby authorizes and approves the Facade Easement and Redevelopment Agreement, the form of which is attached as Exhibit A hereto, together with such changes as shall be determined necessary or otherwise desirable by the Mayor of the City (the “Facade Easement Agreement”), and that the Mayor be, and he is hereby, authorized to execute, by and on behalf of the City, the Facade Easement Agreement, along with such notices, certificates, instruments, agreements, amendments, and other documents as shall be

necessary or desirable in connection with the transactions contemplated by, or in furtherance of, the Facade Easement Agreement; and

FURTHER RESOLVED, by the Council that the City Clerk be, and she is hereby, authorized to seal and attest the Facade Easement Agreement and such notices, certificates, instruments, agreements and other documents as shall be necessary or desirable in connection with the transactions contemplated by, or in furtherance of, the Façade Easement Agreement.

ADOPTED this the 26th day of October, 2023

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 26th day of October, 2023

Mayor of the City of
Huntsville, Alabama

FACADE EASEMENT AND REDEVELOPMENT AGREEMENT

BETWEEN

THE CITY OF HUNTSVILLE,

222 WASHINGTON COMMERCIAL LLC,

AND

222 WASHINGTON HUNTSVILLE LLC

FACADE EASEMENT AND REDEVELOPMENT AGREEMENT

THIS FACADE EASEMENT AND REDEVELOPMENT AGREEMENT (herein called the “Agreement”) is hereby made and entered into this ____ day of _____, 2023 (the “Effective Date”), between the **CITY OF HUNTSVILLE**, a municipal corporation under the laws of the State of Alabama (herein called the “City”), **222 WASHINGTON COMMERCIAL LLC**, a Delaware limited liability company (“Commercial Developer”), and **222 WASHINGTON HUNTSVILLE LLC**, a Delaware limited liability company (“Townhome Developer”) (the Commercial Developer and the Townhome Developer are collectively referred to herein as the “Developers” and, together with the City, herein from time to time called the “Parties”).

RECITALS

WHEREAS, the City has been involved in planning for the development of certain areas of downtown Huntsville including, without limitation, the Redevelopment Site (defined herein) (such area being herein called the “Development Area”); and

WHEREAS, the Development Area contains several buildings and elements of public and private infrastructure that are architecturally significant to the cultural history of the City, which the City deems an important location for planned, mixed-use urban development consisting of multi-family housing, commercial and retail enterprises, restaurants, and other businesses and establishments if developed and improved in accordance with elevated standards typical of successful urban redevelopment observed in other areas; and

WHEREAS, cities throughout the United States have adopted codes and undertaken other procedures that go beyond conventional zoning controls in order to advance land development regulatory mechanisms that place primary emphasis on the physical form of the built environment with the goal of producing a special type of place within the urban environment, which codes are based on the scale, character, intensity and form of development rather than solely on differences in land use; and

WHEREAS, absent adequate enabling laws in the State of Alabama, the City desires to achieve similar goals with respect to certain urban settings within its jurisdiction through agreements with developers that promote preserving historically and culturally significant buildings and impose requirements for refurbishment, restoration, construction, and improvement of such facilities in accordance with higher standards of construction and design that cannot be achieved through zoning and other regulatory actions by the City; and

WHEREAS, the Developers collectively hold legal fee simple title to that portion of the Development Area more particularly described on Exhibit A hereto (herein called the “Redevelopment Site”), which includes a two-story building located at 222 Washington Street and referred to generally as the “Old Lewter Hardware Building” (herein called the “Old Lewter Hardware Building”), which the Commercial Developer intends to redevelop for purposes of constructing the Redevelopment more particularly described herein; and

WHEREAS, (i) the Commercial Developer proposes to renovate and restore the Old Lewter Hardware Facade (as hereinafter defined), and in connection therewith intends to construct on the Redevelopment Site a mixed-use building contain office, retail, courtyard, parking uses and associated amenities, and (ii) Townhome Developer proposes to construct on the Redevelopment Site a “work-live” townhome development, together with associated common areas and amenities (collectively, the “Redevelopment”); and

WHEREAS, since its original construction certain changes have been made to the Old Lewter Hardware Facade and certain other portions of said facade have deteriorated or are otherwise in need of repair, all of which the Commercial Developer seeks to refurbish and restore (said refurbishment and restoration herein called the “Old Lewter Hardware Facade Restoration”) in accordance with the Old Lewter Hardware Facade Restoration Standards hereinafter defined; and

WHEREAS, but for the transactions described in this Agreement, the Commercial Developer would be required to demolish or substantially modify the Old Lewter Hardware Facade in order to redevelop the same in an economical manner; and

WHEREAS, the City and the Commercial Developer recognize the architectural value and significance of the Old Lewter Hardware Facade, and the City has an interest in (a) causing the Old Lewter Hardware Facade Restoration to be conducted in accordance with the Old Lewter Hardware Facade Restoration Standards, and (b) preserving, and subjecting any future changes to approval by the City of, the Old Lewter Hardware Facade (once restored in accordance with the Old Lewter Hardware Facade Restoration Standards), all in order to benefit the public by (i) attracting to the Development Area young professionals and other individuals from outside the City that desire to live in an urban setting, (ii) promoting the redevelopment and refurbishment of other buildings and facilities located within and outside the Development Area for single-family and multi-family housing, retail and entertainment purposes, (iii) enhancing the overall quality of life for the citizens of the City, and (iv) helping to prevent the proliferation of unplanned developments that would be detrimental to the long-term, sustained economic health and well-being of the City and detract from other high-end developments and investments heretofore made by businesses presently located in the vicinity of the Development Area and elsewhere in the City; and

WHEREAS, the Commercial Developer is willing to (i) conduct the Old Lewter Hardware Facade Restoration in accordance with the Old Lewter Hardware Facade Restoration Standards, and (ii) grant to the City a perpetual easement (herein called the “Facade Easement”) that would prevent the Commercial Developer, or any successor in interest or title to the Commercial Developer or the land affected hereby, from removing or otherwise altering the Old Lewter Hardware Facade (following the Old Lewter Hardware Facade Restoration), without the prior written consent of the City, in consideration of funds from the City that reflect the value of the Facade Easement and the other rights and benefits running in favor of the City set forth herein; and

WHEREAS, in order to pay the cost of acquiring the Facade Easement and the other rights of the City granted hereunder, the City has agreed to make payments to the Commercial Developer in amounts equal to Fifty Thousand and No/100 Dollars \$50,000.00 a year for three (3) years (herein called the “City Payments”), all subject to and in accordance with the terms and conditions set forth herein; and

WHEREAS, the City has determined that (i) the project conforms with the overall vision and goals of the City’s effort in the redevelopment of the downtown core, and (ii) the Redevelopment Site is located within the downtown central business district of the City, and the City agrees to support the Developers’ efforts (if desired) to submit the Redevelopment before the Huntsville Downtown Redevelopment Authority (“DRA”) for consideration of possible statutory benefits under the DRA.

NOW, THEREFORE, for and in consideration of the foregoing premises, the covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby covenant, agree and bind themselves as follows:

ARTICLE I
REPRESENTATIONS AND WARRANTIES

SECTION 1.1 Representations and Warranties of the City. The City makes the following representations, warranties and findings:

(a) The City is a municipal corporation under the laws of the State of Alabama and by proper action has duly authorized the execution, delivery and performance of this Agreement.

(b) This Agreement constitutes a legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms. Neither the execution and delivery, nor the performance, of this Agreement by the City requires any consent of, filing with or approval of, or requires any notice to, or hearing with any person or entity (including, but not limited to, any governmental or quasi-governmental entity).

(c) Neither the authorization, execution and delivery of, nor the performance of, this Agreement by City, to the knowledge of the City, violates, constitutes a default under or a breach of (i) any agreement, instrument, contract, mortgage or indenture to which City is a party or to which the City or its assets are subject; or (ii) any law, judgment, decree, order, ordinance, rule, regulation, consent or resolution applicable to the City or any of its assets.

(d) There is not now pending or, to the knowledge of the City, threatened any litigation affecting the City which questions (i) the members, titles or positions of the members of the governing body or the manner in which the officers of the City are selected or (ii) the subject matter of this Agreement.

(e) The City has determined that the Redevelopment Site is within the downtown central business district of the City.

SECTION 1.2 Representations and Warranties of the Developers. The Developers make the following representations, warranties and findings:

(a) Each of the Commercial Developer and the Townhome Developer is duly organized and validly existing as a limited liability company under the laws of the State of Delaware and has duly authorized its execution, delivery and performance of this Agreement.

(b) This Agreement constitutes a legal, valid and binding obligation of the Developers, enforceable against the Developers in accordance with its terms. Neither the execution and delivery of this Agreement, nor the performance hereof, by the Developers require any consent of, filing with or approval of, or notice to, or hearing with any person or entity (including, but not limited to, any governmental or quasi-governmental entity).

(c) Neither the authorization, execution and delivery of, nor the performance of, this Agreement by the Developers, to the knowledge of the Developers, violates, constitutes a default under or a breach of (i) either Developer's articles of organization or operating agreement or other organizational documents, (ii) any agreement, instrument, contract, mortgage or indenture to which the Developers are a

party or to which Developers or their assets are subject, or (iii) any law, judgment, decree, order, ordinance, rule, regulation, consent or resolution applicable to Developer or any of their assets.

(d) There is not now pending or, to the knowledge of the Developers, threatened any litigation affecting the Developers which questions (i) the validity or organization of the Developers, (ii) the titles or positions of the members of the Developers or its officers or the manner in which they are elected or (iii) the subject matter of this Agreement.

(e) The Developers are lawfully seized in fee simple title of the Redevelopment Site and are the lawful owners and holders of the same; and the Commercial Developer has full, lawful and sufficient right and power to sell and convey the Facade Easement to the City as herein provided.

ARTICLE II

FACADE EASEMENT; OLD LEWTER HARDWARE FACADE RESTORATION

STANDARDS

SECTION 2.1 Grant, Purpose and Extent of Facade Easement.

(a) The Commercial Developer hereby bargains, sells, conveys, and grants to the City, and the City hereby purchases, acquires, receives and accepts, a perpetual easement in gross on and limited to the west elevation of the Old Lewter Hardware Building, as graphically depicted on Exhibit B (the “Old Lewter Hardware Façade”) (herein called the “Facade Easement”). It is hereby declared, established and agreed that the Facade Easement shall run forever with that portion of the Redevelopment Site on which the Old Lewter Hardware Façade is located as set forth on Exhibit C hereto (said portions of the Redevelopment Site herein together called the “Facade Easement Site”).

(b) It is the purpose of the Facade Easement created hereunder to assure that the Commercial Developer, and any successor thereof or future owner of the Facade Easement Site, shall not modify, destroy or otherwise alter the exterior architectural features of the Facades without the prior written consent of the City, except as otherwise herein expressly provided.

SECTION 2.2 Commercial Developer Covenants; Prohibited Actions. The Commercial Developer hereby covenants and agrees that the Old Lewter Hardware Façade (once constructed in accordance with the terms of this Agreement), shall not be removed, demolished or otherwise torn down, except as expressly permitted by this Agreement.

SECTION 2.3 Facade Easement to Run with the Land. It is hereby declared, established and agreed that the Facade Easement shall forever run with the Facade Easement Site.

SECTION 2.4 Casualty Damage or Destruction.

(a) In the event that any portion of the Redevelopment shall be significantly damaged or destroyed by fire, flood, windstorm, hurricane, earth movement or other casualty (herein called a “Casualty”) that impacts the Old Lewter Hardware Façade, or any portions thereof, in a single occurrence of \$25,000 or greater, the Commercial Developer shall notify the City in writing within thirty (30) days of the Casualty, such notification including what, if any, emergency work has already been completed. No repairs or reconstruction of any type impacting the Old Lewter Hardware Façade, other than temporary emergency work to prevent further damage to the Old Lewter Hardware Façade or to protect public safety, shall be

undertaken by the Commercial Developer without the City's prior written approval unless the Commercial Developer's repairs or reconstruction shall be to restore a Façade to its original condition immediately prior to such Casualty, using the same materials and architectural features.

(b) Within sixty (60) days of the date of such damage or destruction the Commercial Developer shall submit to the City, at the expense of the Commercial Developer, a written report that shall include: (i) an assessment of the nature and extent of the damage, (ii) a determination of the feasibility of restoring the Old Lewter Hardware Façade, and (iii) a report of such restoration/reconstruction work necessary to return the damaged portion of the Old Lewter Hardware Façade to the condition as of the date immediately following completion of the Old Lewter Hardware Façade Restoration.

(c) If, after reviewing the reports described herein and assessing the Available Insurance Proceeds (as hereinafter defined), if any, to cover the costs of restoration/reconstruction, the Commercial Developer and the City agree that the purpose of the Façade Easement will be served by such restoration/reconstruction, the Commercial Developer shall restore/renovate the Old Lewter Hardware Façade (at the cost of the Commercial Developer) in accordance with plans and specifications consented to by the City.

(d) If, after reviewing the reports described herein and assessing the Available Insurance Proceeds, if any, to cover the cost of restoration/reconstruction, the Commercial Developer and the City agree that restoration/reconstruction of the Façade impacted by the Casualty is unfeasible, impracticable or impossible, or agree that the purpose of the Façade Easement would not be served by such restoration/reconstruction, then, unless otherwise agreed by the Commercial Developer and the City in writing, (1) the Commercial Developer shall not be required to restore/renovate the Old Lewter Hardware Façade, (2) the City shall have no further obligation to make City Payments, if any, hereunder, and (3) the Commercial Developer shall be free to alter, demolish, remove or raze the façade impacted by such Casualty or Casualties and this Agreement shall be terminated.

(e) If, after reviewing the reports described herein and assessing the Available Insurance Proceeds, if any, to cover the costs of restoration/reconstruction, the Commercial Developer and the City are unable to agree that the purpose of the Façade Easement will or will not be served by such restoration/reconstruction, such issue may be referred by either party to binding arbitration and shall be settled in accordance therewith as follows:

i. Each Party shall select as an arbitrator an architect, and the decision of the two architects as to whether the purpose of the Façade Easement will or will not be served by such restoration/reconstruction shall be final. However, if the two architects cannot agree on a decision, they shall select a third architect, and the decision of the third architect as to whether the purpose of the Façade Easement will or will not be served by such restoration/reconstruction shall be final.

ii. If the arbitrator determines that the purpose of the Façade Easement will be served by such restoration/reconstruction, the Commercial Developer shall restore/reconstruct the Façades at issue (at the cost of the Commercial Developer) in accordance with plans and specifications consented to by the City; provided, however, if the Available Insurance Proceeds from such Casualty are insufficient for the Commercial Developer to pay for such

restoration/reconstruction, unless otherwise agreed in writing by the City and the Commercial Developer, (1) the Commercial Developer shall have no obligation to undertake such restoration/reconstruction, (2) the City shall be under no further obligation to make City Payments hereunder, and (3) the Commercial Developer may alter, demolish, remove or raze the Old Lewter Hardware Façade impacted by such Casualty or Casualties and this Agreement shall be terminated.

iii. If the arbitrator determines that restoration/reconstruction of the Façade impacted by the Casualty is unfeasible, impracticable or impossible, or determines that the purpose of the Façade Easement would not be served by such restoration/reconstruction, then (1) the Commercial Developer shall not be required to restore/renovate the Façade at issue, (2) the City shall have no further obligation to make City Payments hereunder, and (3) the Commercial Developer may alter, demolish, remove or raze the Old Lewter Hardware Façade impacted by such Casualty or Casualties and this Agreement shall be terminated.

For purposes of this paragraph (e), (1) each Party shall pay the costs of the architect that it selects as arbitrator, (2) if the two architects cannot agree on a decision and shall select a third architect, the cost of such third architect shall be shared equally between the Commercial Developer and the City, and (3) neither Party may select an architect with whom such Party has done business in the preceding five years or who otherwise may have a conflict of interest.

(f) If, during the original restoration of the Old Lewter Hardware Façade, or any part thereof, the Old Lewter Hardware Façade shall be significantly damaged or destroyed in a manner not anticipated by the terms of this Agreement, the Commercial Developer shall promptly repair and restore the Old Lewter Hardware Façade to the condition anticipated by this Agreement at the Commercial Developer's sole cost and expense.

(g) “Available Insurance Proceeds” means insurance proceeds realized by the Commercial Developer from the Casualty which are directly attributable to the Old Lewter Hardware Façade, less any portion of the insurance proceeds that the holder of a Prior Mortgage (as defined herein) requires to be applied to reduce the Prior Mortgage.

SECTION 2.5 Old Lewter Hardware Façade Restoration Standards.

(a) The Commercial Developer hereby covenants and agrees that the Old Lewter Hardware Façade Restoration shall be conducted in accordance with the Old Lewter Hardware Façade Restoration Standards.

(b) The obligation of the Commercial Developer to comply with the Old Lewter Hardware Façade Restoration Standards are subject to the paramount obligation of the Commercial Developer to comply with the orders of the state and local fire marshal, state and local building codes, inspection compliance, zoning ordinances, the ADA, the Fair Housing Act, and other federal, state, and local legal or regulatory compliance (herein called “Governmental Building Requirements”). In the event the Old Lewter Hardware Façade Restoration Standards do not enable the Commercial Developer to construct and develop the Redevelopment in accordance with applicable Governmental Building Requirements, then prior to such construction the Commercial Developer shall propose for approval by the City (such approval to be evidenced by written instrument from the Mayor or Director of Planning Services/Urban Development) amendments to the Old Lewter Hardware Façade Restoration Standards or Expansion Façade Restoration

Standards, as applicable. The City shall act in good faith and shall not unreasonably withhold or delay its approval.

SECTION 2.6 Inspection. After notice to and with the consent of the Commercial Developer, which such consent shall not be unreasonably withheld, representatives of the City shall be permitted at all reasonable times access to the Redevelopment Site to inspect the exterior of the Redevelopment to determine compliance hereunder; provided, however, that in cases where the City reasonably determines that immediate access to the Redevelopment Site is required to prevent, terminate or mitigate a violation of this Agreement or the Façade Easement the City need not obtain prior consent of the Commercial Developer and shall be permitted access to the Redevelopment Site. Nothing herein shall authorize the City by this Agreement to enter the interior of any building on the Redevelopment Site. Any inspection by the City shall not damage the Old Lewter Hardware Façade, and the City is not authorized to undertake borings, samplings, or other invasive procedures in connection with any of its inspections.

ARTICLE III
APPROVAL OF FACADE;
CHANGES TO FACADE ONCE RESTORED/CONSTRUCTED

SECTION 3.1 City Approval Respecting Changes to Old Lewter Hardware Façade. As part of the Façade Easement that shall forever run with that portion of the Façade Easement Site on which the Old Lewter Hardware Façade is located, the Commercial Developer hereby covenants and agrees that the Old Lewter Hardware Façade Restoration shall be conducted in accordance with rendering and façade standards (the “Old Lewter Hardware Façade Restoration Standards”) subject to prior written consent of the City as follows:

- (i) The Commercial Developer shall deliver to the City proposed rendering and design parameters for the Old Lewter Hardware Façade Restoration.
- (ii) The City shall have a period of not more than thirty (30) days from actual receipt of such proposed rendering and design parameters to review the same and make a good faith determination whether they are acceptable to the City.
- (iii) The City shall notify the Commercial Developer in writing if in good faith the City determines: (1) that such proposed rendering and design parameters are acceptable to the City, or (2) that such proposed rendering and design parameters are not acceptable to the City.
- (iv) If the City determines in writing as aforesaid that such proposed rendering and design parameters are acceptable to the City, such proposed rendering and design parameters shall become the final and definitive rendering and design parameters, and the Commercial Developer agrees that such final and definitive rendering and design parameters shall not be materially altered except upon written approval of the City (which approval shall not be unreasonably withheld, conditioned, or delayed), and that the

proposed changes shall be designed and constructed in accordance with said final rendering and design parameters.

- (v) In the event the City determines that such proposed rendering and design parameters are not acceptable, the City shall provide in writing its rationale for not giving its approval and the Commercial Developer shall have the right to submit a new set of proposed rendering and design parameters to the City for approval pursuant to the process and in the manner described in the foregoing items (i) through (iv) of this Section 3.1.

The process for approving any such submissions shall be conducted by the Department of Planning Services/Urban Development of the City (unless otherwise designated by the Mayor of the City in writing to the Commercial Developer). If at any time following the expiration of the thirty (30) day period set forth above for approval of any submissions of proposed rendering and façade parameters to the City the City shall not have submitted its written notice required in paragraph (iii) above, the Commercial Developer shall have the right to send a written demand (a "Demand") to the City that the City take action to approve or deny such submission pursuant to the terms of this Agreement. In the event the City does not within thirty (30) days of the City's actual receipt of such Demand notify the Commercial Developer in writing of the City's determination that (1) such proposed rendering and design parameters are acceptable to the City, or (2) such proposed rendering and design parameters are not acceptable to the City (and, in such event, provide the information required in paragraph (v) above), then such rendering and facade parameters shall be deemed to have been approved by the City.

SECTION 3.2 No Express or Implied Approval of Construction Activity. Anything in this Article III to the contrary notwithstanding, whether express or implied, it is hereby understood, acknowledged and agreed that approval by the City of any rendering and design parameters shall under no circumstances constitute an approval of any construction activity within the Redevelopment Site as being in conformity with any applicable building codes and other usual inspection approvals by the City or any other governmental authority normal to any new construction in the City, which such approval process shall proceed in the normal course.

ARTICLE IV **CITY PAYMENTS**

SECTION 4.1 City Agreement; Timing of City Payments.

(a) In consideration of the agreements and provisions herein contained, the City hereby covenants and agrees to make payments to the Commercial Developer aggregating \$150,000 at the following times and in the following amounts (herein called the "City Payments"):

<u>Payment Date</u>	<u>Payment Amount</u>
Effective Date	\$50,000
1 st Anniversary of Effective Date	\$50,000
<u>2nd Anniversary of Effective Date</u>	<u>\$50,000</u>
Total	\$150,000

provided, however, the City shall be under no obligation to remit a City Payment to the Commercial Developer until such time as the Commercial Developer shall have certified in writing to the City that Commercial Developer is not then in default under the Agreement. Under no circumstances whatsoever shall the City be obligated to make any City Payment to the Commercial Developer during any time in which a Commercial Developer Event of Default exists.

(b) Any City Payment due on a day that is not a Business Day shall be payable on the next succeeding Business Day. As used herein, the term “Business Day” means any day other than (i) a Saturday, (ii) a Sunday, (iii) a day on which City Hall in the City is not open to the public, or (iv) a day on which banking institutions in the City of Huntsville are required or authorized to remain closed.

ARTICLE V

EVENTS OF DEFAULT AND REMEDIES

SECTION 5.1 Events of Default by the City.

(a) Any one or more of the following shall constitute an event of default under this Agreement by the City (herein called a “City Event of Default”) (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

- i. the City shall fail to make any City Payment on the date said payment shall become due and payable hereunder;
- ii. during any period before payment in full of all City Payments, the dissolution or liquidation of the City, or the filing by the City of a voluntary petition in bankruptcy, or the City's seeking of or consenting to or acquiescing in the appointment of a receiver of all or substantially all of its respective property, or the adjudication of the City as a bankrupt, or any assignment by the City for the benefit of its creditors, or the entry by the City into an agreement of composition with its creditors, or if a petition or answer is filed by the City proposing the adjudication of the City as a bankrupt or its reorganization, arrangement or debt readjustment under any present or future federal bankruptcy code or any similar federal or state law in any court, or if any such petition or answer is filed by any other person and such petition or answer shall not be stayed or dismissed within 60 days; or
- iii. failure by the City to perform or observe any of its agreements or covenants contained in this Agreement (other than an agreement or covenant a default in the performance or breach of which is elsewhere in this Agreement specifically dealt with), which failure shall have continued for a period of thirty (30) calendar days after written notice (a “City Default Notice”) specifying, in reasonable detail, the nature of such failure and requiring the City to perform or observe the agreement or covenant with respect to which it is delinquent shall have been given to the City by the Commercial Developer, unless (A) the Commercial Developer shall agree in writing to

an extension of such period prior to its expiration, or (B) during such thirty (30) day period or any extension thereof, the City has commenced and is diligently pursuing appropriate corrective action, and, further, has corrected such failure to the reasonable satisfaction of the Commercial Developer by not later than 120 days following the date of such City Default Notice, or (C) the City is by reason of *force majeure* at the time prevented from performing or observing the agreement or covenant with respect to which it is delinquent.

(b) If a City Event of Default exists, the sole and exclusive remedies of the Commercial Developer for any damages ever alleged against City shall be: (1) specific performance with respect to consents from the City regarding renderings and façade parameters submitted, and (2) payment of any City Payments owed to the Commercial Developer hereunder, and the Commercial Developer shall not be entitled to any other damages whatsoever, including, without limitation, incidental or consequential damages, whether arising at law or in equity.

SECTION 5.2 Events of Default by the Commercial Developer.

(a) Any one or more of the following shall constitute an event of default under this Agreement by the Commercial Developer (herein called a “Commercial Developer Event of Default”) (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

- i. the Commercial Developer shall fail to conduct the Old Lewter Hardware Restoration in accordance with the Old Lewter Hardware Facade Restoration Standards, shall remove, materially modify or otherwise alter the Old Lewter Hardware Facade without the prior written consent of the City;
- ii. at any time following the Old Lewter Hardware Restoration the Commercial Developer shall materially modify or change the Old Lewter Hardware Facade without the prior written consent of the City;
- iii. the Commercial Developer shall be in breach of any other of the Commercial Developer's obligations under the Facade Easement provided for in this Agreement; and
- iv. failure by the Commercial Developer to perform or observe any of its agreements or covenants contained in this Agreement (other than an agreement or covenant a default in the performance or breach of which is elsewhere in this Agreement specifically dealt with), which failure shall **have continued for a period of thirty (30) calendar days** after written notice specifying, in reasonable detail, the nature of such failure and requiring the Commercial Developer to perform or observe the agreement or covenant with respect to which it is delinquent shall have been given to the Commercial Developer by the City, unless (A) the City shall agree in writing to an extension of such period prior to its expiration, (B) during

such thirty (30) day period or any extension thereof, the Commercial Developer has commenced and is diligently pursuing appropriate corrective action; or (C) the Commercial Developer is by reason of *force majeure* at the time prevented from performing or observing the agreement or covenant with respect to which it is delinquent;

provided, with respect to the events listed in (i), (ii), and (iii) above, such failure shall have continued for a period of thirty (30) calendar days after written notice (a "Commercial Developer Default Notice") specifying, in reasonable detail, the nature of such failure and requiring the Commercial Developer to perform or observe the agreement or covenant with respect to which it is delinquent shall have been given to the Commercial Developer by the City, unless (A) the City shall agree in writing to an extension of such period prior to its expiration, or (B) during such thirty (30) day period, or any extension thereof in writing by the City, the Commercial Developer has commenced and is diligently pursuing appropriate corrective action, and, further, has corrected such failure to the reasonable satisfaction of the City by not later than one hundred twenty (120) days following the date of such Commercial Developer Default Notice.

(b) Anything in this Agreement to the contrary notwithstanding, the City shall not be required to make any City Payments to the Commercial Developer during any period after the City has provided written notice to the Commercial Developer specifying the existence of a Commercial Developer Event of Default and during which the Commercial Developer has failed to cure said Commercial Developer Event of Default to the reasonable satisfaction of the City. In addition, if a Commercial Developer Event of Default exists the City may proceed to protect its rights hereunder by suit in equity, action at law or other appropriate proceedings, whether for the specific performance of any covenant or agreement of the Commercial Developer herein contained or in aid of the exercise of any power or remedy granted to the City under this Agreement or law. Notwithstanding the foregoing, over the term of this Agreement the Commercial Developer's total liability shall not exceed the total of City Payments made by the City.

SECTION 5.3 Remedies Subject to Applicable Law.

All rights, remedies and powers provided in this Article V may be exercised only to the extent the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article V are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that the same will not render this Agreement invalid or unenforceable.

ARTICLE VI **PARKING LEASE**

SECTION 6.1 Parking Lease. The City agrees to work in good faith with the Commercial Developer to negotiate definitive terms of a parking lease and/or license (the "Parking Agreement") under which the City would make available an amount of parking spaces mutually agreeable to the City and the Commercial Developer, on a non-exclusive basis, within the City parking deck located at the southeast corner of Holmes Avenue and Greene Street. The Commercial Developer understands and agrees that (i) all rents or license fees due to the City pursuant to the Parking Agreement shall be calculated at the then-applicable parking rates, which are determined by the City from time to time, and (ii) Commercial Developer's parking rights pursuant to the Parking Agreement shall not provide Commercial Developer with any governance rights with respect to the overall operation, management, and maintenance of said public parking facility. The Parties agree that any such Parking Agreement shall not be entered unless agreed to by all parties thereto and approved by the governing body of the City.

ARTICLE VII
MISCELLANEOUS PROVISIONS

SECTION 7.1 Severability; Enforceability.

The provisions of this Agreement shall be severable. In the event any provision hereof shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any of the remaining provisions hereof, and such invalid or unenforceable provision shall be severed from this Agreement and shall not affect the validity of the remainder of this Agreement.

SECTION 7.2 Entire Agreement.

This Agreement contains the entire agreement of the Parties regarding the transactions described herein and there are no representations, oral or written, relating to the transactions described herein which have not been incorporated herein. Any agreement hereafter made shall be ineffective to change, modify, or discharge this Agreement in whole or in part unless such agreement is in writing and is signed by the Party against whom enforcement of any change, modification, or discharge is sought. The execution of this Agreement by the City shall not constitute an approval of any construction activity referable to the Building or otherwise within the Redevelopment Site as being in conformity with any applicable building codes and other usual inspection approvals by the City or any other governmental authority normal to any new construction in the City, which such approval process shall proceed in the normal course.

SECTION 7.3 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute but one and the same agreement.

SECTION 7.4 Binding Effect; Facade Easement to Run with the Land; Governing Law.

(a) This Agreement shall inure to the benefit of, and shall be binding upon, the Parties hereto and their respective successors and assigns. Except as set forth in the immediately succeeding sentence, this Agreement may not be assigned by the Commercial Developer; provided, the Commercial Developer shall at any time be permitted to assign its right to receive City Payments to a single third-party lender for the Redevelopment if the Commercial Developer shall certify to the City that it has so assigned such payment rights and providing payment instructions for such single third-party lender and other relevant information as the City may reasonably request. Upon completion of the Redevelopment in accordance with the terms of this Agreement, this Agreement shall be freely assignable by the Commercial Developer to a successor owner of the Redevelopment, and upon such assignment the term "Commercial Developer" shall refer to such assignee. No former owner of the Redevelopment shall have any liability for any breach of this Agreement by a later owner.

(b) The Facade Easement herein created shall bind and forever run with the Facade Easement Site.

(c) This Agreement shall be governed exclusively by, and construed and interpreted in accordance with, the laws of the State of Alabama.

SECTION 7.5 Notices.

All notices, demands, consents, certificates or other communications hereunder shall be in writing, shall be sufficiently given and shall be deemed given when delivered personally to the Party or to an officer of the Party to whom the same is directed, or mailed by registered or certified mail, postage prepaid, or sent by overnight courier, addressed as follows:

(1) If to the City:

The City of Huntsville
308 Fountain Circle
Huntsville, AL 35801
Attn: Mayor

With a copy to:

The City of Huntsville
308 Fountain Circle
Huntsville, AL 35801
Attn: Director of Planning Services/Urban Development of the City

(2) If to Commercial Developer:

222 Washington Commercial LLC
1730 Tchoupitoulas St
New Orleans, LA 710302
Attention: Wes Palmisano

With a copy to:

Maynard Nexsen P.C.
655 Gallatin Street
Huntsville, Alabama 35801
Attention: Graham Burgess

(3) If to Townhome Developer:

222 Washington Huntsville LLC
1730 Tchoupitoulas St
New Orleans, LA 710302
Attention: Wes Palmisano

With a copy to:

Maynard Nexsen P.C.
655 Gallatin Street
Huntsville, Alabama 35801
Attention: Graham Burgess

(c) Any such notice or other document shall be deemed to be received as of the date delivered, if delivered personally, or as of three (3) days after the date deposited in the mail, if mailed, or the next business day, if sent by overnight courier. Any party may change the address for the sending of notifications by providing written notice to the other Party in accordance herewith.

SECTION 7.6 Recordation. The Developers hereby consent to the recordation of this Agreement in the Office of the Judge of Probate of Madison County and in whatever other jurisdiction the City determines necessary or desirable in order to protect its rights under the Facade Easement. If this Agreement is terminated under the terms hereof, the City shall, at the written request of the Developers (provided the Developers pre-pay to the City all legal and recording costs in connection therewith), record a release in form satisfactory to the Developers.

SECTION 7.7 Survival of Covenants. The covenants in this Agreement shall not terminate until they have been fully performed or have expired by their terms.

SECTION 7.8 No Waiver. No consent or waiver, express or implied, by either Party hereto or to any breach or default by the other Party in the performance by the other Party of its obligations hereunder shall be valid unless in writing, and no such consent or waiver to or of one breach or default shall constitute a consent or waiver to or of any other breach or default in the performance by such other Party of the same or any other obligations of such Party hereunder. Failure on the part of either party to complain of any act or failure to act of the other Party or to declare the other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such Party of its rights hereunder. The granting of any consent or approval in any one instance by or on behalf of any Party hereto shall be construed to waive or limit the need for such consent in any other or subsequent instance.

SECTION 7.9 Remedies. Whenever either Party hereto shall default in the performance of any of its obligations under this Agreement, the other party hereto may take whatever legal proceeding (including actions for damages or for specific performance to the extent provided by law) as shall be necessary or desirable to enforce any agreement or condition contained herein or any other obligation of the defaulting party imposed by law. The Parties hereto recognize, and will not object to, an action for specific performance.

SECTION 7.10 No Partnership or Joint Venture. Nothing contained in this Agreement shall constitute or be construed to be a partnership or joint venture between the City and the Company and their respective successors and assigns.

SECTION 7.11 Headings. The headings in the Sections in this Agreement are for convenience of reference only and shall not form a part hereof.

SECTION 7.12 No Third-Party Beneficiaries. Except as set forth herein, this Agreement is intended only for the benefit of the signing Parties hereto, and neither this Agreement, nor any of the rights, interest or obligations hereunder, is intended for the benefit of any other person or third-party, except that an Attornment Party, as defined in Section 7.14 hereof, and any mortgagee described in Section 7.14 shall be a third-party beneficiary.

SECTION 7.13 Amendment; Modification. The Parties hereto hereby expressly agree, intend and understand that neither this Agreement nor any provision or terms hereof, shall be amended, changed,

or modified in any respect, nor may be an estoppel, novation or waiver regarding the same be effectuated, without the Parties first executing a writing, in equal dignity to this Agreement, embodying their complete and full Agreement and understanding as to such amendment, change, modification, novation, or waiver.

SECTION 7.14 Subordination and Attornment.

(a) This Agreement and the easements and any other interests granted hereunder shall be subordinate to the lien of any construction mortgage (*i.e.*, a mortgage referable to the construction of the Redevelopment) on any portion of the Development Site and to the lien of any other mortgage any proceeds of which are used to renew, extend, or refinance any such construction mortgage, regardless of whether the mortgage is determined to have been executed, acknowledged, delivered, and recorded its mortgage prior to the execution, acknowledgment, and delivery of this Agreement (any such mortgage, a "Prior Mortgage").

(b) Upon demand by such mortgagee, or any purchaser at foreclosure of such Prior Mortgage, or any recipient of a deed in lieu of foreclosure, and their successors and assigns ("Attornment Party"), City agrees to make full and complete attornment to such Attornment Party and such Attornment Party's successors and assigns in the event of a foreclosure sale under the Prior Mortgage or of a conveyance in lieu of foreclosure or in extinguishment of the indebtedness secured thereby. In any such case, such attornment shall be upon the same terms, covenants, and conditions as provided herein. Such attornment shall establish direct privity of estate and contract between City and the Attornment Party, with the same force and effect as though this Agreement were originally made directly between the Attornment Party to whom City shall attorn as aforesaid.

(c) Upon a foreclosure sale under the Prior Mortgage or of a conveyance in lieu of foreclosure or in extinguishment of the indebtedness secured thereby, should the Attornment Party not demand attornment by the City, then the City may demand that the Attornment Party enter into an attornment agreement with the City. Should the Attornment Party decline to do so, this Agreement shall be thereupon void and of no thither effect and the City shall have no obligation to make any further payments hereunder.

(d) The City shall not seek to terminate this Agreement by reason of the default of the Company without giving any such mortgagee at least 30 days prior written notice specifying the default and granting a reasonable time in which to cure any default by the Company. Any such mortgagee shall be under no duty to effect a cure on behalf of the Company. If the mortgagee shall commence efforts to cure a default within such 30-day period and diligently prosecute efforts to complete the cure, the City shall not terminate this Agreement due to such default unless such default has not been cured within 90 days of the original written notice from the City.

SECTION 7.15 Right of Commercial Developer to Terminate Façade Easement. The Commercial Developer shall have the right at any time on and after the 10th anniversary of the Effective Date to cause this Agreement to be terminated, the Façade Easement to be extinguished by paying to the City, in immediately available funds, an amount equal to the sum of all amounts paid by the City hereunder, plus interest computed at a rate of 5.0% per annum.

[SIGNATURES TO FOLLOW ON THE NEXT FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have each caused this Agreement to be duly executed in its name, under seal, and the same attested, all by officers thereof duly authorized thereunto, and have caused this Agreement to be dated the date and year first above written.

CITY:

CITY OF HUNTSVILLE

By: _____
Tommy Battle
Its: Mayor

COMMERCIAL DEVELOPER:

**222 WASHINGTON COMMERCIAL
LLC, a Delaware limited liability company**

By: _____
Its: _____

TOWNHOME DEVELOPER:

**222 WASHINGTON HUNTSVILLE
LLC, a Delaware limited liability company**

By: _____
Its: _____

STATE OF ALABAMA)

COUNTY OF MADISON)

I, the undersigned authority, a Notary Public in and for said State at Large, hereby certify that **Tommy Battle**, whose name as Mayor of the City of Huntsville, a municipal corporation under the laws of the State of Alabama, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, that being informed of the contents of this instrument, he, as such officer, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and official seal this ____ day of _____, 2023.

Notary Public

My Commission Expires: _____

STATE OF _____)

COUNTY OF _____)

I, the undersigned authority, a Notary Public in and for said State at Large, hereby certify that _____, whose name as _____ of 222 WASHINGTON COMMERCIAL, LLC, a Delaware limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, that being informed of the contents of this instrument, he, as such officer, executed the same voluntarily for and as the act of said limited liability on the day the same bears date.

Given under my hand and official seal this ____ day of _____, 2023.

Notary Public

My Commission Expires: _____

STATE OF _____)

COUNTY OF _____)

I, the undersigned authority, a Notary Public in and for said State at Large, hereby certify that _____, whose name as _____ of 222 WASHINGTON HUNTSVILLE, LLC, a Delaware limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, that being informed of the contents of this instrument, he, as such officer, executed the same voluntarily for and as the act of said limited liability on the day the same bears date.

Given under my hand and official seal this ____ day of _____, 2023.

Notary Public

My Commission Expires: _____

EXHIBIT A

REDEVELOPMENT SITE

ALL REAL PROPERTY SHOWN ON THE FINAL PLAT OF LEWTER DISTRICT, PHASE 1, IN PLAT BOOK 2023 AT PAGE 259, IN THE OFFICE OF THE JUDGE OF PROBATE OF MADISON COUNTY, ALABAMA.

EXHIBIT B

OLD LEWTER HARDWARE FAÇADE – GRAPHICAL DEPICTION

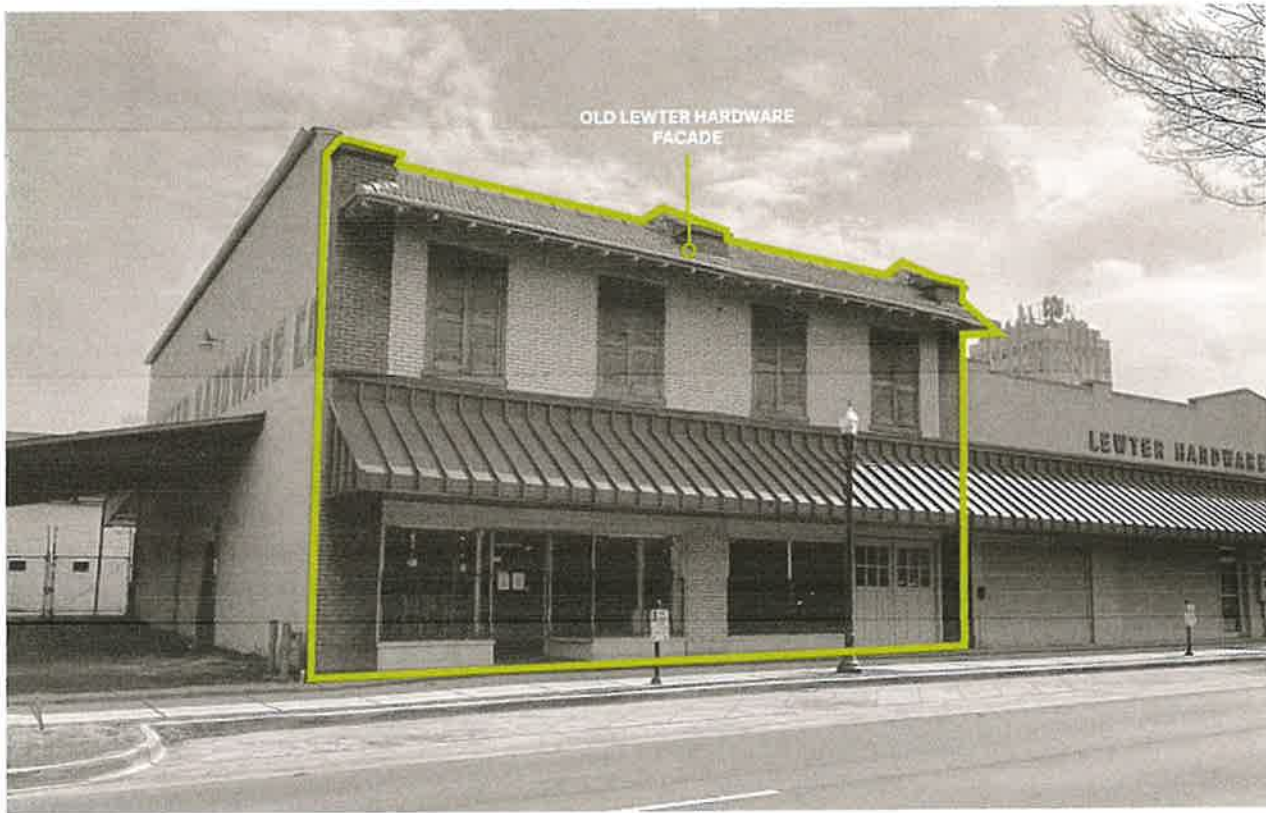


EXHIBIT C
FACADE EASEMENT SITE

LOT 15, ACCORDING TO THE FINAL PLAT OF LEWTER DISTRICT, PHASE 1, IN PLAT BOOK 2023 AT PAGE 259, IN THE OFFICE OF THE JUDGE OF PROBATE OF MADISON COUNTY, ALABAMA.