



Huntsville, Alabama

308 Fountain Circle
Huntsville, AL 35801

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 7/13/2023

File ID: TMP-3112

Department: Urban Development

Subject:

Type of Action: Approval/Action

Resolution authorizing the Mayor to enter into a Purchase and Sale Agreement between the City of Huntsville and Marathon Realty Corp.

Resolution No.

Finance Information:

Account Number: TBD

City Cost Amount: NA

Total Cost: NA

Special Circumstances:

Grant Funded: NA

Grant Title - CFDA or granting Agency: NA

Resolution #: NA

Location: (list below)

Address:

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

Additional Comments:

RESOLUTION NO. 23-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby, authorized to enter into that certain Purchase and Sale Agreement, by and between the City of Huntsville, an Alabama municipal corporation, and Marathon Realty Corp., a Virginia corporation, which said agreement is substantially in words and figures as that certain document attached hereto and identified as “Purchase and Sale Agreement between the City of Huntsville and Marathon Realty Corp.,” consisting of twenty-nine (29) pages, including Exhibits “A” through “E” and the date of July 13, 2023, appearing on the first page thereof, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document after being signed by the Mayor, shall be permanently kept on file in the Office of the City Clerk of the City of Huntsville, Alabama.

BE IT FURTHER RESOLVED the City Council of the City of Huntsville authorized the acquisition of certain property for economic development pursuant to Resolution 23-347, and a portion of thereof is being conveyed pursuant to that certain Grocery Store Development Agreement approved as Resolution 23-349.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Mayor be and he is hereby authorized to execute the Purchase and Sale Agreement, on behalf of the City of Huntsville, with such changes as the Mayor deems desirable and necessary, including the authority to assign said document, and the authority to execute any and all such documents relevant, required, and/or relating to effect, close, carry out, or complete the real estate transaction or closing contemplated therein.

ADOPTED this the 13th day of July, 2023.

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

APPROVED this this the 13th day of July, 2023.

Mayor of the City of Huntsville, Alabama

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "Agreement") is made and entered into by, between and among the **City of Huntsville**, an Alabama municipal corporation ("City" or "Seller"), and **Marathon Realty Corp.**, a Virginia corporation, or its permitted assigns ("Purchaser") effective as of this _____ day of _____, 2023 (the "Effective Date").

RECITALS:

WHEREAS, Purchaser and its affiliates construct, develop, own, and operate a chain of full-service supermarket grocery stores under the "Food City" banner throughout Georgia, Kentucky, Virginia, Tennessee, and Alabama.

WHEREAS, Purchaser desires to invest in a project involving the construction, installation, and development of six (6) Food City grocery stores (each a "Grocery Store" and collectively, the "Grocery Stores") to be constructed in two (2) phases, with three (3) Grocery Stores to be constructed in the first phase (each a "Phase I Grocery Store" and collectively, the "Phase I Grocery Stores") and three (3) Grocery Stores to be constructed in the second phase (the "Phase II Grocery Stores") (the "Project").

WHEREAS, on April 27, 2023, as evidenced by Huntsville City Council Resolution No. 23-349, Seller and Purchaser previously executed and entered into that certain Grocery Store Development Agreement ("Development Agreement"), the terms and conditions of which are hereby ratified and reaffirmed by the parties, whereby the parties agreed to perform certain construction, development, and payment obligations regarding the Project.

WHEREAS, Seller is the process of acquiring a certain parcel of real property from Tall Pines Development, Inc., Donald Bentley, Terry Bentley, and Frances B. Young (collectively, the "Bentley Family"), consisting of approximately 15.28 acres, more or less, pursuant to that certain Option to Purchase Real Estate, as evidenced by Huntsville City Council Resolution No. 23-347, attached hereto as Exhibit "A", and as further described in Exhibit "B", attached hereto, and as depicted in that preliminary boundary survey attached hereto as Exhibit "C" (the "Total Development Tract").

WHEREAS, Seller intends to acquire the Total Development Tract in order to secure it for Purchaser, who intends to purchase a portion of the Total Development Tract from Seller for the establishment, construction, use, and development of a Phase I Grocery Store.

WHEREAS, Seller intends to sell to Purchaser and Purchaser intends to purchase from Seller a portion of the Total Development Tract, consisting of approximately 10.59 acres, more or less, depicted as "Tract 1" on Exhibit "D", attached hereto, and as more particularly described in Exhibit "E", attached hereto, together with any and all structures, fixtures, and other improvements thereon and all rights, easements, interests, privileges, tenements, and hereditaments appurtenant thereto, excepting existing easements of record in favor of the Seller, which shall be reserved unto the Seller (the "Property"). The Total Development Tract, less the Property, shall be referred to herein as the "Seller's Remaining Land".

NOW THEREFORE, in consideration of Ten Dollars and No/100 (\$10.00), the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Purchaser agree as follows:

1. **Sale and Purchase.** The parties incorporate by reference the Recital clauses set forth above as if fully set forth herein. Subject to and in accordance with the terms of this Agreement, Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller, fee simple title to the Property, consisting of 10.59 acres, more or less, as depicted in Exhibit "D", attached hereto, and as more particularly described in Exhibit "E", attached hereto.

2. **Purchase Price.** The purchase price for the Property shall be TWO MILLION EIGHT HUNDRED FORTY-EIGHT THOUSAND SEVEN HUNDRED TEN AND NO/100 DOLLARS (\$2,848,710.00) (the "Purchase Price"). The Purchase Price shall be paid to Seller in cash or immediately available funds, upon delivery of the deed to Purchaser, and upon satisfaction of all Closing Conditions set forth in Section 7 below (the "Closing").

3. **Title Commitment; Survey.** The City shall provide a title commitment from Wilmer & Lee, P.A. ("Closing Agent") to issue an owner's policy of title insurance to be issued in accordance with commercially reasonable standards and insuring Purchaser with good and marketable and insurable fee simple title to the Property, free and clear of all liens, encumbrances, tenancies, covenants, conditions, restrictions, easements and other matters of record affecting title except for the Permitted Exceptions ("Title Commitment"). "Permitted Exceptions" shall mean: (i) current city, state and county ad valorem taxes not yet due and payable; (ii) easements for the installation or maintenance of public utilities servicing the Property; (iii) easements, restrictions, and setback lines of record; (iv) rights of way for public roads; (v) subdivision regulations and zoning ordinances of applicable governmental entities; and (vi) such other matters, if any, as may be acceptable to Purchaser. The City shall remove all monetary liens, if any, prior to Closing. The City, at its expense, has obtained a boundary survey of the Property prepared by Garver Engineering ("Survey"), a copy of said Survey shall be provided to Purchaser on or prior to the Effective Date.

4. **Title Insurance.** The Closing Agent shall issue an ALTA Owner's policy of title insurance in favor of Purchaser in form and substance acceptable to Purchaser ("Title Policy"). The Title Policy premium shall be paid by Purchaser at Closing. Not less than three business days before Closing, Purchaser shall advise Closing Agent of any requested endorsements and the valuation for pending improvements Purchaser desires to simultaneously insure.

5. **Investigation Activities.** The City shall use reasonable efforts to cause the Bentley Family to allow the Purchaser such access to the Property as the Purchaser requires to perform environmental, geotechnical, and other inspections, investigations, and assessments of the Property as the Purchaser deems necessary or desirable to determine the suitability of the Property for the Project (the "Investigation Activities"). Purchaser shall have sixty (60) days from the date on which Seller satisfies all of the following conditions to conduct and perform Investigation Activities or other related due diligence on the Property (the "Inspection Period"): (i) Seller acquires fee simple title to the Total Development Tract from the Bentley Family; (ii) Seller obtains approval of this Agreement by the City Council of the City of Huntsville; (iii) Seller receives preliminary approval of the Plat (defined below) from the applicable governmental

agencies; and (iv) Seller obtains C4 zoning approval to allow for Purchaser's intended use of the Property as a Grocery Store. Purchaser shall not have the right to conduct invasive testing of the Property without Seller's and the Bentley Family's express written consent to a specific proposal with said consent not to be unreasonably withheld, conditioned, or delayed. Purchaser shall indemnify and hold harmless Seller from and against any and all expenses, claims, or losses arising from or in connection with any activities of Purchaser, its officers, agents, employees, or contractors on the Property prior to Closing, including without limitation, any attorney's fees or court costs occasioned by such claims. Upon completion of all Investigation Activities, Purchaser shall deliver written notice to the City specifying that Purchaser has completed all Investigation Activities and other due diligence it deemed necessary and desirable respecting the Property, and requesting the City proceed with the purchase of the Total Development Tract, and expressing Purchaser's desire to proceed with the purchase and acquisition of the Property from the City ("Inspection Notice"). The Inspection Notice shall be given in accordance with Section 15 below. In the event such Inspection Notice is not provided by Purchaser prior to the end of the Inspection Period, then this Agreement shall automatically terminate and be of no other force and effect except with respect to the indemnification obligations set forth in this Section which shall survive termination of this Agreement.

6. Closing. Closing shall occur on or within thirty (30) days following the expiration of the Inspection Period, or at such other date and time as is mutually agreed upon by the parties (the "Closing Date"). Closing shall occur at the offices of Closing Agent. The parties may deliver any documents or closing funds as required herein on or before the Closing Date, such that neither party will be required to be physically present at Closing. Possession of the Property shall be provided to Purchaser at Closing.

(a) On or before Closing, Seller shall deliver the following items to Closing Agent, properly executed and notarized and in form and substance acceptable to Purchaser:

(i) A statutory warranty deed conveying good and marketable fee simple title to the Property to Purchaser subject only to the Permitted Exceptions (the "Deed").

(ii) Recorded or recordable releases terminating and releasing all monetary liens, if any.

(iii) A seller's/owner's title affidavit and any other documents, certificates and agreements that the Closing Agent and/or title company may reasonably require to issue an updated title commitment or owner's title policy.

(iv) A closing statement mutually agreed to by the parties, validly executed and delivered by Seller.

(v) All other documents reasonably requested by the Title Company to carry out the transaction contemplated by this Agreement, including, but not limited to, (A) an affidavit of Non-Foreign Status of Seller, (B) formation documents, certifications, resolutions, brokers affidavits and other reasonable and customary documents establishing that Seller is duly authorized and empowered to enter into this Agreement and perform its obligations hereunder, and (C) such additional assignments, instruments and documents executed and delivered by Seller as

may be reasonably necessary to complete the transfer of the Property, to clear title, and/or to otherwise carry out the intent and purposes of this Agreement.

(b) On or before Closing, Purchaser shall deliver to Closing Agent the following:

(i) The Purchase Price and any additional amounts required to cover any Closing Costs.

(ii) A closing statement mutually agreed to by the parties, validly executed and delivered by Purchaser.

(iii) Such other documents, such as customary affidavits or company agreements and/or written consents, as may be reasonably requested by Closing Agent or its Title Company to close on the Property and/or in accordance with the terms of this Agreement.

7. Closing Conditions. Closing shall be contingent upon the following conditions being satisfied on or before the Closing Date ("Closing Conditions"):

(a) Acquisition of Total Development Tract. Seller acquiring fee simple title to the Total Development Tract from the Bentley Family.

(b) Performance of Obligations. Each party's obligation to close shall be conditioned on the other party's performance of all agreements, covenants and obligations of such party arising under this Agreement.

(c) Approval by City Council. Approval of this Agreement by the City Council of the City of Huntsville.

(d) Rezoning. The City shall have the Property rezoned to C4 to allow for Purchaser's intended use of the Property as a Grocery Store.

In the event all of the Closing Conditions set forth above have not occurred on or before the Closing Date, then this Agreement shall automatically terminate and be of no further force and effect without any liability of any party hereto to the other except with respect to any obligations that expressly survive termination of this Agreement.

8. Property Taxes. All ad valorem or property taxes on the Property shall be prorated as of the Closing Date, such that Seller shall be responsible for any ad valorem taxes due up to and through the Closing Date, and Purchaser shall be responsible for all ad valorem taxes due after the Closing Date. If the Property has not assessed separately from the Total Development Tract by the date that tax statements are issued, Purchaser will pay the taxes for the entire tract and shall bill Seller for its pro-rationed portion based on the respective size of the parcels.

9. Closing Costs. All closing costs ("Closing Costs") shall be paid as follows: (a) Seller shall pay for all Title Commitment and Survey costs, any fee charged by the Closing Agent, and for preparation of the Deed by the Closing Agent, and (b) Purchaser shall pay for the Title Policy and any requested endorsements, all transfer taxes, recording charges and other costs associated

therewith. Each party shall be responsible for their own attorney's fees and other related transactional expenses incurred in connection with Closing or the transaction contemplated herein.

10. Permitting and Approvals. Purchaser, its agents, employees and contractors, will use commercially reasonable efforts to obtain all necessary licenses, permits, and certificates that are required to construct, own, operate, and maintain the Property. Accordingly, Seller shall work in good faith to assist Purchaser in Purchaser's application for and obtaining of all applicable permits, licenses, certificates, or approvals required in connection with Purchaser's intended use of the Property. However, Purchaser acknowledges and agrees that Seller is in no way waiving or disclaiming, nor should this provision be construed as a waiver of, any applicable City licensing, permitting, zoning, design guidelines, or building code requirements. This Section shall survive Closing.

11. Final Subdivision Plat. The parties shall work in good faith with one another to have the Property subdivided into a lot consisting of approximately 10.59 acres and platted in accordance with the City's subdivision regulations (the "Plat"). Prior to commencement of construction, the Plat shall be recorded by Purchaser, at Purchaser's expense, in the Office of the Judge of Probate of Madison County, Alabama.

12. Declaration of Easements, Covenants and Restrictions. At Closing, Seller agrees to execute and record a document titled "Declaration of Easements, Covenants, and Restrictions" or name similar thereto in a form reasonably acceptable to Purchaser, which shall address issues including, but not limited to (the "DECR"):

(a) Any necessary easements or cross easements for utilities, stormwater drainage, detention facilities, access, and ingress and egress on Seller's Remaining Land.

(b) Seller's Restrictive Covenant described in Section 13 and other prohibited use restrictions to encumber Seller's Remaining Land.

(c) Covenants allowing for a tie in between the Property and Seller's Remaining Land providing for free flow of traffic along and through said boundary (but not including a cross parking easement) for ingress and egress to, from and between the Property, Seller's Remaining Land, and public rights-of-way.

(d) Covenants regarding building height restrictions on certain portions of Seller's Remaining Land.

In the event the parties have not been able to negotiate a final DECR on or before the expiration of the Inspection Period, Purchaser may terminate this Agreement at any time on or within fifteen (15) days after the expiration of the Inspection Period by providing written notice to Seller, and neither party will have any further liability to the other, except as expressly otherwise set forth herein. In the event the final DECR is not finalized prior to the expiration of the Inspection Period and Purchaser has not terminated this Agreement on or within fifteen (15) days following the expiration thereof, then the parties shall continue to work together in good faith to negotiate the final DECR on or prior to Closing.

Further, Seller agrees to cause the Bentley Family to be parties to and countersign the DECR in order to encumber any remaining property owned by the Bentley Family that is adjacent to or near the Seller's Remaining Land prohibiting its development and/or use as a grocery store.

13. **Seller's Restrictive Covenants.** Seller agrees to execute a restrictive covenant in a form acceptable to Purchaser ("Seller's Restrictive Covenant") against Seller's Remaining Land prohibiting the development or use of Seller's Remaining Land to be used for the sale of grocery, meat, produce, dairy, bakery products, deli products, seafood, frozen foods, hot and cold coffee, espresso drinks, floral products, any other grocery products typically sold by K-VA-T Food Stores, Inc. in its Food City supermarket operations, prescription drugs, automotive fueling products, or any of them. Seller further covenants and agrees not to permit or suffer Seller's Remaining Land to be used for or occupied by any business dealing in or which shall keep in stock or sell for off-premises consumption any staple or groceries, meats, produce, dairy, bakery products, deli products, seafood, or frozen foods. Neither shall Seller or any affiliate or subsidiary thereof sell or otherwise convey any such portion of the Seller's Remaining Land without imposing thereon a restriction to secure compliance with the aforementioned restrictive covenants. Notwithstanding the foregoing, Seller's Restrictive Covenant shall not preclude Seller from selling or leasing Seller's Remaining Land for restaurant use. All of the aforementioned restrictive covenants shall be contained in the DECR and such other documents executed by Seller that Purchaser deems reasonably necessary to provide notice of Seller's Restrictive Covenant. Purchaser shall pay for the cost to record the DECR in the Probate Records of Madison County, Alabama.

14. **Governing Law.** The terms and conditions of this Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of Alabama without regard to its conflict of law provisions.

15. **Entire Agreement.** This Agreement, together with the Development Agreement, contains the entire agreement between the parties. No promise, representation, warranty or covenant not included in this Agreement and/or the Development Agreement has been or is being relied upon by either party. Each party has relied upon its own examination of this Agreement and the provisions, warranties, representations and covenants expressly contained herein.

16. **Successors and Assigns.** All rights and obligations of the parties under this Agreement shall inure the benefit of and be binding upon all successors and assigns of each party.

17. **Notice.** All notices shall be in writing and may be delivered by any of the following methods: (i) hand delivery, (ii) certified United States Mail or nationally-recognized overnight delivery service (such as, FedEx or UPS), or (iii) email transmission. Notices shall be deemed received, (i) if delivered by hand, on the date of delivery, (ii) if delivered by U.S. Mail or overnight delivery service, on the date the same is deposited with the applicable carrier, or (iii) if delivered by email on the date the transmission is sent. Notices shall be addressed as follows:

If to Seller:	The City of Huntsville
	Attn: Shane Davis
	320 Fountain Circle
	Huntsville, AL 35801
	Ph: (256) 427-5300

Email: shane.davis@huntsvilleal.gov

With a copy to: Samuel H. Givhan & Katie Beasley
Wilmer & Lee, PA
100 Washington Street
Huntsville, Alabama 35801
Ph: (256)533-0202
Email: sgivhan@wilmerlee.com
kbeasley@wilmerlee.com

If to Purchaser: Marathon Realty Corp.
Attn: Stephen D. Spangler
1 Food City Circle
Abingdon, VA 24210
Ph: 276-623-5100 ext. 5749
Email: spanglers@foodcity.com

With a copy to: K-VA-T Food Stores, Inc.
Attn: Real Estate Department
1 Food City Circle
Abingdon, VA 24210
Ph: 276-623-5100 ext. 5813
Email: flemingl@foodcity.com

18. Seller's Representations and Warranties. Seller makes the following representations and warranties:

(a) The City has full right and authority to enter this Agreement and to perform all obligations of Seller, and the City, by action of its governing body, has duly authorized the execution, delivery, and performance of this Agreement.

(b) The execution, delivery, and performance of this Agreement by Seller does not and will not result in any violation of, conflict with, or constitute a default under, any agreement, mortgage, ordinance, resolution, indenture, or other instrument to which the City or the Property are subject.

(c) There is not now pending nor, to the actual knowledge of the City, threatened, any litigation, proceeding, or investigation affecting the City which questions (i) the validity or organization of the City, (ii) the members, title or positions of the members of the City Council of the City of Huntsville or the manner in which the City's offers are selected, or (iii) the subject matter of this Agreement.

19. Purchaser's Representations and Warranties. Purchaser hereby makes the following representations and warranties:

(a) Purchaser is a duly organized and validly existing corporation under the laws of the Commonwealth of Virginia, duly authorized to conduct business in the State of Alabama, and Purchaser has duly authorized the execution, delivery, and performance of this Agreement.

(b) Neither the execution and delivery of this Agreement, nor the performance hereof, by Purchaser requires and consent of, filing with or approval of, or notice to, or hearing with any person, company, or entity (including, but not limited to, any governmental or quasi-governmental entity), except for such consents, filings, notices and hearings described herein, or already held or maintained.

(c) Neither the authorization, execution and delivery of, nor the performance of, this Agreement by Purchaser, violates, constitutes default, or a breach of (i) Purchaser's certificate of formation, articles of incorporation, or other organization documents of Purchaser, (ii) any agreement, instrument, contract, mortgage, or indenture to which Purchaser is a party, or to which Purchaser or its assets are subject, or (iii) any judgment, decree, order, ordinance, regulation, consent or resolution applicable to Purchaser or any of its properties or assets.

(d) There is not now pending nor to the knowledge of Purchaser, threatened, any litigation, proceeding, claim, or investigation affecting Purchaser which questions the validity or organization of Purchaser, or any of the representations and warranties of Purchaser contained herein.

20. Condition of Property. Purchaser understands, acknowledges and agrees that the City is acquiring the Property as a conduit and without ownership of the same for any material amount of time prior to conveyance to Purchaser, and that Purchaser is conducting its own due diligence and other inquiries and inspections respecting the nature, condition and suitability of the Property for the Project. Furthermore, the City makes no representations or warranties, and shall have no liability to Purchaser or any of its Affiliates or assigns whatsoever, regarding the Property, including but not limited to, (i) the Property's nature or condition, (ii) the existence and/or absence of any substances or other deleterious elements or conditions on the Property, (iii) the suitability of the Property for the Project or (iv) the habitability, merchantability, marketability, profitability, or fitness for a particular purpose of the Property. Purchaser further acknowledges and agrees that to the maximum extent permitted by law, the sale of the Property as provided for herein is made on an "AS IS" condition.

21. Survival. Any terms and covenants contained in this Agreement which require the performance of any party after the Closing shall survive the Closing and delivery of the Deed.

22. Amendment. This Agreement may only be amended by a written instrument executed by both parties.

23. Assignment. Purchaser may assign its rights and obligations under this Agreement to any related entity or company controlled by or sharing common control or ownership with Purchaser (an "Affiliate Entity") or otherwise made as a result of any restructure, consolidation, merger, or reorganization of Purchaser in which Purchaser or the Affiliate Entity is the surviving entity without the consent of Seller. In the event of an Assignment, Purchaser shall provide the Closing Agent with notice of the Assignment, including the name, form of entity, address, and

current contact information of the Affiliate Entity, along with any related entity or company documents of said Affiliate Entity as may be requested by the Closing Agent. Prior to Closing, the City and/or Closing Agent may require Purchaser and Affiliate Entity to execute and acknowledge a formal assignment document in a form reasonably acceptable to Closing Agent.

24. Effective Date. The Effective Date shall mean the date this Agreement has been executed by the City.

25. Party Cooperation. The parties agree to cooperate with one another and will work in good faith and will use their commercially reasonable best efforts in order to complete each of their respective obligations as set forth herein and in accordance with the terms of the Development Agreement.

26. Counterparts. This Agreement may be executed in one or more counterparts, each of which is an original, and all of which constitute one agreement between the parties. Documents executed, scanned and transmitted electronically, and electronic signatures shall be deemed original signatures for purposes of this Agreement and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures. Notwithstanding the preceding sentence, the parties agree that they will transmit their original signature pages to the Closing Agent promptly after execution.

27. Real Estate Commissions. Seller and Purchaser each represent and warrant to one another that they, respectively, have not consulted with any broker or finder in connection herewith and no broker, finder or other agent is entitled to any fee or commission with respect to or by reason of this transaction. Seller and Purchaser each agree to indemnify and hold the other harmless from and against any and all loss, cost, damage, claim, expense (including attorneys' fees) incurred by or assessed against the other as a result of a breach of the respective foregoing covenants and representations made by each of them.

28. Attorneys' Fees. If any legal proceeding is commenced related to this Agreement, the prevailing party in such legal proceeding shall be entitled to recover its reasonable attorneys' fees, court costs, and litigation expenses from the non-prevailing party therein.

29. Further Assurances. At Closing Agent's request, the parties shall execute and deliver any additional documents reasonably required to carry out the transaction contemplated herein or to correct any scrivener's error or omissions contained in this Agreement or any document executed pursuant hereto or in connection with the transaction contemplated herein.

30. Counsel Acknowledgment. The parties acknowledge that Seller's counsel, Samuel H. Givhan and Katherine Amos Beasley, of the law firm of Wilmer & Lee, P.A. (collectively, "Counsel") prepared this Agreement on behalf of and in the course of their representation of Seller and, for purposes of this transaction, Counsel represents Seller's interest and no other. All conflicts of interest in connection with Counsel's representation of Seller, if any, are hereby waived.

31. No Partnership or Joint Venture. Nothing contained in this Agreement shall constitute or be construed to be a partnership or joint venture among or between Seller and Purchaser, and/or their respective successors and assigns.

32. No Third-Party Beneficiaries. This Agreement is intended only for the benefit of the parties hereto, and neither this Agreement, nor any of the rights, interests, obligations, or commitments hereunder, is intended for the benefit of any other person, entity, or third party.

33. Arm's Length Transaction. Seller and Purchaser acknowledge and agree that this Agreement shall be interpreted as an agreement between two parties of equal bargaining strength, it being the intention of the parties that this Agreement reflect the conditions and terms which would be obtained by and between comparable, independent persons or parties in substantially similar transactions (taking into account the relative responsibilities and risks between the parties) and comparable market and economic conditions and circumstances.

34. Sale Contingent on Acquisition of Total Development Tract. Purchaser acknowledges that (i) Seller does not own the Property as of the date of this Agreement, (ii) Seller has entered into an Option to Purchase Real Estate with the Bentley Family for the purpose of acquiring the Total Development Tract, (iii) Seller contemplates acquiring the all of the Total Development Tract (including the Property) prior to and/or simultaneously with the Closing and (iv) Seller is attempting to acquire the Total Development Tract as an accommodation to Purchaser in order to facilitate Purchaser's acquisition of the Property. In the event that, for any reason, Seller does not acquire the Total Development Tract on or before the Closing Date, then this Agreement shall terminate and be of no further force and effect without any liability of any party hereto to the other (except with respect to obligations that expressly survive termination of this Agreement).

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the dates set forth below.

[Signatures appearing on the following pages.]

[Seller's Signature Page to Purchase and Sale Agreement.]

SELLER:

City of Huntsville, an Alabama municipal
corporation

By: _____
Tommy Battle, Mayor

ATTESTED TO:


By: _____
Shaundrika Edwards, City Clerk

Date: _____

[Purchaser's Signature Page to Purchase and Sale Agreement.]

PURCHASER:

Marathon Realty Corp., a Virginia corporation

By: 
Name: Stephen D. Spangler
Title: President

WITNESSED:

By: 
Name: Shane E. Robertson

Date: 6-29-23

Exhibit "A"

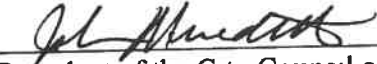
(Attach Copy of Resolution No. 23-347 – Option to Purchase Real Estate)

RESOLUTION NO. 23-347

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby, authorized to enter into that certain Option to Purchase Real Estate, by and between the City of Huntsville, an Alabama municipal corporation, as Purchaser, and Tall Pines Development, Inc., James T. Young, Frances B. Young, Terry Bentley, Louise Bentley, and Donald E. Bentley, as Sellers, which said agreement is substantially in words and figures as that certain document attached hereto and identified as "Option to Purchase Real Estate between the City of Huntsville and Tall Pines Development, Inc., James T. Young, Frances B. Young, Terry Bentley, Louise Bentley, and Donald E. Bentley," consisting of eleven (11) pages, including Exhibit "A" and the date of April 27, 2023, appearing on the first page thereof, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document after being signed by the Mayor, shall be permanently kept on file in the Office of the City Clerk of the City of Huntsville, Alabama.

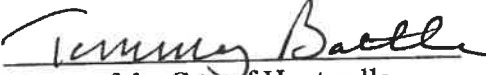
NOW, THEREFORE, BE IT FURTHER RESOLVED that the Mayor be and he is hereby authorized to execute the Option to Purchase Real Estate, on behalf of the City of Huntsville, with such changes as the Mayor deems desirable and necessary, including the authority to exercise the option and to execute any and all such documents relevant, required, and/or relating to effect, close, carry out, or complete the real estate transaction and/or closing contemplated therein.

ADOPTED this the 27th day of April, 2023



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

APPROVED this the 27th day of April, 2023



Mayor of the City of Huntsville,
Alabama

OPTION TO PURCHASE REAL ESTATE

This OPTION TO PURCHASE REAL ESTATE (this "Agreement") is made and entered into as of the 27th day of April, 2023 (the "Effective Date"), by and between the **CITY OF HUNTSVILLE**, an Alabama municipal corporation, and its assigns (the "City" or "Purchaser"), and **TALL PINES DEVELOPMENT, INC.**, an Alabama corporation, **FRANCES B. YOUNG, TERRY BENTLEY, LOUISE BENTLEY** and **DONALD E. BENTLEY** (collectively referred to as "Owner" or "Seller")


WHEREAS Seller is the owner of certain parcels of real property, located off of the east side of North Memorial Parkway (US 231) and lying in Huntsville, Madison County, Alabama, consisting of approximately 60 71 acres, more or less, identified by Madison County Tax Assessor records as PPINs 47643, 163010, and 163011 ("Owner's Property")

WHEREAS, the City desires to obtain from Owner an exclusive option to purchase a portion of Owner's Property, being comprised of all of PPIN 136010 and 163011 and a portion of PPIN 47643, and consisting of approximately 18 acres, more or less, as more particularly shown in green on that preliminary drawing contained in Exhibit "A" attached hereto, together with all improvements thereon and all appurtenances, easements, rights of way, water and water rights (including but not limited to wells, canals, and reservoirs), pumps, pipes, flumes and ditches and ditch rights, water stock, ditch and/or reservoir stock or interests, royalties, development rights and credits, air rights, minerals of every kind, mineral rights, oil rights, and gas rights, and any fixtures or evidence related thereto, whether now or later used or useful in connection with, appurtenant to or related thereto, whether appropriated or unappropriated, tributary or non-tributary, and decreed or undecreed (the "Property")

NOW THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties agree as follows

1 Option. For and in consideration of Ten Thousand and 00/100 Dollars (\$10,000 00) and other good and valuable consideration in hand paid to the Owner ("Option Fee"), the receipt and sufficiency of which are hereby acknowledged by the Owner, the Owner hereby grants to Purchaser an exclusive right and option (the "Option") to purchase the Property, from time to time, at the purchase price and on the terms and conditions hereinafter set forth. The Option Fee is non-refundable except in the event of Owner Default. The Option Fee shall be paid to Owner on or within seven (7) business days of the Effective Date

2 Purchase Price. The purchase price for the Property shall be TWO HUNDRED SIXTY-NINE THOUSAND AND 00/100 DOLLARS (\$269,000 00) per acre, excluding any portion of the Property lying within rights-of-way for railroads or any public roads, public streets or public alleys (the "Acreage Price"). The Property's acreage shall be determined by the Survey referenced below in Section 7 and shall be calculated to the nearest thousandth of an acre. The total purchase price shall be determined by multiplying the acreage established in the Survey by the Acreage Price (the "Purchase Price"). The Purchase Price shall be paid by Purchaser to Owner in cash or other immediately available funds upon the delivery of the Deed to the Property and upon satisfaction of all other closing conditions set forth in this Agreement.


President of the City Council of the
City of Huntsville, Alabama
Date: April 27, 2023

3 Option Term. The term of the Option herein granted is for a period of sixty days (60) days commencing on the Effective Date and expiring at midnight sixty (60) days thereafter (the "Option Term") If the Option is not exercised or extended in writing prior to its expiration, this Option shall automatically and without notice expire and the Option Fee shall be retained by Owner, and neither party shall have any further liability or obligation hereunder

4 Inspection Period Commencing on the Effective Date and ending sixty (60) days thereafter (the "Inspection Period"), Purchaser and its agents are hereby granted the right to enter onto, over, through, across and from the Property from time to time for the purpose of making any general inspections, explorations, tests and surveys as the Purchaser may desire, or for the purpose of engaging in any other general property evaluation and assessment activities which Purchaser deems appropriate, including, without limitation, surveys, soil borings, soil tests, subsurface drillings, subsurface condition evaluations, and environmental inspections or testing or other due diligence (collectively, referred to as the "Reports") All such investigations, testing and evaluations shall be undertaken only after Purchaser has provided reasonable notice of such to Owner and shall be performed by Purchaser or its agents at Purchaser's sole cost and expense. In the event Purchaser does not elect to exercise the Option prior to the expiration of the Option Term, Purchaser, at its cost, shall restore the Property to substantially the same condition as existed prior to such testing. Additionally, Purchaser shall be responsible for obtaining any necessary licenses, permits, or governmental approvals required by its inspections, if any, and all costs associated therewith In the event Purchaser does not provide written notice to Seller of its desire to exercise its Option and proceed to Closing prior to the end of the Inspection Period, then this Agreement shall automatically terminate and shall be null and void and any Option Fee shall be retained by Seller Notwithstanding the foregoing, Purchaser, may at any time prior to the expiration of the Inspection Period, upon written notice to Seller, exercise its Option and proceed to Closing.

5 Exercise of Option. Notice of election by Purchaser to exercise the Option shall be delivered to Owner in accordance with the Notice provision provided in Section 23 below

6 No Obligation to Purchase. Nothing in this Agreement is intended or shall operate to require Purchaser to purchase the Property from Owner

7 Preliminary Title Commitment; Survey. Purchaser shall obtain a title commitment to issue an owner's policy of insurance from Wilmer & Lee, P.A ("Title Commitment"), with the owner's title policy premium to be paid by Purchaser at Closing, to be issued in accordance with commercially reasonable standards and insuring Purchaser with fee simple, good and marketable title to the Property, free and clear of all liens, encumbrances, tenancies, covenants, conditions, restrictions, rights-of-way, easements and other matters of record, except for the Permitted Exceptions "Permitted Exceptions" shall mean (i) ad valorem taxes for the current year not yet due and payable, (ii) easements for the installation or maintenance of public utilities servicing the Property, (iii) easements, restrictions, rights-of-way setback lines, or restrictive covenants of record that do not materially affect Purchaser's intended use of the Property, (iv) any matters shown on the Title Commitment or Survey (defined herein), or (v) such other matters, if any, as may be acceptable to Purchaser Purchaser,

at its expense, shall obtain a boundary survey of the Property prepared by a reputable registered public land surveyor licensed by the State of Alabama, containing a metes and bounds description of the Property (the "Survey"). The Property shall be conveyed by Owner to Purchaser free and clear of any and all liens, except for the Permitted Exceptions

8 Closing. The purchase and sale of the Property and the transaction shall be closed ("Closing") at the law offices of Wilmer & Lee, P.A., located at 100 Washington Street, Huntsville, Alabama 35801 ("Closing Agent"), on or within thirty (30) days after Purchaser's exercise of the Option, or at such date and time as may be mutually agreed upon by the parties (the "Closing Date"). Provided, however, if there are any encumbrances or liens that remain in effect or unsatisfied, or title is otherwise not acceptable to Purchaser, the sale shall be closed within thirty (30) days after title is made acceptable to Purchaser. The parties may deliver all closing documents and deposit all closing funds with Closing Agent on or prior to the Closing Date, such that neither party shall be required to be physically present at Closing. Owner shall deliver the following items to Closing Agent at Closing.

- a. General warranty deed conveying good and marketable fee simple title in the Property to Purchaser subject only to the Permitted Exceptions (the "Deed"),
- b. Recorded or recordable releases terminating or releasing all monetary liens, if any;
- c. An owner's affidavit, and any instrument, such as a corrective or quitclaim deed, company/trust certificate, or scrivener's or heirship affidavit, or similar document necessary to clear title, that the title company or Closing Agent may require to issue an updated title commitment and an owner's policy, including, if necessary, a quitclaim deed to the Property using the legal description obtained from the Survey, if any; and
- d. All other documents reasonably requested by Closing Agent or Purchaser necessary to carry out the transaction contemplated by this Agreement, including but not limited to, mandatory IRS or tax disclosures, a settlement statement, any corporate or company documents, certifications, or resolutions, broker's affidavits, and other customary documents establishing Owner is duly authorized and empowered to enter into this Agreement and/or to perform its obligations hereunder

9 Contingencies. This Agreement shall be contingent upon review and approval by the City Council of the City of Huntsville ("City Council").

10 Taxes. Ad valorem taxes on the Property shall be prorated as of the date of the delivery of the Deed such that Owner will be responsible for any taxes due on the Property up to the Closing Date and Purchaser will be responsible for any taxes on the Property after the Closing Date. Any rollback taxes will be paid by Purchaser.

11 Condition of Property. Purchaser is responsible for its own inspection and examination of the Property and any improvements thereon. Notwithstanding the foregoing, Owner agrees that nothing will be done to the Property which would reduce the value of the

Property, or cause Purchaser to incur additional costs of developing the Property. Should Purchaser exercise its option, Owner agrees to convey the Property to Purchaser in substantially the same condition as on the date hereof.

12 Closing Costs. The cost to prepare the Deed, deed and transfer taxes, recording fees, title insurance fees or premiums, and all other closing costs, except for Owner's attorney's fees, shall be paid by Purchaser at Closing.

13 Owner's Default. In the event Owner fails to perform any provision of this Agreement, Purchaser may elect either of the following remedies, individually or cumulatively, or may elect to assert such other remedies as are available in equity or at law:

a. Purchaser may declare Owner in default and proceed against Owner for recovery of all damages incurred by Purchaser as a result of Owner's breach, including the refund of the Option Fee, and

b. Purchaser may reaffirm this Agreement and proceed against Owner for specific performance thereof.

14 Purchaser's Default. In the event Purchaser fails to purchase the Property after exercising the Option, Owner's remedy shall be payment by Purchaser of Ten Thousand and 00/100 Dollars (\$10,000.00) in liquidated damages. The parties acknowledge that Owner's damages in the event Purchaser does not close are difficult to ascertain, but that \$10,000.00 is deemed to be a reasonable estimate of such damages and does not constitute a penalty.

15 Assignment. Purchaser shall have the right to assign this Option or any of its rights and responsibilities hereunder at any time without the consent of Owner; and from and after the date of such assignment, the term Purchaser, as used herein shall, mean and include such assignee. Purchaser shall notify Owner in writing of any assignment and shall provide the name and contact information of the assignee.

16 Authority. Owner represents and warrants, to and for the benefit of Purchaser, that Owner has the authority to convey the Property in accordance with the terms of this Agreement and the individual(s) signing this Agreement and all documents executed or to be executed by Owner are and shall be duly authorized to sign on behalf of Owner.

17 No Grant of Additional Encumbrances. During the term of this Agreement, Owner shall not (a) sell, lease, transfer or encumber in any manner any portion of the Property, (b) grant or extend the term of any leases, crop agreements or hunting licenses without the express, written approval of Purchaser, or (c) cut or remove or sell the right to cut, remove or divert any timber, mineral deposits, soil, dirt, water or any other natural resources from or on the Property. During the term of this Option, Owner shall maintain the Property and all improvements on the Property in substantially the same condition that existed on the date of this Agreement.

18 Broker's Fees. Seller and Purchaser acknowledge that no broker and/or finder arranged the sale of the Property on the terms and conditions contained herein other than the following Russ Russell of Russ Russell Commercial Real Estate, Inc ("Broker"), whose respective commissions and/or broker's fee, shall be payable by Seller at Closing. Seller and Purchaser do hereby agree to indemnify each other from all loss, damage, cost or expense, including attorney's fees, that they may suffer as a result of any claim or action brought by any other broker or realtor, acting on behalf of Seller or Purchaser, respectively

19 Attorney's Fees In the event either party initiates any lawsuit, litigation, or legal action regarding the terms of this Agreement or the Property, the prevailing party shall be entitled to collect reasonable attorney's fees and court costs

20 Governing Law. The terms and conditions of this Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of Alabama, without regard to Alabama's conflict of law provisions

21 Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the transactions provided for herein, and the parties hereto agree that no other representations have been relied on by either party

22 Successors and Assigns. This Agreement shall be binding upon the heirs, personal representatives, successors and assigns of Owner, and shall inure to benefit of the successors and assigns of Purchaser

23 Notice. All notices shall be property given only if made in writing and sent to the addresses set forth below and provided by any of the following methods (i) hand delivery, (ii) U S Mail or other nationally recognized delivery service (such as FedEx or UPS), or (iii) electronic transmission, such as through email, PDF, JPEG, or other similar electronic means. Such notices shall be deemed received if (i) delivered by hand, on the date of delivery, (ii) sent by U S Mail or national delivery service, on the date deposited with the applicable carrier, or (iii) delivered by electronic transmission, on the date the transmission is sent. Notice shall be provided to the following

To Owner' Tall Pines Development, Inc
Attn Don Bentley
236 Countess Road
Huntsville, AL 35811
Phone 256-527-2268
Email bentleyauto@att.net

With a copy to Russ Russell Commercial Real Estate, Inc
Attn Russ Russell
923 Merchants Walk, Suite C
Huntsville, Alabama 35801
Phone 256-536-7777
Email russrussellalabama@gmail.com
russ@russrussell.com

To City City of Huntsville
 Attn: Shane Davis
 320 Fountain Circle
 Huntsville, Alabama 35801
 Phone: 256-427-5100
 Email: shane.davis@huntsvilleal.gov

To Closing Agent Wilmer & Lee, P.A.
 Attn: Sam Givhan & Katie Beasley
 100 Washington Street
 Huntsville, Alabama 35801
 Phone: 256-533-0202
 Email: sgivhan@wilmerlee.com
 kbeasley@wilmerlee.com

A party may change its address and related contact information by providing the other parties with seven (7) days' prior written notice of such new address and contact information.

24 Survival. Any terms and covenants contained in this Agreement which require the performance of either party after the Closing shall survive the closing and delivery of the deed.

25 Email, Facsimile, or Electronic Signatures. The parties agree that this document may be executed and the signatures transmitted to the other parties by facsimile, email or other similar electronic transmission. Images of handwritten or manually executed signatures transmitted by facsimile, email or similar electronic transmission (such as through "pdf" "tif" or "jpg") as well as any electronic signatures (including, without limitation, DocuSign and AdobeSign, or similar electronic signature service), shall be valid and effective to bind the party so signed and shall be valid and effective for all purposes. Upon transmission and receipt by another party, such signature shall be effective as an original. Notwithstanding the preceding sentence, the parties agree that they will transmit original signature pages to the Closing Agent promptly after execution if required and requested by the Closing Agent. Seller understands that City Council requires an original signature page before this Agreement can be placed on an agenda for City Council consideration.

26 Execution by Counterpart Originals. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

27 Effective Date. The Effective Date shall be the date this Agreement has been signed by the City.

28 Cooperation and Further Assurances. The parties agree to cooperate with one another and will work in good faith and will use their reasonable best efforts to complete their respective obligations hereunder. At Purchaser's request, Owner shall execute and deliver any additional documents reasonably required to carry out the transaction contemplated by this Agreement or to correct any scrivener's error contained in this Agreement or any other document.

executed pursuant hereto or in connection with the transaction contemplated herein. Additionally, Owner agrees to cooperate and assist Purchaser in curing any title defects affecting and/or encumbering the Property.

29 Counsel Acknowledgment. The parties all acknowledge that Purchaser's counsel, SAMUEL H GIVHAN and KATHERINE AMOS BEASLEY, of the law firm of Wilmer & Lee, P.A. (collectively "Counsel") prepared this Agreement on behalf of and in the course of its representation of Purchaser and, for the purposes of this transaction, Counsel represents Purchaser's interest and no other interests. All conflicts of interest due to Counsel's representation of Purchaser are hereby waived.

30 1031 Exchange. Seller shall have the option to structure this transaction as a deferred like-kind exchange pursuant to Section 1031 of the Internal Revenue Code. In the event Seller decides to structure the transaction as a 1031 exchange, Purchaser agrees to cooperate in effecting the exchange in accordance with Section 1031 of the Internal Revenue Code and agrees to execute any documents that may be reasonably necessary to effect the exchange. Seller shall bear all additional costs incurred in connection with the 1031 exchange. Nothing in this section shall interfere with Purchaser's right to close on the Property in accordance with the terms of this Agreement or otherwise delay the Closing.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the dates set forth below:

[Signatures and acknowledgments appearing on the following pages]

[Owner Signature Page to Option to Purchase Real Estate]

OWNER.

TALL PINES DEVELOPMENT, INC., an
Alabama corporation

By Frances B. Young
Name FRANCES B. YOUNG
Its President

Witnessed

By Tallon Ann Bentley

Date 04-24-2023

By Frances B. Young
FRANCES B. YOUNG

Witnessed

By Tallon Ann Bentley

Date 04-24-2023

By Terry Bentley
TERRY BENTLEY

Witnessed

By Tallon Ann Bentley

Date 4-24-2023

[Owner Signatures Continuing on the following page]

[Owner Signature Page to Option to Purchase Real Estate continued.]

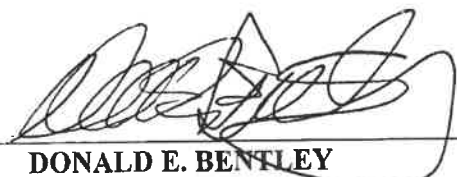
OWNER.

By 
LOUISE BENTLEY

Witnessed

By 

Date 4-24-2023

By 
DONALD E. BENTLEY

Witnessed

By 

Date 4-24-2023

[Purchaser Signature Page to Option to Purchase Real Estate]

PURCHASER.

CITY OF HUNTSVILLE, an Alabama municipal corporation

By Tommy Battle
Tommy Battle, Mayor

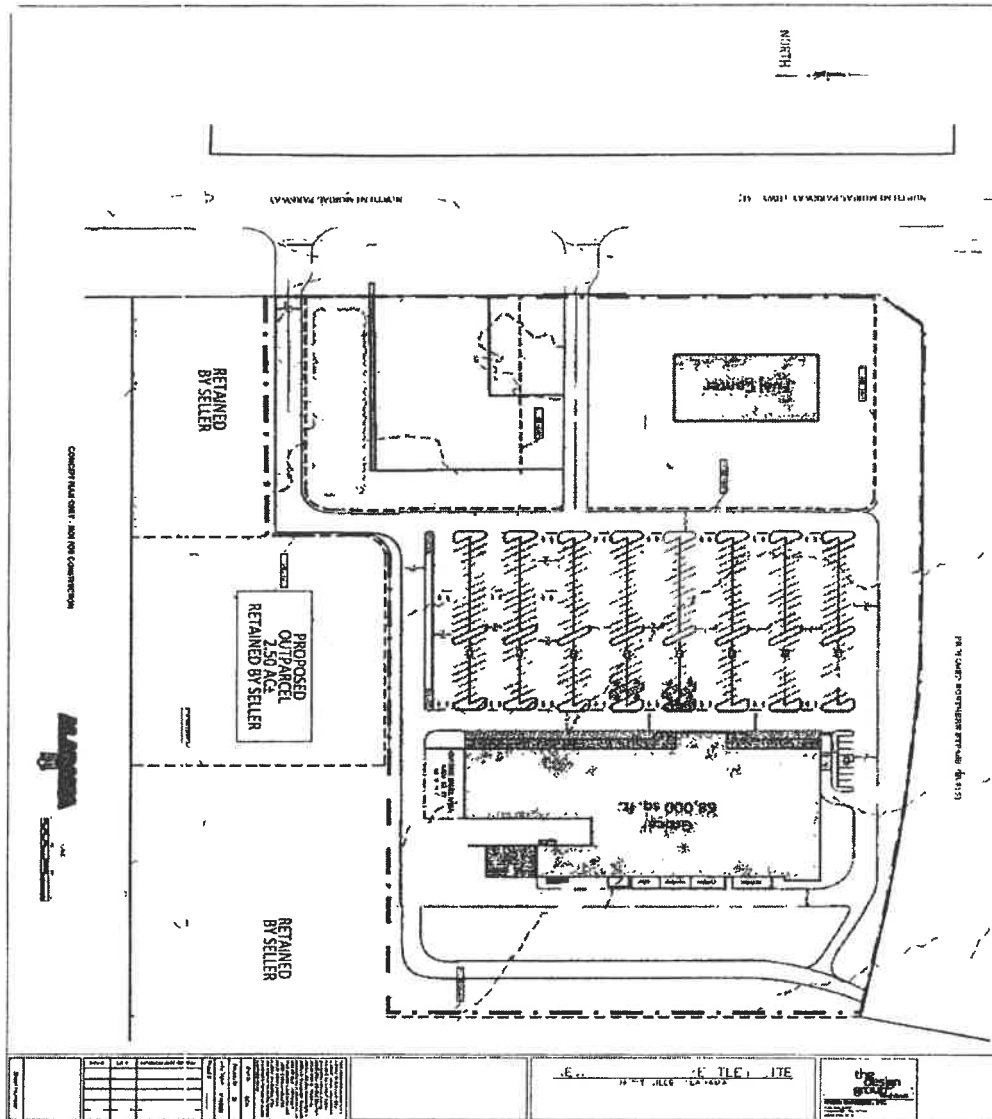
Attested to

By S. Edwards
Shaundrika Edwards, City Clerk

Date 4/27/2023

EXHIBIT "A"

Tall Pines Property – Option Agreement - Sale of Approximately 18 acres to City of Huntsville



Area to be Sold

Retained by Seller

Area to be sold is approximately
27.18 acres. Final acreage will be
determined by an official survey to
be performed by the City of
Huntsville.

Purchase Price at \$269,000/acre.

***The legal description of the Property shall be established by the Survey to be obtained by
Purchaser ***

Exhibit "B"

(Legal Description of the Total Development Tract)

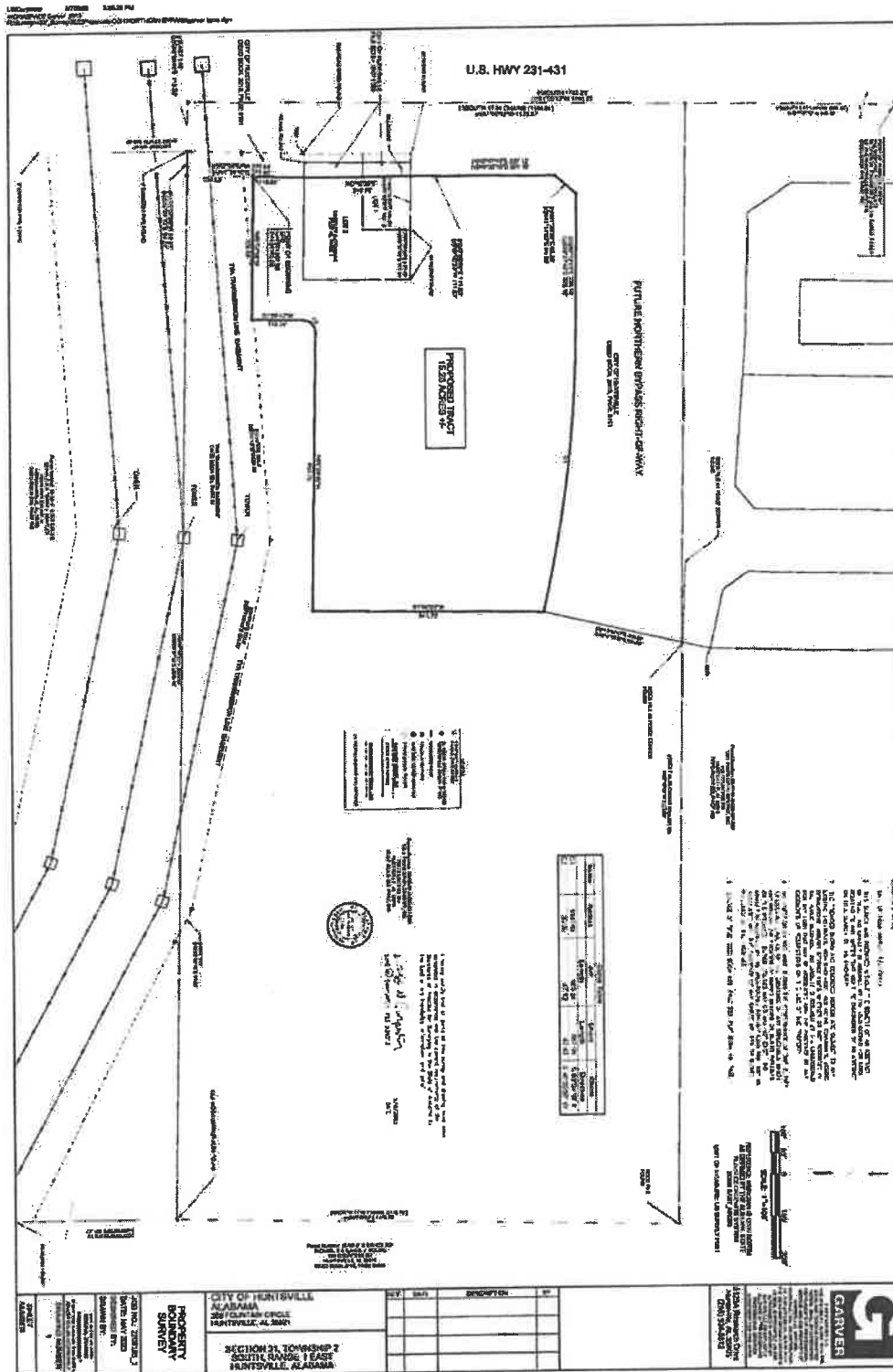
A tract of land lying and being in Section 31, Township 2 South, Range 1 East of the Huntsville Meridian and being more particularly described as follows:

Commencing at the northwest corner of Section 31, Township 2 South, Range 1 East of the Huntsville Meridian; thence along the west boundary of said Section 31 South 1 Degrees 00 Minutes 12 Seconds West a distance of 1780.25 feet; thence leaving said Section line South 88 Degrees 59 Minutes 48 Seconds East a distance of 116.00 feet to a 1 inch diameter pipe found marking the south boundary of a tract of land conveyed to Tall Pines Development, Inc., in Deed Book 988, Page 508 as recorded in the Office of the Judge of Probate for Madison County, Alabama; thence along said south boundary South 89 Degrees 01 Minutes 10 Seconds East a distance of 58.51 feet to a #5 rebar with a cap stamped "GARVER LLC CA-445-LS" (typical) set marking the east right-of-way of US HWY 231-431; thence leaving said south boundary and along said right-of-way North 1 Degrees 38 Minutes 10 Seconds East a distance of 154.63 to a #5 rebar set, said point being the Point of Beginning of herein described tract having established grid coordinates of (N) 1574307.96, (E) 434783.26 of the Alabama State Plane Coordinate System Zone East of the North American Datum of 1983 (NAD83);

Thence North 1 Degrees 38 Minutes 10 Seconds East a distance of 118.88 feet to a #5 rebar set; thence North 0 Degrees 10 Minutes 39 Seconds East a distance of 249.96 feet to a #5 rebar set; thence North 0 Degrees 40 Minutes 29 Seconds East a distance of 111.83 feet to a #5 rebar set; thence North 0 Degrees 32 Minutes 19 Seconds East a distance of 227.12 feet to a #5 rebar set; thence North 41 Degrees 14 Minutes 02 Seconds East a distance of 65.95 feet to a #5 rebar set on the south right-of-way of the Future Northern Bypass; thence leaving said east right-of-way and along said south right-of-way South 89 Degrees 27 Minutes 40 Seconds East a distance of 328.15 feet to a #5 rebar set marking the point of curvature of a to the right, having a radius of 3000.00 feet, the chord of which is South 83 Degrees 04 Minutes 10 Seconds East for a distance of 667.95 feet; thence along the arc of said curve 669.34 feet to a #5 rebar set; thence leaving said right-of-way South 1 Degrees 00 Minutes 00 Seconds West a distance of 541.73 feet to a #5 rebar set; thence North 88 Degrees 59 Minutes 46 Seconds West a distance of 660.75 feet to a #5 rebar set marking the point of curvature of a curve to the left, having a radius of 30.00 feet, the chord of which is South 45 Degrees 59 Minutes 58 Seconds West for a distance of 42.43 feet; thence along the arc of said curve 47.13 feet to a #5 rebar set marking the point of tangency of said curve; thence South 0 Degrees 59 Minutes 42 Seconds West a distance of 119.24 feet to a #5 rebar set; thence North 89 Degrees 07 Minutes 58 Seconds West a distance of 339.64 feet to the POINT OF BEGINNING.

The above-described tract contains 15.28 acres (665497.04 sq. ft.) more or less and is subject to any existing easements and rights-of-way whether or not recorded in the public records.

Exhibit "C"
 (Attach Copy of Preliminary Survey of the Total Development Tract)



[illegible]

Exhibit "E"
(Legal Description of the Property)

A tract of land lying and being in Section 31, Township 2 South, Range 1 East of the Huntsville Meridian.

Commencing at the northwest corner of Section 31, Township 2 South, Range 1 East of the Huntsville Meridian; thence along the west boundary of said Section 31 South 1 Degrees 00 Minutes 12 Seconds West a distance of 1780.25 feet; thence leaving said Section line South 88 Degrees 59 Minutes 48 Seconds East a distance of 116.00 feet to a 1 inch diameter pipe found marking the south boundary of a tract of land conveyed to Tall Pines Development, Inc., in Deed Book 988, Page 508 as recorded in the Office of the Judge of Probate for Madison County, Alabama; thence along said south boundary South 89 Degrees 01 Minutes 10 Seconds East a distance of 58.51 feet to a #5 rebar with a cap stamped "GARVER LLC CA-445-LS" (typical) set marking the east right-of-way of US HWY 231-431; thence leaving said south boundary and along said right-of-way North 1 Degrees 38 Minutes 10 Seconds East a distance of 154.63 to a #5 rebar set, said point being the Point of Beginning of herein described tract having established grid coordinates of (N) 1574307.96, (E) 434783.26 of the Alabama State Plane Coordinate System Zone East of the North American Datum of 1983 (NAD83);

Thence North 1 Degrees 38 Minutes 10 Seconds East a distance of 38.00 feet to a #5 rebar set; thence leaving said right-of-way South 89 Degrees 07 Minutes 58 Seconds East a distance of 271.28 feet to a #5 rebar set; thence North 45 Degrees 55 Minutes 52 Seconds East a distance of 42.38 feet to a #5 rebar set; thence North 0 Degrees 59 Minutes 42 Seconds East a distance of 249.98 feet to a #5 rebar set; thence North 44 Degrees 04 Minutes 08 Seconds West a distance of 56.63 feet to a #5 rebar set; thence North 89 Degrees 07 Minutes 58 Seconds West a distance of 263.63 feet to a #5 rebar set marking the east right-of-way of US HWY 231-431; thence along said right-of-way North 0 Degrees 10 Minutes 39 Seconds East a distance of 10.80 feet to a #5 rebar set; thence North 0 Degrees 40 Minutes 29 Seconds East a distance of 27.20 feet to a #5 rebar set; thence leaving said right-of-way South 89 Degrees 07 Minutes 58 Seconds East a distance of 264.11 feet to a #5 rebar set; thence North 45 Degrees 55 Minutes 52 Seconds East a distance of 56.51 feet to a #5 rebar set; thence North 0 Degrees 59 Minutes 42 Seconds East a distance of 323.60 feet to a #5 rebar set marking the south right-of-way of the Future Northern Bypass; thence along said right-of-way South 89 Degrees 27 Minutes 40 Seconds East a distance of 64.44 feet to a #5 rebar set marking the point of curvature of a curve to the right, having a radius of 3000.00 feet, the chord of which is South 83 Degrees 04 Minutes 10 Seconds East for a distance of 667.95 feet; thence along the arc of said curve 669.34 feet to a #5 rebar set marking the point of tangency of said curve; thence leaving said right-of-way South 1 Degrees 00 Minutes 00 Seconds West a distance of 541.73 feet to a #5 rebar set; thence North 88 Degrees 59 Minutes 46 Seconds West a distance of 660.75 feet to a #5 rebar set marking the point of curvature of a curve to the left, having a radius of 30.00 feet, the chord of which is South 45 Degrees 59 Minutes 58 Seconds West for a distance of 42.43 feet; thence along the arc of said curve 47.13 feet to a #5 rebar set marking the point of tangency of said curve; thence South 0 Degrees 59 Minutes 42 Seconds West a distance of 119.24 feet to a #5 rebar set; thence North 89 Degrees 07 Minutes 58 Seconds West a distance of 339.64 feet to the POINT OF BEGINNING.

The above-described tract contains 10.59 acres (461367.30 sq. ft.) more or less and is subject to any existing easements and rights-of-way whether or not recorded in the public records.