



# Huntsville, Alabama

308 Fountain Circle  
Huntsville, AL 35801

## Cover Memo

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**Meeting Type:** City Council Regular Meeting **Meeting Date:** 3/28/2024

**File ID:** TMP-4026

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**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 TLZ Huntsville Promenade, LLC, for the purchase of property located in Colonial Promenade Huntsville Phase 2.

Resolution No.

**Finance Information:**

**Account Number:** TBD

**City Cost Amount:** \$104,000.00

**Total Cost:** \$104,000.00

**Special Circumstances:**

**Grant Funded:** NA

**Grant Title - CFDA or granting Agency:** NA

**Resolution #:** NA

**Location: (list below)**

**Address:** Colonial Promenade Huntsville Phase 2

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

**Additional Comments:**

**RESOLUTION NO. 24-\_\_\_\_\_**

**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 City of Huntsville, an Alabama municipal corporation, and TLZ HUNTSVILLE PROMENADE, LLC, a Delaware limited liability company, which said agreement is substantially in words and figures as that certain document attached hereto and identified as “Purchase and Sale Agreement between City of Huntsville and TLZ HUNTSVILLE PROMENADE, LLC,” consisting of eight (8) pages including Exhibit A, and the date of March 28, 2024, appearing on the first page thereof, 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 Purchase and Sale Agreement on behalf of the City of Huntsville, with such changes as the Mayor deems desirable and necessary, 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 and/or closing contemplated therein.

**ADOPTED** this the 28th day of March, 2024.

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

**APPROVED** this the 28th day of March, 2024.

\_\_\_\_\_  
Mayor of the City of Huntsville, Alabama

## **PURCHASE AND SALE AGREEMENT**

This PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into as of the 28 day of March, 2024 (the "Effective Date"), by and between **City of Huntsville**, an Alabama municipal corporation, and its assigns ("City" or "Purchaser"), and **TLZ Huntsville Promenade, LLC**, a Delaware limited liability company ("Seller").

WHEREAS, the City desires to purchase and Seller desires to sell a certain parcel of real property owned by Seller lying north of Hwy 72 W and located off the west side of Promenade Point Pkwy, located in Huntsville, Madison County, Alabama.

NOW THEREFORE, in consideration of the premises and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Purchase and Sale.** Seller agrees to sell to Purchaser, and Purchaser agrees to buy from Seller, that certain parcel of real property consisting approximately 0.45 acres, more or less, being identified in Madison County Tax Assessor records as PPIN 538040, and being more particularly described in Exhibit "A" attached hereto, together with any and all improvements, structures, fixtures and other improvements located thereon along with all rights, easements, interests, privileges, tenements appurtenances pertaining thereto (the "Property").

2. **Purchase Price.** The purchase price for the Property shall be ONE HUNDRED FOUR THOUSAND AND 00/100 DOLLARS (\$104,000.00). The Purchase Price shall be paid to Seller in cash or other immediately available funds upon the consummation and closing of the transaction contemplated herein ("Closing").

3. **Preliminary Title Commitment and Survey.** Purchaser shall obtain a title commitment to issue an Owner's policy of insurance from Lanier Ford Shaver & Payne P.C. ("Closing Agent"), 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 good and marketable and insurable fee simple title to the Property, free and clear of all liens, encumbrances, leases, tenancies, covenants, conditions, restrictions, rights-of-way, easements and other matters affecting title except for the Permitted Exceptions ("Title Commitment"). "Permitted Exceptions" shall mean: (i) ad valorem taxes not yet due and payable, (ii) easements for the installation or maintenance of public utilities servicing the Property, (iii) easements, restrictions, 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 (defined herein) or the Survey (defined herein), or (v) such other matters, if any, as may be acceptable to Purchaser. Seller shall remove any and all monetary liens incurred by Seller prior to Closing. Purchaser, at its option, may obtain an ALTA survey of the Property to be prepared by a public land surveyor licensed in the State of Alabama ("Survey"). The Property shall be conveyed by Seller to Purchaser free and clear of any and all liens, except for the Permitted Exceptions.

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President of the City Council of the  
City of Huntsville, Alabama  
Date: March 28, 2024

4. Closing. The Deed to the Property shall be delivered, and the transaction shall be closed at the law offices of Closing Agent, located at 2101 W. Clinton Avenue, Ste. 102, Huntsville, Alabama 35805. Closing shall occur on or within ninety (90) days following satisfaction of the Closing Conditions, or at such other time as may be mutually agreed upon by the parties ("Closing Date"). However, if there are any encumbrance or liens on the Property other than the Permitted Exceptions, Purchaser may extend the Closing Date for an additional thirty (30) days so that any title issues may be resolved. At Closing, Seller shall deliver the following items to Purchaser:

a. Statutory 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;

c. An Owner's affidavit and any other documents, certificates, or affidavits that the title company may require to issue an updated title commitment and an Owner's policy;

d. All other documents reasonably requested by Purchaser to carry out the transaction contemplated by this Agreement, including but not limited to, any mandatory IRS disclosures, a settlement statement, any company formation documents, certifications or resolutions, brokers affidavits, and any other customary documents establishing Seller is duly authorized and empowered to enter into this Agreement and to perform its obligations hereunder.

5. Closing Conditions. This Agreement shall be contingent upon its approval by the City Council of the City of Huntsville ("City Council").

6. Condition of Property Upon Conveyance; Possession. Purchaser is responsible for its own inspection and examination of the Property and any improvements thereon. Notwithstanding, Seller agrees that nothing will be done to the Property by Seller which would reduce the value of the Property prior to Closing. Seller shall deliver exclusive possession of the Property to Purchaser at Closing.

7. Closing Costs and Tax Prorations. The cost of deed preparation, deed tax, recording fees, and all closing costs, except for Seller's attorney's fees, shall be paid by Purchaser at Closing. All ad valorem taxes on the Property shall be prorated as of the date of the delivery of the deed such that Seller will be responsible for any taxes due on the Property up to the Closing Date and Purchaser will be responsible for the taxes on the Property after the Closing Date. Any title insurance premiums shall be paid by Purchaser.

8. Assignment. The City shall not have the right to assign this Agreement or any of its rights and responsibilities hereunder at any time without the written consent of Seller, and any attempted assignment without Seller's consent shall be void.

9. Inspection Period. Purchaser shall have sixty (60) days from the Effective Date to inspect and conduct due diligence on the Property ("Inspection Period"), in which Purchaser, its agents, designees, employees, and contractors shall have the right to enter onto the Property from

time to time to conduct surveys, soil borings, soil tests, subsurface drillings, subsurface condition evaluations, environmental testing, and such other site condition and suitability investigations, samples, tests and evaluations as Purchaser may deem necessary to determine whether or not the Property and subsurface conditions are suitable for Purchaser's intended use (collectively, referred to as the "Reports"). All such investigations, testing and evaluations shall be undertaken only after Purchaser has provided reasonable notice to Seller and shall be performed at Purchaser's expense. Purchaser hereby covenants and agrees to indemnify and hold harmless Seller from any and all loss, liability, cost, claim, demand, damage, action, cause of action and suit arising out of or in any manner related to the exercise by Purchaser of Purchaser's rights under this section. The provisions of this Section 9 shall survive Closing and transfer of title.

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

11. Property Condition- No Grant of Additional Encumbrances. During the term of this Agreement, Seller shall not (a) sell, lease, transfer, or encumber, in any manner, the Property, or any portion thereof; (b) grant or extend the term of any leases without the express, written approval of Purchaser; (c) construct, remove or substantially modify any improvements existing on the Property; or (d) cut, remove, divert, 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.

12. Broker's Fees. Each party represents that there are no brokers' fees or real estate commissions due on account of their actions or in connection with this Agreement. Each party agrees to indemnify, defend and hold the other harmless from any claims of real estate agents or brokers claiming through the party.

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

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 laws provision.

15. 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.

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

17. Notice. All notices shall be properly given only if made in writing to the addresses set forth below and may be provided by any of the following methods: (i) hand delivery, (ii)

certified U.S. Mail or other nationally recognized overnight delivery service (such as UPS or FedEx), or (iii) electronic mail (e-mail), pdf, or other similar electronic transmission. Such notices shall be deemed received, (i) if delivered by hand, on the date of delivery, (ii) if sent 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 or pdf transmission on the date the transmission is sent. Notice shall be provided to the following:

To Seller: TLZ Huntsville Promenade, LLC  
c/o CMK Properties, LLC  
Attn: John Hopfensperger  
1205 Concord Hunt Drive  
Brentwood, Tennessee 37027  
Phone: 920-621-6140  
Email:

With a copy to: Polsinelli PC  
Attn: J. David Wicker  
401 Commerce Street, Suite 900  
Nashville, Tennessee 37219  
Phone: 615-252-3922  
Email: [dwicker@polsinelli.com](mailto:dwicker@polsinelli.com)

To City: City of Huntsville  
Attn: Shane Davis & Jim McGuffey  
320 Fountain Circle  
Huntsville, Alabama 35801  
Phone: 256-427-5300  
Email: [shane.davis@huntsvilleal.gov](mailto:shane.davis@huntsvilleal.gov)  
[Jim.mcguffey@huntsvilleal.gov](mailto:Jim.mcguffey@huntsvilleal.gov)

With a copy to: Lanier Ford Shaver & Payne P.C.  
Attn: Sam Givhan and Katie Beasley  
2101 W. Clinton Ave, Ste. 102  
Huntsville, Alabama 35805  
Phone: 256-535-1100  
Email: [shg@lanierford.com](mailto:shg@lanierford.com)  
[kab@lanierford.com](mailto:kab@lanierford.com)

18. 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.

19. Email or Facsimile Signatures. The parties agree that this document may be executed and the signatures transmitted to the other parties by facsimile, email or similar electronic transmission. 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 other parties and Closing Agent promptly after execution.

20. Effective Date. The Effective Date shall mean the date the Agreement is executed by the City.

21. 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. Furthermore, the City Council requires Seller's original signature page before it will place this Agreement on a city council agenda for consideration.

22. Counsel Acknowledgment. The parties all acknowledge that Purchaser's counsel, SAMUEL H. GIVHAN and KATHERINE AMOS BEASLEY, and the law firm of Lanier Ford Shaver & Payne P.C. (collectively "Counsel") prepared this Agreement on behalf of and in the course of their 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.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first written above.

*[Signatures and acknowledgments appearing on the following pages.]*

[Signature Page to Purchase and Sale Agreement for Seller]

**SELLER:**

**TLZ Huntsville Promenade, LLC**, a Delaware  
limited liability company

By: 

Name: Kim McAfee

Its: Authorized Representative

Tyler Villet  
Witness

Date: 3/20/2024



*[Signature Page to Purchase and Sale for Purchaser]*

**PURCHASER:**

**CITY OF HUNTSVILLE**, an Alabama municipal  
corporation

By: \_\_\_\_\_  
Tommy Battle, Mayor

Attested to:

By: \_\_\_\_\_  
Shaundrika Edwards, City Clerk

Date: March 28, 2024

**Exhibit "A"**  
**(Legal Description of Property)**

Lot 3B, according to that Final Plat of Colonial Promenade Huntsville Phase 2 Resurvey of Lots 2, 3, 4, 6, & 7, recorded as Document Number 20120425000248340 in the Probate Records of Madison County, Alabama.