

**Department:** Urban Development

**Subject:**

**Type of Action:** Approval/Action

Resolution authorizing the Mayor to enter into an Agreement for Public Right-of-Way among the City of Huntsville, IMI Huntsville, LLC, and ProCOG, LLC, and acceptance of a Statutory Warranty Deed pertaining to the same.

Resolution No.

**Finance Information:**

**Account Number:** Click or tap here to enter text.

**City Cost Amount: \$**

**Total Cost: \$**

**Special Circumstances:**

**Grant Funded: \$**

**Grant Title – CFDA or granting Agency:** Click or tap here to enter text.

**Resolution #:** Click or tap here to enter text.

**Location:**

**Address:**

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

**Additional Comments:**

**RESOLUTION 22- \_\_\_\_\_**

**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 agreement by and between the City of Huntsville, an Alabama municipal corporation, and IMI Huntsville, LLC, an Alabama limited liability company, and ProCOG, LLC, an Alabama limited liability company, which said agreement is substantially in words and figures the same as that certain document attached hereto and identified as “Agreement for Public Right-of-Way among IMI Huntsville, LLC, City of Huntsville, and ProCOG, LLC,” consisting of eleven (11) pages, including Exhibits “A” through “C,” and the date of April 14, 2022, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

**NOW, THEREFORE, BE IT FURTHER RESOLVED** that the Mayor be, and he is hereby, authorized to execute and perform the Agreement for Public Right-of-Way, on behalf of the City of Huntsville, with such changes as the Mayor deems desirable and necessary, including the authority to execute all such documents relevant, required, or relating to effect, close, carry out, and/or complete the real estate transaction contemplated therein, including but not limited to, acceptance of fee simple title to certain real estate on behalf of the City of Huntsville, as further described therein.

**ADOPTED** this the 14th day of April, 2022.

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

**APPROVED** this the 14th day of April, 2022.

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

## **AGREEMENT FOR PUBLIC RIGHT-OF-WAY**

**THIS AGREEMENT FOR PUBLIC RIGHT-OF-WAY** (the "Agreement") is made as of March 14, 2022, among IMI HUNTSVILLE, LLC, an Alabama limited liability company ("IMI"), CITY OF HUNTSVILLE, ALABAMA, a municipal corporation ("City"), and ProCOG, LLC, an Alabama limited liability company ("ProCOG").

### **RECITALS**

A. ProCOG is the fee owner of the property described on **Exhibit "A"** attached hereto and incorporated herein by this reference (the "Property");

B. IMI is the owner of certain property adjacent to the Property and desires for the City to design, build and maintain the Property as a public road; and

C. ProCOG desires to sell the Property and the City desires to own, design, build, and maintain a public road on the Property subject to the terms and conditions set forth below.

**NOW, THEREFORE**, with reference to the foregoing Recitals, all of which are incorporated herein by this reference, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto covenant and agree as follows:

1. **Sale of Property.** ProCOG hereby agrees to sell the Property to the City for One Hundred Fifty Thousand Dollars (\$150,000.00) (the "Purchase Price"). IMI hereby agrees to pay the Purchase Price on behalf of the City to ProCOG at the Closing.

2. **Development of Road.** The City hereby agrees to allow IMI and ProCOG to review and approve the road plans before commencement of construction. The City hereby agrees to design, build, and maintain a road on the Property within 24 months of the Closing. The City hereby agrees to construct and complete a curb cut to the road in the general location shown and depicted on the plat prepared by Johnson & Associates Engineering attached hereto as **Exhibit "C"** (the "Curb Cut Area").

3. **Closing.** The Closing of the sale of the Property shall occur on or before ten (10) days following approval of this Agreement by the City Council and shall take place as an escrow closing coordinated by Wilmer & Lee, P.A. If for any reason the City does not approve this Agreement on or before June 30, 2022, this Agreement shall automatically terminate and the parties shall have no rights and obligations to each other under this Agreement. At the Closing, IMI shall pay up to Three Thousand Dollars (\$3,000) to reimburse ProCOG for legal expenses related to this Agreement. IMI agrees to pay the closing costs, recording fees and transfer taxes at Closing. ProCOG shall be responsible for the current year ad valorem taxes on the Property; provided, however, ProCOG shall receive a credit at Closing equal to the amount of taxes payable for the portion of the tax year after closing, based on the most recent tax bill for the Property. Notwithstanding anything to the contrary set forth herein, the parties acknowledge and agree that in no event shall the total amount paid to ProCOG at Closing be less than \$150,000.

4. **Title.** At Closing, ProCOG shall convey to the City fee simple marketable title to the Property by statutory warranty deed in the form attached hereto as **Exhibit "B,"** free and clear

of all liens, defects of title, and encumbrances, except for taxes for the current year and subsequent years not yet due and payable.

5. **Representations.** The parties hereto hereby certify, represent and covenant to each other as of the date hereof as follows:

(a) **IMI Representations.** IMI represents that it (i) is a limited liability company duly organized, existing and in good standing in the State of Alabama, (ii) has the power, authority and legal right to carry on the business now being conducted by it and to engage in the transactions contemplated by this Agreement, and (iii) the execution and delivery of this Agreement and the performance and observance of the provisions hereof have been duly authorized by any and all necessary actions of IMI, or affiliates of IMI.

(b) **City Representations.** The City (i) is a municipal corporation in Madison County, Alabama, (ii) has the power, authority and legal right to carry on the business now being conducted by it and to engage in the transactions contemplated by this Agreement, and (iii) the execution and delivery of this Agreement and the performance and observance of the provisions hereof have been duly authorized by any and all necessary actions of the City.

(c) **ProCOG Representations.**

(i) ProCOG (i) is an Alabama limited liability company, (ii) has the power, authority and legal right to engage in the transactions contemplated by this Agreement, and (iii) the execution and delivery of this Agreement and the performance and observance of the provisions hereof have been duly authorized by any and all necessary actions of ProCOG.

(ii) ProCOG has not received any written notice of any current or pending litigation, condemnation, tax appeals or environmental investigations against the Property;

6. **Severability.** If any provision of this Agreement shall be invalid, illegal or unenforceable, it shall not affect or impair the validity, legality and enforceability of any other provisions of this Agreement.

7. **Amendment.** This Agreement may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by an instrument in writing and signed by IMI, ProCOG, and the City.

8. **Successors and Assigns.** This Agreement and all duties and obligations herein shall be binding upon the parties and their respective successors and assigns.

9. **Choice of Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama.

10. **Notices.** Each notice, request, demand and other communication hereunder will be in writing and will be deemed to have been duly given (i) when delivered by hand (so long as the delivering party shall have received a receipt of delivery executed by the party to whom such notice was delivered), or (ii) one (1) business day after delivery to a recognized overnight courier service,

in each case addressed to the parties as follows (or to such other address as a party may designate by notice to the others):

**If to IMI:**

c/o Miller Capital Advisory, Inc.  
5750 Old Orchard Road, Suite 400  
Skokie, Illinois 60077  
Fax No.: (847) 966-9628  
E-Mail: amiller@miller-capital.com and  
awilson@miller-capital.com  
Attention: Andrew R. Miller and  
Andrew Wilson

*with a copy to*

Greenberg Traurig, LLP  
77 W. Wacker Drive, Suite 3100  
Chicago, Illinois 60601  
Fax No.: (312) 899-0427  
E-Mail: toonj@gtlaw.com  
Attention: Jason M. Toon, Esq.

and

Burr & Forman, LLP  
420 North 20th Street, Suite 3400  
Birmingham, AL 35203  
Email: msellers@burr.com  
Attention: Melinda E. Sellers, Esq.

**If to the City:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*with a copy to*

Wilmer & Lee, P.A.  
100 Washington Street  
Huntsville, Alabama 35801  
Attn: Suzanne D. Currie, Esq.  
Email: scurrie@wilmerlee.com

**If to ProCOG:**

ProCOG LLC  
6705 Odyssey Dr Ste C  
Huntsville, AL 35806  
Attn: Wendy Owens  
Email: wendy.owens@provanv.com

*with a copy to*

Maynard, Cooper & Gale, P.C.  
655 Gallatin Street  
Huntsville, AL 35801  
Attn: Allie c. Tucker, Esq.  
Email: atucker@maynardcooper.com

11. **Counterparts**. This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which, when so executed and delivered shall be an original, but also such counterparts shall together constitute one and the same instrument.

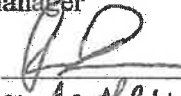
*[NO FURTHER TEXT ON THIS PAGE]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

IMI HUNTSVILLE, LLC,  
a Delaware limited liability company

By: Institutional Mall Investors, LLC  
a Delaware limited liability company  
its sole member

By: Miller Capital Advisory, Inc.,  
an Illinois corporation  
its manager

By:   
Name: Andrew Wilson  
Its: VICE PRESIDENT

**CITY OF HUNTSVILLE, ALABAMA,**  
a municipal corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_



**ProCOG, LLC,**  
an Alabama limited liability company

By: Wendy Owens  
Name: Wendy Owens  
Its: President

**Exhibit A**

**LEGAL DESCRIPTION**

Said tract being a portion of the property conveyed to Procog, LLC, as recorded in the Office of the Judge of Probate for Madison County, Alabama in Instrument 2019-00035337 and being more particularly described as follows:

Commencing at the northwest corner of Section 6, Township 4 South, Range 1 West of the Huntsville Meridian; Thence South 1 Degree 54 Minutes 57 Seconds West a distance of 2571.65 feet; thence South 88 Degrees 18 Minutes 38 Seconds East a distance of 1658.43 feet to a concrete monument found marking the southwest corner of a tract of land conveyed to Procog, LLC, as recorded in the Office of the Judge of Probate for Madison County, Alabama in Instrument 2019-00035337, said point being the Point of Beginning of the herein described tract, having established grid coordinates of N-1536570.78. E-403480.19 of zone east of the Alabama State Plane Coordinate System;

Thence along the west boundary of said Procog tract North 14 Degrees 57 Minutes 47 Seconds East a distance of 533.59 feet to a #4 rebar found on the south right-of-way of Odyssey Drive, said point being on a curve to the right, having a radius of 200.00 feet, the chord of which is South 69 Degrees 01 Minutes 17 Seconds East for a distance of 41.46 feet; thence leaving said west boundary and along said right-of-way and the arc of said curve 41.54 feet to a #5 rebar with a cap stamped "GARVER LLC CA-445-LS" (typical) set; thence leaving said right-of-way South 14 Degrees 49 Minutes 46 Seconds West a distance of 48.37 feet to a #5 rebar set; thence South 16 Degrees 23 Minutes 16 Seconds West a distance of 100.04 feet to a #5 rebar set; thence South 14 Degrees 49 Minutes 46 Seconds West a distance of 340.42 feet to a #5 rebar set; thence South 8 Degrees 52 Minutes 06 Seconds West a distance of 30.48 feet to a #5 rebar set on the south boundary of said Procog tract; thence along said south boundary North 88 Degrees 19 Minutes 44 Seconds West a distance of 44.07 feet to the POINT OF BEGINNING.

The above-described tract contains 0.48 acres (20959.37 sq. ft.), more or less.

**Exhibit B**

**FORM OF DEED**

**THIS INSTRUMENT PREPARED BY:**

Allie C. Tucker, Esq.  
MAYNARD, COOPER & GALE, P.C.  
655 Gallatin Street  
Huntsville, AL 35801  
(256)551-0171

STATE OF ALABAMA )

COUNTY OF MADISON )

**STATUTORY WARRANTY DEED**

KNOW ALL MEN BY THESE PRESENTS,

THAT IN CONSIDERATION of Ten Dollars (\$10.00) and other good and valuable consideration to the undersigned grantor, PROCOG, LLC, an Alabama limited liability company ("Grantor"), in hand paid by CITY OF HUNTSVILLE, ALABAMA, a municipal corporation ("Grantee") the receipt of which is hereby acknowledged, Grantor does by these presents, grant, bargain, sell and convey unto Grantee all that tract or lot of land lying in the County of Madison, State of Alabama, and more particularly described on Exhibit "A", attached hereto and incorporated herein by reference.

**SUBJECT TO:**

1. Taxes and assessments for the year 2022 and subsequent years, not yet due and payable.
2. Easements, encumbrances and restrictions of record in the Office of the Judge of Probate of Madison County, Alabama, on the date hereof.

TO HAVE AND TO HOLD, to the said Grantee, its successors and assigns, forever.

Pursuant to and in accordance with Section 40-22-1 of the Code of Alabama (1976), the following information is offered in lieu of submitting Form RT-1:

Grantee's Address:	
Grantor's Address:	<u>6705 Odyssey Drive, Suite C, Huntsville, AL 35806</u>
Property Address:	<u>6705 Odyssey Drive, <del>35806</del> Huntsville, AL 35806</u>
Purchase Price:	<u>\$150,000.00</u>
Parcel No.:	

And GRANTOR does for itself and for its successors and assigns covenant with the said GRANTEE, its successors and assigns, that it is lawfully seized in fee simple of said premises;

that it is free from all encumbrances, unless otherwise noted above; that it has a good right to sell and convey the same as aforesaid; that it and its successors and assigns shall warrant and defend the same to the said GRANTEE, its successors and assigns forever, against the lawful claims of all persons, claiming by, through or under GRANTOR but no further.

IN WITNESS WHEREOF, Grantor has executed and sealed this indenture, and delivered this indenture to Grantee, all this 14 day of March, 2022, [YEAR].

**GRANTOR:**

**ProCOG, LLC,**  
an Alabama limited liability company

By: Wendy Owens  
Name: Wendy Owens  
Its: President

**GRANTEE:**

**CITY OF HUNTSVILLE, ALABAMA,**  
a municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

# Exhibit C

## CURB CUT AREA

