



Huntsville, Alabama

308 Fountain Circle
Huntsville, AL 35801

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 4/27/2023

File ID: TMP-2884

Department: Urban Development

Subject:

Type of Action: Approval/Action

Resolution authorizing the Mayor to enter into an Option to Purchase Real Estate Sales Agreement between the City of Huntsville and Tall Pines Development, Inc., James T. Young, Frances B. Young, Terry Bentley, Louise Bentley and Donald E. Bentley.

Resolution No.

Finance Information:

Account Number: N/A

City Cost Amount: \$ N/A

Total Cost: \$ N/A

Special Circumstances:

Grant Funded: \$ N/A

Grant Title - CFDA or granting Agency: N/A

Resolution #: N/A

Location: (list below)

Address: N/A

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

Additional Comments: N/A

RESOLUTION NO. 23-_____

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 _____ day of _____, 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.

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 at that time, 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 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: _____

Name: _____

Its: _____

Witnessed:

By: _____

Date: _____

By: _____

FRANCES B. YOUNG

Witnessed:

By: _____

Date: _____

By: _____

TERRY BENTLEY

Witnessed:

By: _____

Date: _____

[Owner Signatures Continuing on the following page.]

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

OWNER:

By: _____
LOUISE BENTLEY

Witnessed:

By: _____

Date: _____

By: _____
DONALD E. BENTLEY

Witnessed:

By: _____

Date: _____

[Purchaser Signature Page to Option to Purchase Real Estate.]

PURCHASER:

CITY OF HUNTSVILLE, an Alabama municipal corporation

By: _____
Tommy Battle, Mayor

Attested to:

By: _____
Shaundrika Edwards, City Clerk

Date: _____

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



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