

Department:

Subject:

Type of Action: Introduction

Introduction of an Ordinance to declare property as surplus and no longer needed for a municipal purpose and authorizing the Mayor to enter into a Purchase and Sale Agreement between the City and Broadway Westside Square, LLC, for the purchase of the same. Ordinance No.

Ordinance No.

Finance Information:

Account Number: Click or tap here to enter text.

City Cost Amount: \$

Total Cost: \$56,000.00

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:

***Ordinance to Declare Property as Surplus
and Authorizing and Directing its Sale***

WHEREAS, the City of Huntsville, an Alabama municipal corporation (“City”), is the owner of certain real property situated in Huntsville, Madison County, Alabama, consisting of approximately 0.04 acres, more or less, and as more particularly described as follows in Exhibit “A” attached hereto (the “Subject Property”); and

WHEREAS, Broadway Westside Square, LLC, an Alabama limited liability company, has requested that the City declare the Subject Property as surplus and offer the same for sale; and

WHEREAS, it is the judgment and opinion of the Mayor and the City Council of the City of Huntsville that, pursuant to §11-47-20 of the *Code of Alabama* (1975), that the Subject Property is no longer used or needed for a public purpose; and

WHEREAS, the Mayor of the City of Huntsville is hereby authorized to enter into that certain Purchase and Sale Agreement between the City of Huntsville and Broadway Westside Square, LLC, attached hereto as Exhibit “B” (the “Agreement”), and pursuant to the terms and conditions therein, the Subject Property will be sold to Broadway Westside Square, LLC, in exchange for Fifty-Six Thousand and No/100 Dollars (\$56,000.00); and

WHEREAS, in the judgment and opinion of the Mayor and the City Council of Huntsville, Alabama, the Subject Property having been appraised and valued at \$56,000.00, finds said compensation is fair and reasonable compensation for the Subject Property; and

WHEREAS, it is necessary for the Mayor to execute a statutory warranty deed for the Subject Property to Broadway Westside Square, LLC; and

WHEREAS, a general and permanent ordinance is necessary to effect declaration of surplus property, for the transfer or sale of said surplus property, and to authorize the Mayor to execute a deed to the purchaser of surplus property.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HUNTSVILLE, ALABAMA, AS FOLLOWS:

1. The Subject Property is found and determined not to be needed for public or municipal purposes by the City of Huntsville and is hereby declared as surplus property in accordance with the requirements of Section 11-47-20 of the *Code of Alabama* (1975); and
2. The Mayor of the City of Huntsville is hereby authorized and directed to execute the Agreement, and to convey the Subject Property to Broadway Westside Square, LLC pursuant to the terms of said Agreement, and to execute and deliver all documents required to close said sale for and on behalf of the City; and

3. The City Clerk for the City of Huntsville is hereby instructed to publish notice of this Ordinance in accordance with §11-45-8 of the *Code of Alabama* (1975); and
4. A copy of said real estate closing documents, as legally required, will be kept on file in the office of the Clerk-Treasurer of the City of Huntsville, Alabama; and
5. This ordinance shall become effective upon its approval, adoption, enactment, and publication by posting as set forth in §11-45-8(b) of the *Code of Alabama* (1975).

ADOPTED this the 14th day of April, 2022.

President or President Pro Tem of the City
Council of the City of Huntsville, Alabama

APPROVED this the 14th day of April, 2022.

Tommy Battle, Mayor

EXHIBIT "A"
(Legal Description of Subject Property)

All that part of Section 36, Township 03 South, Range 01 West of the Huntsville Meridian, Madison County, Alabama, more particularly described as follows:

Commencing at a point located South 14 Degrees 18 Minutes 36 Seconds East, a distance of 4587.94 feet from the Northwest Corner of said Section 36; said point of Commencement is also described as being located at the intersection of the centerlines of Spragins Street and Spring Street; thence South 35 Degrees 59 Minutes 31 Seconds East, a distance of 348.72 feet to the Point of Beginning;

thence from the Point of Beginning, South 31 Degrees 45 Minutes 00 Seconds East, a distance of 51.43 feet to a point at the beginning of a curve to the right;

thence along said curve to the right with a radius of 140.44 feet, a chord bearing and distance of North 08 Degrees 08 Minutes 33 Seconds East, 18.20 feet;

thence North 14 Degrees 36 Minutes 39 Seconds East, a distance of 10.20 feet;

thence North 19 Degrees 06 Minutes 34 Seconds East, a distance of 10.20 feet;

thence North 23 Degrees 36 Minutes 15 Seconds East, a distance of 10.20 feet;

thence North 28 Degrees 06 Minutes 23 Seconds East, a distance of 10.20 feet to a point at the beginning of a curve to the right;

thence along said curve to the right with a radius of 129.96 feet, a chord bearing and distance of North 34 Degrees 50 Minutes 26 Seconds East, 20.38 feet;

thence North 41 Degrees 35 Minutes 15 Seconds East, a distance of 10.20 feet;

thence North 46 Degrees 04 Minutes 41 Seconds East, a distance of 10.20 feet;

thence North 50 Degrees 34 Minutes 33 Seconds East, a distance of 11.63 feet;

thence South 57 Degrees 14 Minutes 28 Seconds West, a distance of 94.16 feet back to the Point of Beginning and containing 0.04 Acres, more or less.

EXHIBIT "B"
(Purchase and Sale Agreement)

*[Attach copy of Purchase and Sale Agreement between the City of Huntsville and Broadway
Westside Square, LLC]*

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 **Broadway Westside Square, LLC**, an Alabama limited liability company, or its permitted assigns ("Purchaser") effective as of this ____ day of _____, 2022 (the "Effective Date").

WHEREAS, the City owns that parcel of real property lying in Huntsville, Madison County, Alabama, located on the northwest corner of Fountain Circle, consisting of approximately 0.04 acres, more or less, and being more particularly described in Exhibit "A" attached hereto and incorporated herein, and as depicted in Exhibit "B" attached hereto and incorporated herein (collectively, the "Property"); and

NOW THEREFORE, in consideration of Ten Dollars and No/100 (\$10.00), which amount is non-refundable, 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. Subject to and in accordance with the terms of this Agreement, Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, the Property, consisting of approximately 0.04 acres, more or less, as more particularly described in Exhibit "A" attached hereto and as depicted in Exhibit "B" attached hereto, together with any and all structures, fixtures and other improvements thereon and all rights, interests, privileges, tenements and hereditaments appurtenant thereto, but reserving unto Seller all easements or rights of way of record (the "Property").

2. Purchase Price. The purchase price for the Property shall be Fifty-Six Thousand and NO/100 Dollars (\$56,000.00) (the "Purchase Price"). The Purchase Price shall be paid to Seller in cash or immediately available funds at the closing and upon the consummation of the transaction contemplated by this Agreement (the "Closing").

3. Title Commitment. Purchaser may, at its option, obtain a title commitment 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. "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. Seller shall remove or have released all monetary liens affecting the Property, if any, prior to Closing.

4. Inspection Period. Purchaser shall have up to forty-five (45) days from the Effective Date to inspect and conduct due diligence on the Property (the "Inspection Period"), in which Purchaser, its agents, designees, and contractors shall have the right to enter the Property for the

sole purpose of conducting Purchaser's due diligence investigations of the Property, including without limitation surveys, geological studies, soil borings, phase I and phase II environmental site assessments and such other investigations, studies or tests as Purchaser may deem necessary or desirable in order to determine whether or not the Property is suitable for Purchaser's intended use (collectively, the "Reports"). Prior to the expiration of the Inspection Period, Purchaser may provide written notice to the City, to be given in accordance with Section 14 below, of its desire to terminate this Agreement ("Termination Notice"). If no such Termination Notice is provided by Purchaser prior the expiration of the Inspection Period, then the parties shall proceed to Closing as set forth in this Agreement. However, in the event that such Termination Notice is provided by Purchaser prior to the end of the Inspection Period, then this Agreement shall automatically terminate and shall be null and void, and Purchaser shall immediately provide the Seller with copies of all Reports performed, and shall restore the Property to the same condition as existed prior to the Inspection Period.

5. Closing Conditions. Seller's obligation to convey the Property to Purchaser is contingent upon the Property being declared as "Surplus" by the City Council of the City of Huntsville (the "City Council") and upon approval of this Agreement by the City Council.

6. Closing. Closing shall occur on or within sixty (60) days following the satisfaction of the Closing Conditions, or at such other date and time as is mutually agreed upon by the parties ("Closing Date"). The Closing shall occur at the offices of Wilmer & Lee, P.A ("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.

(a) At 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 a good and marketable fee simple title to the Property to Purchaser subject only to the Permitted Exceptions.

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

(iii) An owner's 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) 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 IRS §1445 Certificate, (B) a settlement statement, and (C) 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.

(v) Satisfaction of any and all leasehold rights held on the Property.

7. Property Taxes. No ad valorem taxes are currently owed or assessed on the Property, as the Property is currently classified as exempt. Accordingly, ad valorem taxes will not be

prorated and no property taxes will be collected at Closing. Seller shall be responsible for any and all ad valorem taxes assessed for the current tax year and shall pay them when due.

8. Closing Costs. All closing costs, including any title examination fee, title insurance premium, all deed, transfer, and mortgage taxes, and any and all recording costs shall be paid by Purchaser ("Closing Costs). Provided, Closing Costs shall not include the cost of deed preparation, which shall be paid by Seller. In addition, each party shall pay for its own attorney's fees incurred in connection with the transaction contemplated by this Agreement.

9. 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.

10. Final Subdivision Plat; Additional Easements. The parties shall work in good faith with one another to have the Property subdivided or re-subdivided and platted in accordance with the City's subdivision regulations (the "Plat"). Additionally, the parties understand that certain additional easements in favor of the City may be necessary, and Purchaser agrees to grant and convey to the City those certain utility and drainage easement(s) and/or greenway/pedestrian easement(s) as may reasonably be required by the City ("Additional Easements") over those certain portions of the Property as mutually agreed upon by the parties. In the event any Additional Easements are necessary, the parties agree to cooperate with one another to have the Additional Easements depicted on the Plat, and allowing for the Additional Easements to be dedicated to the City by Plat. However, should the City, in its sole discretion, determine that it is necessary to acquire the Additional Easements by or through separate recordable instrument, Purchaser agrees to cooperate with the City in its efforts, and shall promptly execute such instruments, which shall be prepared and recorded at the City's expense. The Plat shall be recorded, at Purchaser's expense, in the Office of the Judge of Probate of Madison County, Alabama on or within one hundred twenty (120) days after the Closing Date.

11. 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.

12. Entire Agreement. This Agreement contains the entire agreement between the parties. No promise, representation, warranty or covenant not included in this 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.

13. 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.

14. 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 other overnight delivery service (i.e., FedEx or UPS), or (iii) using electronic mail (e-mail) or pdf transmission. 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. Notices shall be addressed as follows:

If to Seller:	The City of Huntsville Attn: Jim McGuffey and Shane Davis 320 Fountain Circle Huntsville, AL 35801 Ph: (256) 427-5300 Email: jim.mcguffey@huntsvilleal.gov shane.davis@huntsvilleal.gov
With a copy to:	Katie Beasley Wilmer & Lee, PA 100 Washington Street Huntsville, Alabama 35801 Ph: (256)533-0202 Email: kbeasley@wilmerlee.com
If to Purchaser :	Broadway Westside Square, LLC Attn: Mr. Bob Broadway; Lisa Hawkins 216 West Side Square Huntsville, Alabama 35801 Ph: (256) 533-7287 Email: Bob.Broadway@broadwaygroup.net
With a copy to:	Harrison & Gammons, P.C. Attn: Attn: Bethany H. Sneed 2430 L & N Drive Huntsville, Alabama 35801 Ph: (256) 533-7711 Email: bethany@harrisongammons.com

15. 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.

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

17. 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. 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.

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

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

20. 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.

21. 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.

22. 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.

23. Further Assurances. At Closing Agent's request, the parties 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 or omissions contained in this Agreement or any document executed pursuant hereto or in connection with the transaction contemplated herein.

24. Counsel Acknowledgment. The parties acknowledge that Seller's counsel, 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 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.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be effective 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:

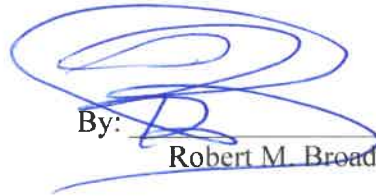
By: _____
Kenneth Benion, Clerk-Treasurer

Date: _____

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

PURCHASER:

Broadway Westside Square, LLC, an Alabama
limited liability company



By: _____

Robert M. Broadway, Manager

WITNESSED:

By: Bernadette Peters

Date: 3/15/22

Exhibit "A"
(Legal Description of the Property)

All that part of Section 36, Township 03 South, Range 01 West of the Huntsville Meridian, Madison County, Alabama, more particularly described as follows:

Commencing at a point located South 14 Degrees 18 Minutes 36 Seconds East, a distance of 4587.94 feet from the Northwest Corner of said Section 36; said point of Commencement is also described as being located at the intersection of the centerlines of Spragins Street and Spring Street; thence South 35 Degrees 59 Minutes 31 Seconds East, a distance of 348.72 feet to the Point of Beginning;

thence from the Point of Beginning, South 31 Degrees 45 Minutes 00 Seconds East, a distance of 51.43 feet to a point at the beginning of a curve to the right;

thence along said curve to the right with a radius of 140.44 feet, a chord bearing and distance of North 08 Degrees 08 Minutes 33 Seconds East, 18.20 feet;

thence North 14 Degrees 36 Minutes 39 Seconds East, a distance of 10.20 feet;

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thence along said curve to the right with a radius of 129.96 feet, a chord bearing and distance of North 34 Degrees 50 Minutes 26 Seconds East, 20.38 feet;

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thence North 46 Degrees 04 Minutes 41 Seconds East, a distance of 10.20 feet;

thence North 50 Degrees 34 Minutes 33 Seconds East, a distance of 11.63 feet;

thence South 57 Degrees 14 Minutes 28 Seconds West, a distance of 94.16 feet back to the Point of Beginning and containing 0.04 Acres, more or less.

Exhibit "B"
(Tax Map of Property)

Viewer Map

