

RESOLUTION NO. 31968

A RESOLUTION AUTHORIZING THE MAYOR OR HIS DESIGNEE TO ENTER INTO A CONTRACT FOR SALE AND PURCHASE, IN SUBSTANTIALLY THE FORM ATTACHED, WITH HEIDI HEFFERLIN AND CRAIG KRONENBERG, TRUSTEES OF THE CRAIG KRONENBERG AND HEIDI HEFFERLIN JOINT REVOCABLE TRUST, WILLIAM D. FUGATT, AND MATTHEW KILLEBREW FOR THE PURCHASE OF 5006 AND 5010 ROSSVILLE BOULEVARD, IDENTIFIED AS TAX MAP NO. 168O-C-012 AND TAX MAP NO. 168O-C-010, FOR THE AMOUNT OF TWENTY-TWO THOUSAND DOLLARS (\$22,000.00), AND TO EXECUTE ALL DOCUMENTS REQUIRED TO COMPLETE THE TRANSACTION.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it is hereby authorizing the Mayor or his designee to enter into a Contract for Sale and Purchase, in substantially the form attached, with Heidi Hefferlin and Craig Kronenberg, Trustees of the Craig Kronenberg and Heidi Hefferlin Joint Revocable Trust, William D. Fugatt, and Matthew Killebrew for the purchase of 5006 and 5010 Rossville Boulevard, identified as Tax Map No. 168O-C-012 and Tax Map No. 168O-C-010, for the amount of \$22,000.00, and to execute all documents required to complete the transaction.

ADOPTED: February 13, 2024

/mem

CONTRACT FOR SALE AND PURCHASE

This Contract for Sale and Purchase (“Contract”) is made and entered into this ____ day of _____, 2024, by and between CITY OF CHATTANOOGA, TENNESSEE, a Tennessee municipal corporation (“Seller”), and the undersigned Buyer parties (collectively, “Buyer”).

WITNESSETH

WHEREAS, Seller owns a fee simple interest in two parcels of real property located at (1) 5006 Rossville Boulevard, Chattanooga, Tennessee, Tax Parcel No. 1680-C-012; and (2) 5010 Rossville Boulevard, Chattanooga, Tennessee, Tax Parcel No. 1680-C-010 (collectively, the “Property”), as more particularly described on **Exhibit “A”**; and

WHEREAS, the Seller wishes to sell, and the Buyer wishes to purchase the Property as more specifically described below.

NOW, THEREFORE, in consideration of the respective covenants, agreements, conditions, and terms stated herein and at the time and in the manner provided herein, the parties covenant as follows:

1. **Property.** Seller, in consideration of the mutual covenants and obligations herein, does hereby agree to convey to Buyer, and Buyer agrees to purchase from Seller, at the consideration of the Purchase Price (as defined below) and upon the terms and conditions hereof, the Property, together with all improvements located thereon, including, without limitation, surrounding grounds, driveways, parking areas, and related facilities, and including all appurtenances, rights, privileges, easements, and advantages thereto belonging.

2. **Consideration; Purchase Price; Earnest Money.** Subject to the terms, conditions, and provisions herein, Buyer agrees to pay, and Seller agrees to accept as full consideration for the conveyance of the Property described in Paragraph 1 above, the purchase price as set forth below (the “Purchase Price”):

a. **Purchase Price.** Buyer agrees to pay, and Seller agrees to accept as full consideration for the conveyance of the Property described in Paragraph 1 hereinabove, the sum of TWENTY-TWO THOUSAND AND NO/100 DOLLARS (\$22,000.00).

3. **Feasibility Period.** Simultaneously with Seller's execution of this Contract, Seller will deliver to Buyer all existing documentation, maps, surveys, environmental reports, engineering, and architectural reports, plans or drawings, title reports, as well as all correspondence received from any federal, state, or local authority that Seller may have that would adversely affect the Buyer's ability to use the Property for the Buyer's intended purpose. Buyer shall have one hundred twenty (120) days from the Effective Date to conduct such physical and other inspections and investigations of the Property which it deems appropriate (the "Feasibility Period") to determine whether or not the transaction contemplated herein is suitable for Buyer's intended purposes, as determined by Buyer. Buyer may, prior to the expiration of the Feasibility Period, notify Seller in writing that it elects to terminate this Contract in the event it deems the Property to be unsuitable for any reason or no reason at which point this Contract shall be deemed terminated.

4. **Closing Costs.**

1. Seller shall be responsible for all fees, costs, and expenses incurred by Seller in connection with or relating to Seller's satisfying the terms and conditions hereof.

2. Buyer shall be responsible for all fees, costs and expenses incurred by Buyer in connection with or relating to Buyer's satisfying the terms and conditions hereof.

3. Buyer and Seller shall be responsible for their own attorney's fees.

4. All other costs shall be allocated as follows:

<u>Cost</u>	<u>Party Responsible</u>	
	<u>Seller</u>	<u>Buyer</u>
Title Insurance & Title Examination		X
Preparation of Deed	X	
Survey		X
Recording Fees and Tax on Deed		X
Phase I Environmental Assessment		X
Phase II Environmental Assessment		X
Water Quality Fees (prorated)	X	X

Buyer shall pay for all closing and expenses

5. **Taxes and Assessments.** Real estate property taxes for 2024 are exempt from payment until the Closing Date. From and after the Closing Date, the Buyer will be responsible for the payment of real property taxes. Water quality fees assessed for the year in which the Closing occurs (regardless of when due and payable) shall be prorated as of the Closing Date.

6. **Conveyances.** At Closing, Seller shall convey title to the Property by Quitclaim Deed (the “Deed”) as follows: Craig Kronenberg and Heidi Hefferlin, Trustees of the Craig Kronenberg and Heidi Hefferlin Joint Revocable Trust U/A dated August 21, 2018, as to a fifty-two and one-half percent (52.5%) undivided interest, and William D. Fugatt and Matthew Killebrew, as joint tenants with right of survivorship, as to a forty-seven and one-half percent (47.5%) undivided interest.

7. **No Representations and Warranties/Release.**

a. BY ENTERING INTO THIS AGREEMENT, BUYER REPRESENTS AND WARRANTS THAT IT HAS PERFORMED (AND BUYER REPRESENTS AND WARRANTS TO SELLER THAT BUYER IS CAPABLE OF PERFORMING) AN INDEPENDENT INVESTIGATION, ANALYSIS EVALUATION OF THE PROPERTY. PRIOR TO THE EXPIRATION OF THE FEASIBILITY PERIOD, BUYER SHALL DETERMINE, SUBJECT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, THAT THE PROPERTY IS ACCEPTABLE TO BUYER. PRIOR TO THE EXPIRATION OF THE FEASIBILITY PERIOD, BUYER SHALL CONDUCT ITS OWN THOROUGH AND INDEPENDENT INSPECTION, INVESTIGATION,

ANALYSIS, AND EVALUATION OF ALL INSTRUMENTS, RECORDS, AND DOCUMENTS WHICH BUYER DETERMINES TO BE APPROPRIATE OR ADVISABLE TO REVIEW IN CONNECTION WITH BUYER'S ACQUISITION OF THE PROPERTY AND THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

- b. BUYER FURTHER ACKNOWLEDGES AND AGREES THE BUYER HAS SUBSTANTIAL EXPERIENCE WITH REAL PROPERTY AND ITS OPERATIONS, AND THAT BUYER WILL ACQUIRE THE PROPERTY IN "AS IS, WHERE IS, WITH ALL FAULTS" CONDITION, AND SOLELY IN RELIANCE ON BUYER'S OWN INSPECTION AND EXAMINATION.
- c. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT SELLER MAKES NO REPRESENTATIONS, WARRANTIES OR GUARANTIES OF ANY KIND, NATURE OR SORT, EXPRESS OR IMPLIED, WITH RESPECT TO THE PHYSICAL CONDITION, PAST, PRESENT OR FUTURE OPERATION AND/OR PERFORMANCE, OR VALUE, OF THE LOTS AND THAT SELLER CONVEYS ALL OF THE PROPERTY TO BUYER "AS IS AND WHERE IS, WITH ALL FAULTS," AND BUYER ACKNOWLEDGES THAT SELLER MAKES NO REPRESENTATIONS, GUARANTIES OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, AS TO THE QUALITY, CHARACTER, EXTENT, PERFORMANCE, CONDITION OR SUITABILITY OF THE PROPERTY FOR ANY PURPOSE.
- d. BUYER'S INSPECTION, INVESTIGATION, AND SURVEY OF THE PROPERTY SHALL BE IN LIEU OF ANY NOTICE OR DISCLOSURE REQUIRED BY ANY APPLICABLE HEALTH AND SAFETY CODE, OR BY ANY OTHER PROVISION OF APPLICABLE LAW, RULE OR REGULATION, INCLUDING LAWS REQUIRING DISCLOSURE BY SELLER OF FLOOD, FIRE, MOLD, SEISMIC HAZARDS, LEAD PAINT, LANDSLIDE AND LIQUEFACTION, OTHER GEOLOGICAL HAZARDS, RAILROAD AND OTHER UTILITY ACCESS, SOIL CONDITIONS AND OTHER CONDITIONS WHICH MAY AFFECT THE USE OF THE PROPERTY, BUYER HEREBY WAIVES ANY REQUIREMENT FOR A NOTICE PURSUANT TO THOSE PROVISIONS AND HEREBY ACKNOWLEDGES AND AGREES THAT IT WILL CONDUCT ITS OWN INSPECTIONS AND REVIEWS WITH RESPECT TO ALL MATTERS COVERED THEREBY, AND EXCEPT WITH RESPECT TO FRAUD, HEREBY RELEASES SELLER FROM LIABILITY IN CONNECTION WITH ANY SUCH MATTERS.
- e. FURTHERMORE, BUYER ACKNOWLEDGES THAT SELLER MAKES NO, AND HAS MADE NO, REPRESENTATIONS OR WARRANTIES IN CONNECTION WITH THE PRESENCE OR INTEGRATION OF HAZARDOUS MATERIALS UPON OR WITHIN

THE PROPERTY. IN THAT REGARD, BUYER HAS, PRIOR TO CLOSING, CONDUCTED ITS OWN INVESTIGATIONS TO DETERMINE IF THE PROPERTY CONTAIN ANY HAZARDOUS MATERIALS OR TOXIC WASTE, MATERIALS, DISCHARGE, DUMPING OR CONTAMINATION, WHETHER SOIL, GROUNDWATER OR OTHERWISE, WHICH VIOLATES ANY FEDERAL, STATE, LOCAL OR OTHER GOVERNMENTAL LAW, REGULATION OR ORDER OR REQUIRES REPORTING TO ANY GOVERNMENTAL AUTHORITY, EXCEPT WITH RESPECT TO FRAUD, BUYER, FOR ITSELF AND ITS OWNERS, SUCCESSORS AND ASSIGNS, HEREBY RELEASES AND FOREVER DISCHARGES SELLER, AND SELLER'S PAST, PRESENT AND FUTURE EMPLOYEES, AGENTS, ATTORNEYS, ASSIGNS, AND SUCCESSORS-IN-INTEREST, FROM ALL PAST, PRESENT AND FUTURE CLAIMS, DEMANDS, OBLIGATIONS, LOSSES AND CAUSES OF ACTION OF ANY NATURE WHATSOEVER, WHETHER NOW KNOWN OR UNKNOWN, DIRECT OR INDIRECT, FORESEEN OR UNFORESEEN, SUSPECTED OR UNSUSPECTED, WHICH ARE BASED UPON OR ARISE OUT OF OR IN CONNECTION WITH THE CONDITION OF THE PROPERTY AND, WITH RESPECT TO THE PRESENCE OF ANY HAZARDOUS MATERIALS, ANY ENVIRONMENTAL DAMAGES OR ENVIRONMENTAL REQUIREMENTS, INCLUDING THE PHYSICAL, STRUCTURAL, GEOLOGICAL, MECHANICAL, AND ENVIRONMENTAL (SURFACE AND SUBSURFACE) CONDITION OF THE PROPERTY (INCLUDING THE IMPROVEMENTS THEREON) OR ANY LAW OR REGULATION RELATING TO HAZARDOUS MATERIALS, WITHOUT LIMITING THE FOREGOING. THIS RELEASE SPECIFICALLY APPLIES TO ALL LOSSES AND CLAIMS ARISING UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED, THE SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT OF 1986, (42 U.S.C. SECTIONS 9601, ET SEQ.), THE RESOURCES CONSERVATION AND RECOVERY ACT OF 1976, (42 U.S.C., SECTIONS 6901 ET SEQ.), THE CLEAN WATER ACT, (33 U.S.C. SECTIONS 466 ET SEQ.), THE SAFE DRINKING WATER ACT, (14 U.S.C. SECTION 1401-1450), THE HAZARDOUS MATERIALS TRANSPORTATION ACT, (49 U.S.C. SECTIONS 1801, ET SEQ.), THE TOXIC SUBSTANCE CONTROL ACT, (15 U.S.C. SECTIONS 2601-2629), AND ANY OTHER FEDERAL, STATE OR LOCAL LAW OF SIMILAR EFFECT, AS WELL AS ANY AND ALL COMMON LAW CLAIMS.

BY INITIALING THIS CLAUSE BELOW, BUYER ACKNOWLEDGES THAT THIS SECTION HAS BEEN READ AND FULLY UNDERSTOOD, AND THAT BUYER HAS HAD THE CHANCE TO ASK QUESTIONS OF ITS COUNSEL ABOUT ITS MEANING AND SIGNIFICANCE.

BUYER'S SIGNATURE

8. **Conditions.** Unless otherwise waived by Buyer in writing, the duties, and obligations of Buyer under the terms and provisions of this Contract are and shall be expressly subject to the following conditions precedent, each of which shall be deemed material to this Contract:

- a. **Resolutions and Consents.** Seller's delivery to Buyer, at or before Closing, of such resolutions and/or consents to the sale of the Property as contemplated by this Contract as Buyer may reasonably require, all in such form as is satisfactory to Buyer.
- b. **Written Approval.** Buyer's written approval of all exhibits to this Contract.
- c. **Property Condition.** Buyer's approval that no material, adverse change occurring in the physical or financial condition of the Property between the Effective Date of this Contract and the Closing Date, including, but not limited to, any change in the environmental condition of the Property or presence of a Hazardous Substance on the Property. For purposes of this Contract, "**Hazardous Substance**" shall have the meaning set forth at 42 U.S.C. Section 9601(14), as well as the meaning(s) set forth in any applicable state law or regulation.
- d. **Representations and Covenants.** All covenants and representations contained in this Contract being true and correct as of the Closing.
- e. **Failure of Condition.** In the event of the failure of any of the conditions set forth in this Paragraph 8., which condition is not waived in writing by

Buyer, in Buyer's sole discretion, Buyer may (i) terminate this Contract by written notice to Seller, and this Contract shall be null and void and each of the parties shall be released from further liability to the other, or (ii) Buyer may, at Buyer's sole election, postpone the Closing for twenty (20) business days to allow such conditions to be satisfied, or waive the same; provided the provisions of this paragraph shall continue to apply if the Closing is postponed pursuant hereto and no waiver of such conditions shall be deemed to have been made unless expressly set forth in a writing signed by Buyer.

9. **Contract Default.**

- a. **Seller's Default.** If Seller fails to comply with this Contract within the time specified or if Seller breaches any covenant contained herein, Buyer shall be entitled to any remedies available to Buyer at law or in equity. An election by Buyer to pursue any one or more of its available remedies at law or in equity shall in no way limit or be deemed a waiver of its rights to pursue any other remedies available.
- b. **Buyer's Default.** If Buyer fails to comply with this Contract within the time specified or if Buyer breaches any covenant contained herein, Seller shall be entitled to any remedies available to Seller at law or in equity. An election by Seller to pursue any one or more of its available remedies at law or in equity shall in no way limit or be deemed a waiver of its rights to pursue any other remedies available.

10. **Date and Location.**

- a. **Closing Date.** The consummation of the transaction contemplated by this Contract (the “Closing”) shall occur on a date mutually satisfactory to the parties, but in any event before March 31, 2024 (the “Closing Date”).
- b. **Closing Location.** The Closing shall be held at a location as is mutually satisfactory to Buyer and Seller.
- c. **Documents.** At Closing, all documents herein contemplated for the conveyance of the Property, payment of the Purchase Price, and all other necessary documents and instruments shall be executed and/or delivered by the parties.
- d. **Possession.** Possession of the Property shall be transferred to Buyer on the Closing Date.

11. **Notices.**

- a. **Written Notices; Addresses.** All notices required herein must be written and shall be deemed to have been validly given when deposited postage prepared in the United States Mail, Certified, Return Receipt Requested, addressed to the parties as identified and set forth below:

Seller: City of Chattanooga
Attn: Real Property Office
101 E. 11th Street, Suite G-18
Chattanooga, TN 37402

With a copy to: Office of the City Attorney
100 E. 11th Street, Suite 200
Chattanooga, TN 37402

Buyer: Heidi Hefferlin et al.
1216 Main Street, Suite 120
Chattanooga, TN 37408

With a copy to: pmeyer@meyerburnett.com

- b. **Attorneys.** The respective attorney for each party shall have the right, but not the obligation, to give any notice on behalf of such attorney's client. Any notice so given by such attorney shall be deemed to have been given by such attorney's client.

12. **Entire Agreement.** This Contract constitutes the sole and entire agreement between Buyer and Seller relative to the Property, and no modification hereof shall be binding unless signed by both Buyer and Seller. Representations, promises, or inducements not included in this Contract shall not be binding upon either of the parties.

13. **Successors and Assigns.** This Contract shall be binding upon and shall inure to the benefit of each of the parties hereto, their respective heirs, successors, assigns, beneficial owners and representatives.

14. **Assignment.** Buyer shall have no right to assign its interest in this Contract to any person or entity except that Buyer shall have the right to assign its rights hereunder to an entity controlled by, or under common control with, the Buyer, by giving written notice thereof to Seller at least five (5) days before Closing.

15. **Waiver of Breach.** The failure of either party to insist upon strict performance of any of the terms or conditions and covenants contained herein shall not be deemed to constitute a waiver of any rights or remedies by either party that they may have and shall not be deemed to constitute a waiver of any subsequent breach or default.

16. **Performance. Time is of the essence in the performance and satisfaction of the obligations and conditions of this Contract.**

17. **Miscellaneous.**

- a. **Choice of Law.** The validity, construction, interpretation, and performance of this Contract shall, in all ways be governed and determined in accordance with the laws of the State of Tennessee. Should there be any provision thereof to be declared invalid, illegal, or unenforceable by a court of competent jurisdiction, the legality, validity, and enforcement of the remaining provisions shall not be affected but shall continue in full force and effect.
- b. **Captions.** The captions used in this Contract have been inserted only for purposes of convenience and the same shall not be construed or interpreted so as to limit or define the intent or the scope of any part of this Contract.
- c. **Gender and Number.** Within this Contract, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires.
- d. **Exhibits.** All exhibits described herein and attached hereto are fully incorporated into this Contract by this reference for all purposes.
- e. **Counterparts/Effective Date.** This Contract may be executed by the parties independently in any number of identical counterparts, and upon execution by both parties of any such independent counterparts, this Contract shall be in full force and effect on the date the last party executes an identical counterpart (the “Effective Date”) as if the parties had executed one and the same counterpart, and all of such counterparts when taken together shall constitute one and the same instrument.

- g. **Additional Documents.** The parties agree to execute such additional documents, including escrow instructions, as may be reasonable and necessary to carry out the provisions of this Contract.
- h. **Mergers.** Except as expressly provided to the contrary in this Contract, none of the obligations, representations or warranties contained in this Contract shall survive the Closing.
- i. **Modifications.** This Contract shall not be modified, amended, or terminated orally, and no such amendment, modification or termination shall be effective for any purpose unless same is in writing and duly authorized and executed by both parties hereto.

[signatures on following page]

IN WITNESS WHEREOF, this Contract has been executed by the Buyer and Seller on the dates set out below their respective signatures hereto.

SELLER:

CITY OF CHATTANOOGA

BY: _____

Richard J. Beeland, *Administrator*
Department of Economic
Development

Date: _____

BUYER:

Heidi Hefferlin, Trustee of the Craig Kronenberg
and Heidi Hefferlin Joint Revocable Trust U/A
dated August 21, 2018

Craig Kronenberg, Trustee of the Craig Kronenberg
and Heidi Hefferlin Joint Revocable Trust U/A
dated August 21, 2018

William D. Fugatt

Matthew Killebrew

Date: January 4, 2024

EXHIBIT "A"

Legal Description of the Property

Lots 7, 9 and 10, Block One (1), M.E. Stone's Subdivision, as shown by plat of record in Plat Book 6, Page 9, Register's Office of Hamilton County, Tennessee.

Reference is made for prior title to Quitclaim Deed recorded in Book 12955, Page 770, Register's Office of Hamilton County, Tennessee.

Subject to any setback lines, rights of way, easements, notes and any and all other matters shown on plat recorded in Plat Book 6, Page 9, Register's Office of Hamilton County, Tennessee.

Subject to governmental zoning and subdivision ordinances or regulations in effect thereon.