Derrick Mostella Mayor

Chrystal St. John City Clerk



P.O. Box 70 211 8th Street Ashville, AL 35953

Phone 205-594-4151 Fax 205-594-4292

ORDINANCE NO. 2017-005

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASHVILLE, **ALABAMA AS FOLLOWS:**

Section 1. It is hereby established and declared that the following described real property (the "Property") of the City of Ashville, Alabama, is no longer needed for public or municipal purposes, to-wit:

The Property: That property identified in Exhibit "A."

Section 2. That the Mayor is hereby authorized and directed to execute, for and on behalf of the City of Ashville, Alabama, the Purchase and Sale Agreement (the "Sales Contract") attached hereto as Exhibit "B" which provides for the sale of the Property for the sum of Twelve Thousand Nine Hundred and No/100 Dollars (\$12,900.00). Said consideration being deemed adequate by the City Council, the Mayor and City Clerk are hereby also authorized to execute a deed consistent with the Sales Contract at a closing held consistent with the terms and conditions set forth in the Sales Contract.

ADOPTED and APPROVED this the _______ day of ______ Jume_

CITY OF ASHVILLE, ALABAMA

Derrick Mostella, Mayor

ATTEST:

rystal St John

Send Tax Notice To: Jeff Brown 18801 US HWY 11 Steele, AL 35987

STATE OF ALABAMA COUNTY OF ST. CLAIR

STATUTORY WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, That, for and in consideration of the sum of Twelve Thousand Nine Hundred & NO/100 (\$12,900.00) Dollars to the undersigned Grantor, in hand paid by the Grantee herein, the receipt whereof is hereby acknowledged, CITY of ASHVILLE, a municipal corporation (herein referred to as Grantor), grant, bargain, sell and convey unto JEFFREY BROWN (herein referred to as Grantee), the following described real estate, situated in St. Clair County, Alabama, to-wit:

A part of the NW ¼ of the SW ¼ of Section 31, Township 13 South, Range 4 East, St. Clair County, Alabama, being more particularly described as follows:

The West 390 feet of the North 960 feet of the NW 1/4 of the SW 1/4 of Section 31, Township 13 South, Range 4 East.

ALSO: A non-exclusive easement for ingress and egress over, along and through that certain existing undedicated road known as Murray Circle.

Subject to easements and rights of way, if any, of record. Description furnished by Grantor. No title examination.

TO HAVE AND TO HOLD unto Grantee, and unto his heirs and assigns forever.

> Derrick L. Mostella, Mayor Of Ashville, Alabama

STATE OF ALABAMA COUNTY OF ST. CLAIR

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that DERRICK L. MOSTELLA, whose name as Mayor of City of Ashville, a corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day, that, being informed of the contents of the conveyance, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this day of

Chustal 1

My Commission Expires:

10/13/17

GRANTOR'S ADRESS: City of Ashville P.O. Box 70 Ashville, AL 35953 GRANTEE'S ADRESS: Jeffrey Brown 18801 US HWY 11 Steele, AL 35987

Prepared By: Jeff Brown 18801 US HWY 11 Steele, AL 35987 STATE: ALABAMA COUNTY: ST. CLAIR

Land Purchase Contract

THIS LAND PURCHASE CONTRACT (this "Contract") is made by and between Jeffrey Brown ("Buyer"), and the City of Ashville, Alabama, an Alabama municipal corporation ("Seller"). Both parties state and acknowledge as follows:

- A. Seller owns certain approximately 8.64 acres of land located in St. Clair County, Alabama, and described in **Exhibit A** attached hereto and incorporated herein (the "Land"). The Land, together with all rights, permits, privileges, licenses and easements appurtenant thereto and all vegetation and improvements located thereon, are hereinafter collectively referred to as "the Property."
 - B. Seller desires to sell the Property to Buyer, and Buyer desires to purchase the Property from Seller.

THEREFORE, for and in consideration of the reciprocal covenants stated herein, the parties agree as follows:

- 1. **Conveyance**. Seller shall sell and convey the Property to Buyer, and Buyer shall purchase the Property from Seller, on the terms and conditions stated herein.
- 2. **Effective Date**. The "Effective Date" means the last of the following dates: (a) the date this Contract is executed by Buyer, or (b) the date this Contract is executed by Seller.
- 3. **Purchase Price.** The purchase price of the Property ("the Purchase Price") shall be One Thousand Five Hundred and N0/100 Dollars per acre (\$1,500 / acre), computed to the nearest 100th acre as shown by the survey of the Property accepted by the parties pursuant to Section 9 below. Subject to the "Option Consideration" in the paragraph titled "Seller's Option to Purchase", the Purchase Price shall be payable at closing on the sale and purchase of the Property ("Closing") by delivery of cash or other immediately available funds, subject to adjustments, prorations and credits as herein provided.

4. Earnest Money.

- a. Within ten (10) business days of the Effective Date, Buyer shall deposit the sum of <u>Five Hundred and No/100 Dollars (\$500.00)</u> (the "Earnest Money") with Hill, Hill & Gossett, P.C. to be held in escrow for this purchase.
- b. If this Contract is not sooner terminated, the Earnest Money shall, at Buyer's election, be returned to Buyer at Closing or paid to Seller and credited against the Purchase Price.

5. Primary Contingencies; Definitions.

- a. <u>Primary Contingencies</u>. Buyer's obligation to close on the purchase of the Property under this Contract is contingent upon each and all of the following (collectively, the "Primary Contingencies"): (1) all of Seller's warranties, representations and covenants contained in this Contract shall be and remain true, correct, complete and fully performed as of the Effective Date and through Closing; (2) Seller shall be ready, willing and able to deliver good and marketable title (as defined in Section 8 below) to the Property to Buyer, and Buyer's title insurer (the "Title Company") shall be unconditionally prepared to issue a standard ALTA owner's form title policy insuring good and marketable fee simple title to the Property with a liability limit in the amount of the Purchase Price at standard premium rates.
- 6. Closing and Possession.

- a. Closing shall be held no more than thirty (30) days after the later of: (a) the date on which all of the Primary Contingencies have been either satisfied or waived by Buyer, or (b) 60 days from the execution of this Land Purchase Contract.
- b. At Closing, Seller shall deliver a Warranty deed conveying fee simple title to the Property in recordable form (the "Deed"). Seller shall deliver exclusive possession of the Property to Buyer at Closing.
- 7. **Closing Costs and Prorations.** Seller shall pay the cost of preparation of the Deed, the cost of satisfaction of any liens on the Property, Seller's attorneys' fees and all other expenses incurred by Seller related to Closing. Buyer shall pay the cost of any title search, the cost for preparation and issuance of an owner's title insurance policy in favor of Buyer in the amount of the Purchase Price, the recording cost associated with the recording of the Deed, any transfer or recording tax assessed on the recording of the Deed, Buyer's attorneys' fees and the cost of any survey. Ad valorem taxes on the Property for the tax year of Closing shall be prorated between Seller and Buyer as of Closing based on the latest assessment available. Should such proration be inaccurate based on the actual ad valorem tax bill when received, either party shall be entitled, upon demand, to adjustment of the proration and corresponding reimbursement from the other party. Seller shall be solely responsible for any deferred or past due taxes. The provisions of this Section shall survive Closing.
- 8. Conveyance of Title. At Closing, Seller shall convey good and marketable title to the Property to Buyer pursuant to the Deed. As used in this Contract, "good and marketable title" shall mean title that is free and clear of all liens, encumbrances and other exceptions to title and rights of others except the Permitted Exceptions (hereinafter defined). Buyer shall examine title to the Property and give written notice to Seller of any objections that Buyer may have prior to the expiration of the Inspection Period (the "Initial Objection to Title Notice"). Within ten (10) days after receipt of the Initial Objection to Title Notice, Seller shall provide written notice to Buyer whether Seller will cure any such objections or refuse to cure such objections. Failure by Seller to give written notice of its election within ten (10) days after receipt of the Initial Objection to Title Notice shall be deemed an election by Seller not to cure the objections. In the event Seller elects, or is deemed to have elected, not to cure any objections, then Buyer shall have the right to elect to either (i) waive the unsatisfied objections and proceed with Closing, or (ii) terminate this Contract at any time prior to the Closing and receive an immediate refund of the Earnest Money. In the event Seller elects to cure the objections, Seller shall have thirty (30) days from the date of the notice to cure all such objections, at Seller's sole cost. The Closing shall be delayed during and extended for any such cure period. If Seller fails for any reason to cure the objections within thirty (30) days, then Seller shall be in default hereunder. In such event, in addition to any rights and remedies which Buyer may have pursuant to Section 15 below, Buyer may: (1) waive the unsatisfied objections and complete the purchase of all portions of the Property scheduled for Closing, including those subject to the unsatisfied objections, or (2) terminate this Contract in its entirety and receive an immediate refund of the Earnest Money. Any objections that are waived in writing by Buyer, or deemed to be waived by Buyer pursuant to this Section 8, shall become "Permitted Exceptions." Notwithstanding anything to the contrary contained herein, Seller shall be obligated to remove any exception that can be cured by the payment of money, such as a deed of trust, mortgage, lien, judgment, deferred tax or confirmed assessment. Buyer may re-examine title up to the time of the Closing and give written notice to Seller of any objections that Buyer may have as to matters first appearing of record subsequent to Buyer's Initial Objection to Title Notice, or in the event Buyer did not provide an Initial Objection to Title Notice, as to matters that did not exist or were not of public record as of the Effective Date, which new title objections shall be addressed as set forth above. At Closing, Seller shall execute an Owner's Affidavit and other affidavits, certificates and documents reasonably required by Buyer or the Title Company to deliver title as required by this Contract.
- 9. **Buyer's Survey.** Buyer may obtain at its expense an ALTA Survey and/or a boundary survey (the "Survey") of the Property. If Buyer obtains the Survey, Buyer shall provide Seller with a copy of the Survey, and the Subdivision Plat shall contain the legal description for the Property derived from the Survey. Within fifteen (15) days after delivery of the Survey to Seller, Seller shall notify Buyer in writing of any objection to the Survey. If a notice of objection is not timely received, the Survey proposed by Buyer shall be deemed accepted by Seller, and the Purchase Price shall be based on the acreage of the Property computed to the nearest 100th of an acre as shown by the Survey. If Seller objects to Buyer's Survey, then Seller shall cause the Property to be surveyed by a Registered Land Surveyor within thirty (30) days thereafter, and shall furnish a copy of Seller's survey to Buyer. If Buyer does not accept Seller's survey, then the surveyors who prepared Buyer's and Seller's surveys shall select a third Registered Land Surveyor who shall survey the Property. The results of said third survey shall be conclusive, the Subdivision Plat shall contain the legal description for the Property contained therein, and the Purchase Price shall be based on the acreage of the Property as shown by that survey. Seller shall bear the expenses of any surveyor hired by Seller.

Buyer and Seller shall equally divide and pay the cost of any expense incurred by any third surveyor employed pursuant to the terms of this Section.

10. Inspection Period.

- a. <u>Duration</u>. The "Inspection Period" shall mean the period of time beginning with the Effective Date, and ending at 11:59 p.m. on the date that is thirty (30) days following the Effective Date.
- b. Rights and Obligations. From the Effective Date through Closing, Buyer may enter upon the Property to inspect and examine the Property and to perform whatever tests and studies of the Property that Buyer deems necessary or appropriate. Seller shall cooperate with Buyer in its entry upon and inspections, tests, examinations and studies of the Property. Buyer shall indemnify Seller for any and all claims of bodily injury or damage to property (including the Property itself) arising out of Buyer's inspections of the Property. Buyer shall also indemnify Seller for liens which may be filed against the Property by persons or entities employed or contracted by Buyer to perform inspections of the Property. Buyer's indemnity of Seller pursuant to this subsection b shall survive Closing or any earlier termination of this Contract for a period of one (1) year. If any test or study reveals a matter which, in Buyer's sole discretion, causes the Land to be undesirable to purchase, Buyer may terminate this contract so long as the same is done at least ten (10) days prior to Closing.
- 11. **Delivery of Information**. Within five (5) business days after the Effective Date, Seller shall deliver to Buyer Copies of all of the following materials, to the extent they are in the possession or control of Seller: (a) all surveys, (b) all reports, documents and surveys regarding rock tests and other soil conditions, (c) all environmental studies and reports, (d) all wetland delineation studies, (e) all other reports, studies and other materials that pertain to environmental hazards, wetlands, flood studies or any aspect of the physical or environmental condition of the Property or other property in the vicinity of the Property, and (f) all existing or proposed leases, licenses, easements and contracts affecting the Property.
- 12. **Condemnation and Casualty.** If prior to Closing, all or any portion of the Property is condemned or taken, or threatened to be condemned or taken, by any authority, or any portion of the Property suffers a casualty loss, Seller shall give Buyer immediate notice thereof with a complete description of all relevant information and complete copies of all relevant documentation. Within thirty (30) days of such notice, Buyer may elect either: (i) to terminate this Contract, in which event all of the Earnest Money shall be immediately refunded to Buyer; or (ii) to collect all awards and proceeds from any condemnation or insurance policy and keep this Contract in full force and effect, in which case Seller shall promptly execute all documents required by Buyer to assign Seller's rights therein to Buyer.
- 13. **Seller's Warranties**. Seller represents, warrants and covenants to Buyer that, as of the Effective Date, and continuing through Closing:
 - a.

 Seller is in sole and exclusive possession of the Property and no person or entity claims any right of possession to all or any portion thereof;
 - b.
 Seller has full authority to execute this Contract and convey the Property to Buyer and execute and deliver the Deed and such other documents, instruments, affidavits and certificates as are necessary or desirable to effectuate this transaction, and no other signatures are required for this Contract to be fully enforceable by Buyer;
 - c.
 There is no pending, and Seller has no notice or knowledge of any threatened, taking or condemnation of the Property or any portion thereof, or any action, litigation or proceeding by any organization, person or governmental agency affecting the Property or Seller's right to sell the same;

- d. Seller has no notice or knowledge of any violation of law, order, ruling, ordinance, rule or regulation with respect to Seller or the Property or the use thereof;
- e.
 The execution and delivery of this Contract and the consummation of this transaction will not result in a breach of any of the terms of, or constitute a default under, any (i) indenture, contract or instrument to which Seller is a party or by which Seller or the Property is bound, or (ii) law, order, ruling, ordinance, rule or regulation with respect to Seller or the Property or the use thereof;
- f.

 To the best of Seller's knowledge, there are no attachments, executions, assignments for the benefit of creditors or voluntary or involuntary proceedings in bankruptcy or under any applicable debtor relief laws pending or threatened against Seller or the Property;
- g.

 The information and materials furnished and to be furnished to Buyer by Seller, and Seller's representations and warranties made herein or in connection herewith, are true, complete and accurate and do not omit to include any material information necessary to make the same true or not misleading; and

Seller will not allow or cause any action to be taken that will cause any of the foregoing representations or warranties to be untrue or incorrect at Closing, or fail to take any action that may be required to keep such representations and warranties true and correct at Closing. Seller shall indemnify and hold Buyer harmless from and against any and all liabilities, losses, costs, damages and expenses (including attorneys' fees and expenses and costs of litigation) incurred by Buyer as a result of the untruth, incorrectness or incompleteness when made and through Closing of any representation or warranty made herein or in connection herewith. The provisions of this Section shall survive Closing or any termination of this Contract for a period of one (1) year.

14. Broker Fees. Seller represents to Buyer that Seller has not discussed this Contract or the subject matter hereof with any real estate broker, agent, or salesperson in any manner or context that would create any legal right of any such broker, agent, or salesperson to claim a real estate commission, finder's fee, or similar compensation from Buyer with respect to the sale and/or conveyance of the Property contemplated in this Contract. Seller shall indemnify and hold Buyer harmless from and against any and all liabilities, losses, costs, damages and expenses (including reasonable attorneys' fees and expenses and costs of litigation) that Buyer may suffer or incur because of any claim by any broker, agent, or salesperson, whether or not meritorious, for any compensation with regard to this Contract or the sale and purchase of the Property contemplated herein, and arising out of any acts or agreements of Seller. Buyer represents to Seller that Buyer has not discussed this Contract or the subject matter hereof with any real estate broker, agent, or salesperson in any manner or context that would create any legal right of any such broker, agent, or salesperson to claim a real estate commission, finder's fee, or similar compensation from Seller with respect to the sale and/or conveyance of the Property contemplated in this Contract. Buyer shall indemnify and hold Seller harmless from and against any and all liabilities, losses, costs, damages and expenses (including reasonable attorneys' fees and expenses and costs of litigation) that Seller may suffer or incur because of any claim by any broker, agent, or salesperson whether or not meritorious, for any compensation with regard to this Contract or the sale and purchase of the Property contemplated herein, and arising out of any acts or contracts of Buyer. The provisions of this Section shall survive Closing or any termination of this Contract.

15. Default.

a. <u>Buyer's Default</u>. If Buyer defaults in the performance of any obligation or covenant hereunder, Seller's sole and exclusive remedy shall be to terminate this Contract and receive payment of the Earnest Money then held by the Escrow Agent as Seller's full liquidated damages as a result of such default. The parties hereby agree and acknowledge that (i) ascertaining the actual damages in the event of a default by Buyer would be difficult, (ii) it is impossible more precisely to estimate the damages to be suffered by Seller upon Buyer's default, (iii) such payment of Earnest Money is intended not as a penalty, but as full liquidated damages, and (iv) the amount of the Earnest Money constitutes a good faith estimate of the potential damages that could arise from a default by Buyer hereunder.

- b. <u>Seller's Default</u>. If Seller defaults in the performance of any obligation hereunder prior to Closing, Buyer may either: (i) seek specific performance of this Contract, or (ii) terminate this Contract, receive a full refund of all of the Earnest Money.
- c. <u>Post-Closing Remedies</u>. Notwithstanding subsections a and b above, from and after the Closing, each party shall have the right to pursue its actual (but not consequential or punitive) damages against the other party for: (1) a breach of any covenant or agreement contained herein that is performable after or that expressly survives the Closing (including the indemnification obligations contained in this Contract), and (2) a breach of any representation or warranty in this Contract.
- d. <u>Notice and Cure Rights</u>. In the event of a default hereunder, the non-defaulting party shall give the defaulting party notice of such default, specifying in reasonable detail the nature of the default. Thereafter, the defaulting party shall have fifteen (15) days from the date notice of default is given to cure the default. If the defaulting party cures the default within the 15-day period, it shall not incur any liability to the other party for the default. Each party shall reasonably cooperate with any and all attempts by the other to cure any default within the aforesaid cure period.
- 16. **Notices**. All notices required or permitted to be given hereunder shall be in writing and shall be deemed given: (a) upon hand-delivery, receipt required, (b) the next business day after deposit with Federal Express, UPS or other nationally recognized overnight courier service, or (c) when transmitted via email or facsimile, provided a copy is sent the next business day by method (a) or (b) or by regular first-class U.S. Mail. All notices shall be addressed as follows:

| If to Seller: | City of Ashville, Alabama c/o Mayor |
|---------------|--|

17. **Covenants Pending Closing**. From and after the Effective Date through Closing, Seller shall: (a) operate and maintain the Property in a good and workmanlike manner at least as well as Seller has operated and maintained it prior to the Effective Date, and shall not commit or allow any waste of or on the Property, (b) within 3 business days after Seller's receipt thereof, give notice to Buyer of any litigation, arbitration or administrative proceeding concerning or affecting the Property, together with copies of all relevant documents, and (c) comply with all requirements of all laws, orders, rulings, ordinances, rules and regulations of any governmental authority having jurisdiction over Seller and the Property and/or the use thereof. From and after the Effective Date through Closing, Seller shall not convey or encumber any portion of the Property or any rights therein, nor enter into any conveyance, mortgage, security document, option, right of first refusal, easement, lease or other contract granting to any person or entity any rights or interests in any portion of the Property.

18. Standard Provisions.

If to Buyer:

- a. This Contract shall be interpreted in accordance with the laws of the State of Alabama.
- b. Time is of the essence in the occurrence of all events, the satisfaction of all conditions and the performance of all obligations hereunder.
- c. This Contract constitutes the sole and entire agreement between the parties with regard to its subject matter. All prior discussions, negotiations and agreements regarding the subject matter of this Contract are merged herein and shall have no further force or effect. No representations or warranties have been made by either party except as stated herein.

- d. All representations and warranties of both parties contained in this Contract, together with all covenants expressly surviving Closing, shall survive Closing and delivery of the Deed and other documents delivered at Closing for a period of one (1) year and shall not be merged with delivery thereof.
- e. The term "business day" shall mean Monday through Friday, excluding days on which federally-chartered or banks chartered by the state in which the Property is located are closed for business. If the day for any action under this Contract falls on a day other than a business day, the day for the action shall automatically be extended until the next business day.
- f. If any provision of this Contract shall be declared invalid or unenforceable by laws applicable thereto, or unenforceable as to certain parties, then the performance of such provision shall be excused by the parties hereto and the remaining provisions of this Contract shall remain in full force and effect.
- g. The titles, captions and paragraph headings herein are inserted for convenience only and are in no way intended to interpret, define or limit the scope or content of this Contract or any provision hereof. Both parties have been represented by counsel in the drafting and negotiation of this Contract, and this Contract shall be construed without regard to any presumption or other rule requiring construction against the party causing this Contract to be drafted.
- h. BUYER AND SELLER EACH AGREE TO WAIVE A TRIAL BY JURY IN ANY DISPUTE ARISING OUT OF THIS CONTRACT.
- i. Any failure or delay of Buyer or Seller to enforce any term of this Contract shall not constitute a waiver of such term. Any waiver of any term of this Contract by either party must be specifically stated in a writing delivered to the other party in compliance with Section 16 above. Any such waiver by Buyer or Seller shall not be deemed to be a waiver of any other term of this Contract or of a subsequent breach of the same term.
- j. If this Contract is terminated prior to Closing, the Earnest Money shall be refunded to Buyer, unless Buyer is in default hereunder and Seller is entitled to the Earnest Money pursuant to Section 15 above. Upon termination of this Contract and return of the Earnest Money to Buyer, Buyer and Seller shall thereafter have no further rights, obligations or liabilities hereunder, other than those expressly surviving termination; provided that if this Contract is terminated prior to Closing but after Buyer's issuance of a Notice of Suitability pursuant to Section 10 above, the parties shall execute a written Termination Agreement on terms reasonably acceptable to counsel for both parties and the Escrow Agent. Failure of the parties to execute a Termination Agreement shall not negate or otherwise affect the termination; however, either party shall have the right to sue for its actual damages resulting from the refusal or willful failure of the other party to execute a written Termination Agreement upon reasonable terms.
- k. This Contract shall be binding upon and shall inure to the benefit of Seller and Buyer, their respective heirs, successors, legal representatives and permitted assigns. Buyer may assign its rights and obligations hereunder. Seller may not assign its rights and obligations hereunder without the prior written consent of Buyer, which shall not be unreasonably withheld.
- I. This Contract may be executed in multiple, separate counterparts, and such counterparts shall constitute one and the same document. This Contract may not be modified or amended except by a writing signed by both Buyer and Seller.
- m. This Contract, any amendments hereto, the Earnest Money instrument (if any), and the Notice of Suitability (if any) may be executed by hand-signatures or by electronic signatures using DocuSign or other similar technology. Such signatures may be transmitted by facsimile or email. Any such electronic signatures or electronic transmissions of signatures shall be deemed to constitute originals. In addition, either party and/or the Escrow Agent may rely upon any electronic transmission of any document that is properly executed by the other party. The ratification of this Contract or any amendment hereto by any of the Authorized Officers on behalf of Buyer also may be accomplished by either hand-signature or by electronic signature using DocuSign or other similar technology. Except as otherwise provided in this subsection to the contrary, the Electronic Signatures in Global and National Commerce Act and any parallel, corresponding or similar state law or regulation shall not apply to the execution of this Contract or any amendment hereto, and Buyer shall not be bound by any electronic signature.

IN WITNESS WHEREOF, the parties hereto have caused this Contact to be executed on the dates shown below.

Seller:

Buyer:

City of Ashville, Alabama

By:

By:

Date:

Dat

Exhibit A

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