

RESOLUTION NO. 30579

A RESOLUTION AUTHORIZING THE MAYOR OR HIS DESIGNEE TO ENTER INTO A CONTRACT FOR SALE AND PURCHASE, IN SUBSTANTIALLY THE FORM ATTACHED, WITH RISE CHATTANOOGA, FORMERLY KNOWN AS JAZZANOOGA, FOR THE PURCHASE OF 842 GILLESPIE ROAD, IDENTIFIED AS TAX PARCEL NO. 147G-L-001, FOR THE AMOUNT OF THIRTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$37,500.00), WITH EARNEST MONEY IN THE AMOUNT OF ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00) DEPOSITED WITH JONES TITLE AGENCY, INC., AND TO EXECUTE ALL DOCUMENTS RELATED TO THE TRANSACTION, WITH CLOSING FEES FOR AN AMOUNT NOT TO EXCEED ONE THOUSAND THREE HUNDRED DOLLARS (\$1,300.00), FOR A TOTAL AMOUNT NOT TO EXCEED THIRTY-EIGHT THOUSAND EIGHT HUNDRED DOLLARS (\$38,800.00).

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 Rise Chattanooga, formerly known as Jazzanooga, for the purchase of 842 Gillespie Road, identified as Tax Parcel No. 147G-L-001, for the amount of \$37,500.00, with earnest money in the amount of \$1,500.00 deposited with Jones Title Agency, Inc., and to execute all documents related to the transaction, with closing fees for an amount not to exceed \$1,300.00, for a total amount not to exceed \$38,800.00.

ADOPTED: December 15, 2020

/mem

CONTRACT FOR SALE AND PURCHASE

This Contract for Sale and Purchase (“Contract”) is made and entered into this ___ day of _____, 2020, by and between JAZZANOOGA n/k/a RISE Chattanooga, a Tennessee nonprofit corporation (“Seller”), and CITY OF CHATTANOOGA, a Tennessee municipal corporation (“Buyer”).

WITNESSETH

WHEREAS, Seller owns a fee simple interest in real property located at 842 Gillespie Road, Chattanooga, Tennessee, Tax Parcel No. 147G-L-001 (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 THIRTY-SEVEN THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$37,500).
- b. **Earnest Money Deposit.** Within thirty (30) days from the Effective Date (as defined below), Buyer shall deposit the amount of ONE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$1,500) (the “Earnest Money Deposit”) with Jones Title Agency, Inc., 518 Georgia Avenue, Suite 200, Chattanooga, Tennessee 37403, Attention: William Jones, Esquire (“Escrow Agent”). The Earnest Money Deposit shall be applied to the Purchase Price at the Closing. The Earnest Money Deposit will remain refundable until the Closing, subject to the terms and conditions of this Contract. The remainder of the Purchase Price after application of the Earnest Money Deposit owed by Buyer to Seller in the amount of THIRTY-SIX THOUSAND AND NO/100 DOLLARS (\$36,000) shall be tendered at the Closing.

3. **DUE DILIGENCE**

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 “Due Diligence Period”) to determine whether or not the transaction contemplated herein is suitable for Buyer’s intended purposes, as determined by Buyer,

in Buyer's sole discretion. Buyer may, prior to the expiration of the Due Diligence 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, and Escrow Agent shall refund Buyer the Earnest Money Deposit, and the parties shall have no further obligations pursuant to this Contract, except as expressly stated to survive the termination of this Contract.

4. **Survey and Title Approval.**

- a. **Survey.** At Buyer's option and Buyer's expense and direction during the Due Diligence Period, Buyer may obtain an as built survey and a surveyor's certificate, in form sufficient to remove the survey exception from the Title Commitment (as defined below). The survey will be prepared by a licensed surveyor acceptable to Buyer. The survey shall incorporate an exact description of the Property to be conveyed, shall be dated not more than sixty (60) days prior to the Closing Date, shall show the total area of the Property in square feet, easements, if any, dimensions and locations of improvements, driveways, location of adjoining streets and rights of way, building setback lines, zoning requirements and such other details as may be required by Buyer. The survey shall be insurable by the Title Company (as defined below).
- b. **Title Commitment.** At Buyer's option and Buyer's expense, Buyer may obtain a binding commitment from Escrow Agent ("Title Commitment"), as agent for a national title insurer reasonably acceptable to Buyer ("Title Company"), for an ALTA owner's title insurance policy covering the

Property, together with copies of all documents referenced therein (the "Title Policy").

- c. **Environmental Assessment.** At Buyer's option and at Buyer's expense and direction, Buyer may obtain a Phase I Environmental Site Assessment of the Property prepared in accordance with ASTM E1527-13 (the "Phase I").
- d. **Review of Title.** Buyer shall have until the expiration of the Due Diligence Period to review all of: (i) the Title Commitment, (ii) legible copies of all documents referenced in title exceptions disclosed therein, (iii) the survey, and (iv) the Phase I, if applicable, (i) through (iv), together, the "Due Diligence Documents") and to give written notice to Seller of any title matters which affect title to the Property and which are unacceptable to Buyer. If any title or survey defects or other matters objectionable to Buyer are disclosed by any of the Due Diligence Documents, Buyer shall give Seller written notice of same prior to the expiration of the Due Diligence Period. Seller shall be allowed a reasonable time, not in excess of fifteen (15) business days or longer period if approved, in writing, by Buyer, as determined in Buyer's sole discretion. If said defects are not timely cured to Buyer's satisfaction, Buyer may waive such defects and proceed to Closing, or Buyer may terminate this Contract by written notice to Seller, upon which the Earnest Money Deposit shall be returned to Buyer, and each of the parties shall be released from further liability to the other.
- e. **Title at Closing.** At the Closing, the Title Company shall be prepared to issue an owner's title insurance policy on a standard ALTA Form insuring Buyer's fee simple title to the Property free and clear of all exceptions and

encumbrances with liability limits in the amount of the Purchase Price, subject only to the delivery of documents, materials, and funds described herein, the recordation of the Deed, and payment of the applicable title insurance premiums and survey exceptions, if any. If the Title Company is unable to insure the Property for any reason, Buyer shall be entitled to terminate the Contract by written notice to Seller, upon which the Earnest Money Deposit shall be returned to Buyer, and each of the parties shall be released from further liability to the other.

f. **Closing Costs.**

- a. 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.
- b. 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.
- c. Buyer and Seller shall be responsible for their own attorney's fees.
- d. 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 taxes for 2020 and 2021 shall be paid by Seller. From and after the Closing Date, the property will be exempt from 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 Warranty Deed conveying to Buyer marketable and insurable fee simple title to the Property (the “Deed”).

7. **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. **Buyer's Title Policy.** As of the Closing, the Title Company shall have committed to issue, upon the condition of the payment of its regularly scheduled premium, the Title Policy.
- f. **Failure of Condition.** In the event of the failure of any of the conditions set forth in this Paragraph 7., 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 obtain a full refund of the Earnest Money Deposit, 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.
- g. **Updates.** Seller shall immediately notify Buyer, in writing, if Seller obtains knowledge or receives notice of (i) any event which has or is likely to have a material adverse effect on the operation, physical condition or financial condition of the Property, (ii) any violation, potential violation or alleged violation of any applicable governmental laws, statutes, codes, ordinances, rules, regulations, orders, judgments and decrees, including, but not limited to, the terms of all permits, related to the Property, or (iii) any legal action

or governmental proceeding related to the Property or which may affect Seller's ability to perform its obligations under this Contract, or any actual, pending or threatened taking of the Property by condemnation or eminent domain.

8. **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 shall fail to purchase the Property from Seller in breach of this Contract and does not cure such failure within ten (10) business days after receiving written notice of the same from Seller, then Seller may terminate this Agreement. The parties acknowledge that the actual damages likely to result from breach of this Contract by Buyer are difficult to estimate on the Effective Date of this Contract and would be difficult to prove. Therefore, the parties agree that if Buyer breaches this Contract, Seller shall be entitled to retain the Earnest Money Deposit as liquidated damages and not as a penalty as Seller's sole remedy.

9. **Date and Location.**

- a. **Closing Date.** The consummation of the transaction contemplated by this Contract (the “Closing”) shall occur on or before _____, 2021 (the “Closing Date”).
- b. **Closing Location.** The Closing shall be held at the offices of the Escrow Agent or at such other 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.

10. **Real Estate Commissions.** At Closing, Seller shall be responsible for paying a real estate commission to Sim A. Wilson, III of CBRE, Inc. in the amount of three percent (3%) of the Purchase Price (the “Broker”). Seller agrees to indemnify, defend, and hold harmless Buyer from and against any and all losses, liens, claims, judgments, liabilities, costs, expenses or damages (including reasonable attorneys’ fees and court costs) of any kind or character arising out of or resulting from any agreement, arrangement or understanding alleged to have been made by such parties or on their behalf with any broker in connection with this Contract other than the Broker. Notwithstanding anything to the contrary contained herein, this paragraph shall survive the Closing or any termination of this Contract.

11. **Relocation of Community Garden.** Following the Closing, Buyer, in its sole discretion, will select an area within Buyer’s site plan to relocate Seller’s existing community

garden located on the Property. Buyer will participate with Seller in establishing a timeline for the relocation of the community garden and any mutually agreed upon community announcements. Once Buyer has identified a site for the relocation of the community garden, Seller shall execute a Premises Use Agreement prepared by Buyer, and Seller shall provide insurance coverage as required by Buyer's Standard Terms and Conditions. This provision shall survive the Closing.

12. **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
ECD Real Property
101 E. 11th Street, Suite G-4
Chattanooga, TN 3741

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

Buyer: RISE Chattanooga
ATTN: Shane Morrow
P.O. Box 406
Chattanooga, TN 37401

With a copy to: _____

- 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.

13. **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.

14. **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.

15. **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.

16. **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.

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

18. **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.
- f. **No Assumption.** Buyer’s acquisition of the Property shall in no way be construed as an assumption of any liability, debt or obligation related thereto, known or unknown, which is allocable to periods prior to the Closing. Furthermore, Buyer shall assume no liabilities of Seller of any kind or nature whatsoever, whether known or unknown, fixed or contingent, in connection with or as a result of the acquisition of the Property or arising

from or in connection with Seller's ownership of the Property or Seller's operation of any business, concern, or enterprise involving the Property. Seller shall remain solely responsible for the obligations, liabilities and debts of Seller. Seller shall indemnify Buyer against, and shall hold Buyer harmless from, any and all claims, demands, causes of action, liabilities, judgments, losses, damages, costs, and expenses of any kind whatsoever (including without limitation reasonable attorneys' fees incurred in connection with the enforcement of this indemnity) resulting from or arising out of or in connection with the ownership and operation of the Property, any business conducted thereon or therein, and any use or occupancy of the Property by Seller or its agents, employees, invitees, licensees or guests on or before the Closing Date..

- 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.

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

BUYER:

CITY OF CHATTANOOGA

BY: _____
Donna C. Williams, *Administrator*
Economic & Community Development

Date: _____

SELLER:

RISE Chattanooga

BY: _____
Shane Morrow

TITLE: _____

Date: _____

Exhibit A

Legal Description to be updated with new Survey

LOCATED IN THE CITY OF CHATTANOOGA, HAMILTON COUNTY, TENNESSEE:

Being the North One-Hundred Forty (140) feet of Lots One-Hundred Thirty-Nine (139) and One-Hundred Forty (140) Plat of Sylvan Hills, as shown by plat of record in Plat Book 7, Page 35, in the Register's Office of Hamilton County, Tennessee. According to said plat, said parts of two (2) lots together make one tract fronting One-hundred (100) feet, more or less, on the southeastern line of Dixon Highway, now called Shallowford Road, and extends southwardly, between parallel lines that are One-Hundred (100) feet apart, and along the eastern line of Gillespie Road, One-Hundred Forty (140) feet to a line parallel to the said Shallowford Road. Except that part used in rounding the intersection of the Shallowford Road and the Gillespie Road.

For prior title and last instrument of record affecting title, see deed from Harry C. Cash, Successor Trustee to Chattanooga Neighborhood Enterprise, Inc. dated August 3, 2012 and recorded August 6, 2012 at Book 9710, Page 167, in the Register's Office of Hamilton County, Tennessee.

SUBJECT TO any governmental zoning and subdivision ordinances in effect thereon.

SUBJECT TO the restrictions in set out in the deed by W. H. Frazier, et. al., to Thomas W. Schneider, dated July 28, 1921, and registered in Book H, Volume 10, Page 21, in the Register's Office of Hamilton County, Tennessee and modified in instrument dated February 20, 1947, and registered in Book 943, Page 306, in the said Register's Office, but deleting any covenant, condition or restriction indicating a preference, limitations or discrimination based on race, color, religion, sex, handicap, familial status or national origin to the extent such covenants, conditions or restrictions violate 3604(c).