

RESOLUTION NO. 30919

A RESOLUTION AUTHORIZING THE MAYOR OR HIS DESIGNEE TO ENTER INTO A CONTRACT FOR SALE AND PURCHASE WITH SUNLIGHT, LLC, IN SUBSTANTIALLY THE FORM ATTACHED, FOR THE PURCHASE OF 7725 LEE HIGHWAY, IDENTIFIED AS TAX PARCEL NO. 139F-A-003.04, FOR THE AMOUNT OF TWO MILLION SEVEN HUNDRED EIGHTY-FIVE THOUSAND DOLLARS (\$2,785,000.00), WITH EARNEST MONEY IN THE AMOUNT OF TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) DEPOSITED WITH JONES TITLE AGENCY, INC., AND TO EXECUTE ALL DOCUMENTS RELATED TO THE TRANSACTION, WITH CLOSING FEES, FOR AN AMOUNT NOT TO EXCEED TEN THOUSAND DOLLARS (\$10,000.00), FOR A TOTAL AMOUNT NOT TO EXCEED TWO MILLION SEVEN HUNDRED NINETY-FIVE THOUSAND DOLLARS (\$2,795,000.00).

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 with Sunlight, LLC, in substantially the form attached, for the purchase of 7725 Lee Highway, identified as Tax Parcel No. 139F-A-003.04, for the amount of \$2,785,000.00, with earnest money in the amount of \$25,000.00 deposited with Jones Title Agency, Inc., and to execute all documents related to the transaction, with closing fees, for an amount not to exceed \$10,000.00, for a total amount not to exceed \$2,795,000.00.

ADOPTED: October 26, 2021

/mem

CONTRACT FOR SALE AND PURCHASE

This Contract for Sale and Purchase (“Contract”) is made and entered into this ___ day of _____, 2021, by and between SUNLIGHT, LLC, a Tennessee limited liability company (“Seller”), and CITY OF CHATTANOOGA, a Tennessee municipal corporation (“Buyer”).

WITNESSETH

WHEREAS, Seller owns a fee simple interest in real property located at 7725 Lee Highway, Tax Parcel No. 139F-A-003.04 (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. The Property shall include the following:

(a) **Real 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 (the “Real Property”).

(b) **Personal Property**. All equipment, furniture, signs, bedding and linens, and articles of personal property owned by Seller now are hereafter attached to or used in connection with the

operation and maintenance of the Property, and all manufacturers and vendors' warranties related thereto (the "Personal Property").

(c) **Leases.** All tenant leases, rental arrangements, lease applications, and all of the rents, issues, and profits, if any, derived therefrom that are attributable to the Real Property from and after the Closing Date (hereinafter defined) (the "Property Leases").

(d) **Records.** All financial, operating, and any other records pertaining to the use and operation of the Real Property (the "Property Records").

(e) **Supplies.** All supplies and equipment located at the Real Property on the Closing Date, including, without limitation, power equipment, tools, and cleaning and other supplies for the maintenance and operation of the Real Property and all manufacturers' and vendors' warranties relating thereto, if any (the "Supplies").

(f) **Plans.** All building and site plans, construction specifications, prior surveys, permits, licenses, and similar items pertaining to the Real Property within Seller's possession and/or control (the "Plans").

All of the foregoing, the Real Property, the Personal Property, the Property Leases, the Property Records, the Supplies and the Plans shall be collectively referred to herein as the "Airport Inn Property."

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 Airport Inn Property described in Paragraph 1 above, the purchase price as set forth below.

a. **Purchase Price.** Buyer agrees to pay, and Seller agrees to accept as full consideration for the conveyance of the Airport Inn Property described in Paragraph

1 hereinabove, the sum of TWO MILLION SEVEN HUNDRED EIGHTY-FIVE THOUSAND NO/100 DOLLARS (\$2,785,000.00) (the "Purchase Price").

- b. **Earnest Money Deposit.** Within ten (10) days from the Effective Date (as defined below), Buyer shall deposit the amount of TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00) (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 TWO MILLION SEVEN HUNDRED SIXTY THOUSAND AND NO/100 (\$2,760,000) 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 ("Existing Property Documentation"). Buyer shall have thirty (30) days from the Effective Date to notify Seller with any objections related to the Existing Property Documentation.

Buyer shall have sixty (60) 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. If the due diligence is completed prior to the expiration of the Due Diligence Period, Buyer shall notify Seller.

4. **Promise not to Further Encumber.** From and after the date hereof and until Closing or termination of this Agreement, the Seller shall not do any of the following without prior written consent of the Buyer: (a) make or allow to be made, extend or allow to be extended any leases, contracts, options or agreements whatsoever affecting the Airport Inn Property, except such as will expire prior to Closing or can be terminated prior to Closing; (b) cause or permit any lien, encumbrance, mortgage, security deed, deed of trust, right, restriction or easement to be placed upon the Airport Inn Property; (c) permit any mortgage, security deed, deed of trust or other lien or encumbrance to be foreclosed upon due to Seller's actions or omissions, including failure to make any required payment(s); or (d) convey any interest in the Airport Inn Property, including, but not limited to, conveyances of title or easement rights, and transfers of development rights.

5. **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. **Adjustments; Closing Costs.**

(a) **Taxes and Assessments.** Real estate taxes for 2021 shall be paid by Seller. From and after the Closing Date, the Real 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.

(b) Rent. Collected rents on the Real Property shall be prorated as of the Closing Date with Buyer receiving a credit for that portion of the collected rents attributable to the period on and after the Closing Date. To the extent that such rents for the month in which the Closing occurs have not been collected, Buyer shall collect the same and upon collection, shall remit to Seller its prorata portion. If any such rents are delinquent on the Closing Date and subsequently collected, they shall be applied first to rents due and payable, then to past due rents in the reverse order in which they became due. Notwithstanding the foregoing, rent collected in the month in which the Closing occurs shall be applied to said month's rent. Any application of such sums shall occur only after paying all costs of collection, including reasonable attorneys' fees. Seller shall be entitled to all other income, whether paid or unpaid, attributable to the period prior to the Closing Date, including, but not limited to liability claims, damages and litigation settlement.

(c) Other Expenses. All other expenses of operating or owning the Real Property shall be prorated as of the Closing Date, those paid or accruing prior to the Closing Date being Seller's responsibility and those accruing on and after the Closing Date, being Buyer's responsibility. To the extent that invoices for such expenses attributable to the period before the Closing Date are received by Buyer, such invoices shall be forwarded upon Buyer's receipt to Seller, whereupon, Seller shall promptly pay same. All refunds of expenses attributable to the period before the Closing Date,

shall belong to Seller. If any such refunds are received by Buyer, Buyer shall deliver them immediately to Seller.

(d) Cash adjustments. All of such adjustments and allocations shall be made in cash at Closing. Where adjustments are made or based on estimates, any necessary readjustment shall be made when actual figures are available.

(e) Other Closing Costs.

(i). 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.

(ii) 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.

(iii) Buyer and Seller shall be responsible for their own attorney's fees.

(iv) 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	_____	<u>X</u>
Preparation of Deed	<u>X</u>	_____
Survey	_____	<u>X</u>
Recording Fees and Tax on Deed	_____	<u>X</u>
Phase I Environmental Assessment	_____	<u>X</u>
Phase II Environmental Assessment	_____	<u>X</u>
Water Quality Fees (prorated)	<u>X</u>	<u>X</u>

6. **Conveyances.**

(a) **Warranty Deed.** Fee simple title to the Real Property shall be conveyed by Warranty Deed. Title to the Real Property shall be good and marketable, subject to existing easements, zoning, covenants, restrictions, and reservations of record.

(b) **Bill of Sale.** Good and valid title to the tangible Personal Property located on the Real Property shall be conveyed by a Bill of Sale in a form satisfactory to Buyer.

(c) **Assignment and Assumption.** All tenant leases and rental arrangements; any monies and sums deposited with and/or held by Seller as tenant deposits, including, without limitation, all security deposits required to be held by Seller under the terms of any lease or any applicable law; and service contracts or operating agreements which Buyer elects to assume; manufacturers' and vendors' warranties, if any, shall be assigned to Buyer by an Assignment and Assumption Agreement in a form satisfactory to Buyer.

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 Airport Inn 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. **Pest Inspection.** Buyer obtaining, at its sole expense, at any time prior to closing, a certificate from a licensed structural pest control operator or termite exterminating company dated within thirty (30) days of Closing stating that the Real Property is free from infestation by wood-destroying pests and organisms, subterranean termites, Formosan termites, fungi, dry-rot, or any other forms of infestations, to the area where the Real Property is located and any damage therefrom. In the event that such certificate indicates that curative repair work or treatment is required, City shall have the option of terminating this Agreement in its sole discretion.
- e. **No Pending Actions.** Seller’s representation that there are no pending or threatened lawsuits or condemnation proceedings.
- f. **Representations and Covenants.** All covenants and representations contained in this Contract being true and correct as of the Closing.
- g. **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.
- h. **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.

- i. **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 Airport Inn 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 Airport Inn 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 Real 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 Airport Inn 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 December 31, 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. **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:

Buyer: City of Chattanooga
Real Property Office
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

Seller: Sunlight, LLC
ATTN: Pradip Patel
3657 Ringgold Road
Chattanooga, TN 37412

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, after written approval from the client for each notice. 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 Airport Inn 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.

- f. **No Assumption.** Buyer's acquisition of the Airport Inn 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 Airport Inn Property or arising from or in connection with Seller's ownership of the Airport Inn Property or Seller's operation of any business, concern, or enterprise involving the Airport Inn 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 Airport Inn 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.

[SIGNATURES ON THE 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.

BUYER:

CITY OF CHATTANOOGA

BY: _____
Jermaine E. Freeman

TITLE: Senior Advisor for Economic Opportunity

Date: _____

SELLER:

SUNLIGHT, LLC

BY: _____
Pradip Patel

TITLE: Managing Member

Date: _____

EXHIBIT "A"

Legal Description of the Property