

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 4/25/2013

Action Requested By:
Legal

Agenda Item Type
Resolution

Subject Matter:

Sale and Assignment Agreement for Mirabeau.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into a Saie and Assignment Agreement between the City of Huntsville and Lowe Mill Development, LLC.

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

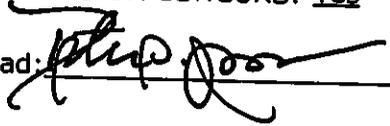
Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

Associated Cost: 1,386,000

Budgeted Item: Not applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: _____



Date: 4-18-13

RESOLUTION NO. 13-_____

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into a Sale and Assignment Agreement by and between the City of Huntsville and Lowe Mill Development, LLC, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Sale and Assignment Agreement between the City of Huntsville and Lowe Mill Development, LLC," consisting of Thirty-nine (39) pages including Exhibits A-F, and the date of April 25, 2013, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 25th day of April, 2013.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 25th day of April, 2013.

Mayor of the City of
Huntsville, Alabama

SALE AND ASSIGNMENT AGREEMENT

THIS SALE AND ASSIGNMENT AGREEMENT (this "Agreement") is executed by and between **CITY OF HUNTSVILLE**, a municipal corporation (the "Seller"), and **LOWE MILL DEVELOPMENT, LLC**, an Alabama limited liability company or its nominee (the "Buyer"), and is dated as of April 25, 2013 (the "Effective Date").

RECITALS:

A. Seller is the holder of those certain loan and repayment obligations (collectively, hereinafter the "Obligations"), evidencing, securing, or otherwise related to sums advanced by the City to the party or parties therein listed relating to the Property (as defined below). A more complete description of the Obligations and the principal balances outstanding thereunder are listed on Exhibit A, which is attached to and made a part of this Agreement.

B. Seller shall provide to Buyer true and complete copies, and originals to the extent available, of the Obligations that the City has in its possession, control or reasonably obtainable by City, including, but not limited to, any and all amendments to such documents and instruments, which documents, instruments and amendments are herein collectively called the "Delivery Documents".

C. Seller and Buyer agree that Seller will sell, transfer and assign to Buyer, without recourse and warranty, except with respect to the representations and warranties of Seller set forth in this Agreement, all of Seller's right, title and interest in, to and under the Obligations, including Seller's right to all outstanding principal, accrued and unpaid interest, fees and other unpaid charges now due or hereafter due thereunder, along with all of Seller's rights to collect under any corporate or individual guaranty or other rights under any and all Obligations (collectively, the "Assigned Rights and Property"), all subject to the terms and conditions set forth herein.

D. The Obligations relate to that certain real property located at 2610 Mirabeau Drive SW, Huntsville, Madison County, Alabama consisting of approximately twenty-three (23) acres of land as more particularly described on Exhibit B attached hereto and incorporated herein by reference, together with all and singular the improvements, rights, tenements, hereditaments, privileges and appurtenances thereunto belonging or in anywise appertaining ("Property").

AGREEMENT

NOW, THEREFORE, in consideration of the promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

1. **Sale and Assignment, Purchase Price.** Subject to the terms and conditions of this Agreement:

- (a) Seller shall sell, transfer, assign, grant and convey unto Buyer without recourse and warranty, except with respect to the representations and warranties of Seller provided in this Agreement, at the Closing (as defined below) the Obligations and the Assigned Rights and Property.
- (b) In full payment for the Obligations and the Assigned Rights and Property, Buyer shall pay to Seller One Million Three Hundred Eighty Six Thousand and No/100 Dollars (\$1,386,000.00) (the "Purchase Price"), which Purchase Price shall be paid as set forth in Paragraph 1(e) below.
- (c) At Closing, Seller shall deliver or cause to be delivered to Buyer originals of the Obligations to the extent originals of the Obligations are in Seller's possession, control or can be reasonably obtained by Seller. Seller shall provide certified true and correct copies of any of the Obligations and Delivery Documents for which Seller is unable to provide an original pursuant to this Paragraph 1(c), such certification to be in form and substance acceptable to Buyer.
- (d) Seller expressly retains all of Seller's duties, obligations and responsibilities to third parties that arose or subsequently arise out of and during Seller's ownership of the Obligations.
- (e) As full consideration for the Purchase Price, Buyer shall give Seller a new, industry standard, non-recourse note, in an amount equal to the Purchase Price, and in the form set forth in Exhibit C, which is attached to and made a part of this Agreement ("Acquisition Loan"). The terms of the Acquisition Loan shall be as follows:
 - (i) The maturity date of the Acquisition Loan shall occur on the later to occur of (i) one (1) year from the date upon which Buyer or an affiliate of Buyer takes title to the Property (the "Purchase Date"); and (ii) one hundred eighty (180) days after the date of Seller's final settlement agreement with HUD/OIG relating to any ongoing matters impacting or in any way pertaining to the Property. Any conversations or other correspondence Purchaser has with HUD or OIG regarding the Property shall be non-substantive discussions unless in the presence of the City or in response to an official inquiry from HUD and/or OIG.
 - (ii) The Acquisition Loan shall bear interest at the rate of one percent (1%) per annum, with all accrued interest and unpaid principal to be paid upon the maturity date of the Acquisition Loan.
 - (iii) The Acquisition Loan shall be secured by a collateral assignment of Buyer's right, title and interest in the Obligations, until such time as Buyer or an affiliate of Buyer takes title to the Property. Upon Buyer or an affiliate of Buyer taking title to the Property, Seller shall receive a first mortgage lien on the Property, which the parties acknowledge will be subject to any and all rights of redemption. Upon Seller's receipt of such

first mortgage lien, the collateral assignment of Buyer's right, title and interest in the Obligations shall be released.

2. **Costs/Expenses.** At Closing, to help Buyer defray certain legal and transactional costs associated with the acquisition and ownership of the Obligations and enforcement of its rights under the Obligations, costs that would have largely been absorbed in whole or in part by the Seller had it not transferred the Obligations or enforced its foreclosure rights under the Obligations, Seller shall loan Buyer Two Hundred Thousand and No/100 Dollars (\$200,000.00) ("**Seller Loan**"). The Seller Loan shall (i) be non-recourse; (ii) be unsecured; (iii) bear interest at the rate of one percent (1%) per annum; and (iv) mature on December 31, 2017, the same date that the 40-unit HOME set-aside applicable to the Property expires. No payments will be required to be made under the Seller Loan, and the outstanding principal balance, along with all accrued and unpaid interest, will be due and payable at loan maturity. The Seller Loan shall be in the form set forth in **Exhibit D**, which is attached to and made a part of this Agreement, and shall contain language memorializing the 40-unit HOME set-aside currently applicable to the Property, which set-aside shall be as set forth in that certain Consolidated Financing Agreement and Affordable Home Ownership Mortgage Financing Program agreement dated September 30, 2008 by and between Mirabeau, LP and Mirabeau Gated Community LP and the City of Huntsville Community Development Department ("**Consolidated Financing Agreement**"). In the event that Buyer is not in default of its obligations relating to said HOME set-aside at loan maturity, then all outstanding indebtedness under the Seller Loan shall be forgiven, and the Seller Loan shall be deemed satisfied and released. The Seller shall be responsible for its own costs and legal bills. All other costs of the transaction shall be borne by Buyer. The Seller Loan proceeds shall be placed in escrow at Closing with an independent third party escrow agent to be chosen by Buyer's legal counsel (the "**Escrow Agent**"). Buyer shall submit evidence of such costs and obligations for which it seeks reimbursement from the Seller Loan proceeds to both Seller and Escrow Agent, concurrently. Seller shall have one (1) full business day from the date it receives from Buyer such a request for release of Seller Loan proceeds (the "**Objection Period**") to object to the release of funds requested by so notifying Buyer and Escrow Agent within the Objection Period of the specific cost or obligation to which it objects, and the rationale for its objection. Seller shall be deemed to have accepted a request from Buyer for release of escrowed loan proceeds, and Escrow Agent shall be authorized to release such requested funds to Buyer without further action of either Seller or Buyer, for payment of any cost or obligation to which Seller does not object during the Objection Period. In the event Buyer requires Seller to repurchase the Obligations, Buyer shall authorize Escrow Agent to return to the Seller any of the Seller Loan proceeds that are not spent and/or committed or otherwise obligated; and upon Seller's receipt of any such Seller Loan proceeds or Escrow Agent's statement that all Seller Loan proceeds were distributed, the outstanding indebtedness of the Seller Loan shall be forgiven, and the Seller Loan shall be deemed satisfied and released. Upon Buyer's completion of the transaction in which the Seller is not required to repurchase the Obligations, Buyer shall be entitled to use the balance of the Seller Loan proceeds for any Property operating or capital expense or may allow an affiliate of Buyer to use any remaining Seller Loan proceeds for the same purposes.

3. **Infrastructure Loan.** Seller shall provide Buyer an additional loan in the amount of Seventy-Five Thousand and No/100 Dollars (\$75,000.00), in order to provide funds to assist

Buyer with correction of infrastructure deficiencies at the Property (“Infrastructure Loan”). The terms of the Infrastructure Loan shall be as follows:

- (a) The Infrastructure Loan shall be used by Buyer towards costs and expenses incurred by Buyer in furtherance of (i) any Section 504/ADA studies or reviews of the Property commissioned by Buyer; (ii) the correction of any Section 504 or ADA non-compliance found at the Property; and (iii) the correction of any common area or exterior deferred maintenance identified by Buyer.
- (b) The maturity date of the Infrastructure Loan shall be December 31, 2033.
- (c) The Infrastructure Loan shall be non-recourse, unsecured and bear interest at the rate of three percent (3%) per annum, with all accrued interest and unpaid principal to be paid upon the maturity date of the Infrastructure Loan.
- (d) The Infrastructure Loan shall be in the form set forth in Exhibit E, which is attached to and made a part of this Agreement.
- (e) The Infrastructure Loan shall be deemed satisfied and released in the event Buyer does not acquire the Obligations as set forth in Paragraph 5 below or Buyer or an affiliate of Buyer does not take title to the Property due to the condition subsequent matters set forth in Paragraph 7 below.
- (f) The Infrastructure Loan proceeds shall be placed in escrow with Escrow Agent, within thirty (30) days of Seller’s execution of this Agreement. Buyer shall submit evidence of such costs and obligations for which it seeks reimbursement from the Infrastructure Loan proceeds to both Seller and Escrow Agent, concurrently. Seller may object to any release of Infrastructure Loan proceeds by so notifying Buyer and Escrow Agent within the Objection Period of the specific cost or obligation to which it objects, and the rationale for its objection. Seller shall be deemed to have accepted a request from Buyer for release of escrowed proceeds, and Escrow Agent shall be authorized to release such requested funds to Buyer without further action of either Seller or Buyer, for payment of any cost or obligation to which Seller does not object during the Objection Period. In the event Buyer requires Seller to repurchase the Obligations, Buyer shall authorize Escrow Agent to return to the Seller any of the Infrastructure Loan proceeds that are not spent and/or committed or otherwise obligated; and upon Seller’s receipt of any such Infrastructure Loan proceeds or Escrow Agent’s statement that all Infrastructure Loan proceeds has been distributed, the outstanding indebtedness of the Infrastructure Loan shall be forgiven, and the Infrastructure Loan shall be deemed satisfied and released. Upon Buyer’s completion of the transaction in which the Seller is not required to repurchase the Obligations, Buyer may use the balance of the Infrastructure Loan solely for the purposes described in Paragraph 3(a) above. Any Infrastructure Loan proceeds remaining in escrow one (1) year from the date such proceeds were initially placed in escrow shall be returned to Seller, as repayment of Infrastructure Loan principal.

4. **Due Diligence Materials.** Within seven (7) days following the Effective Date, Seller shall transmit to Buyer, copies of any and all information related to the Property and the Obligations in Seller's possession or reasonably obtainable by the Seller, including, but not limited to: (i) surveys, plans and specifications, soils reports, environmental reports, zoning entitlements, variances, approvals, permits or environmental permits relating to the Property or improvements situated thereon; (ii) title reports, title commitments or policies relating to the Property; (iii) appraisals or market studies of any or all of the Property; (iv) documents or instruments pertaining to the physical condition of the Property, including open citations relating to violations of municipal codes or ordinances; (v) all loan, security and ancillary documents evidencing and securing the Obligations that are known to Seller, including the Delivery Documents; (vi) all restrictive covenants currently in force that are known to Seller; and (vii) any and all other documents, instruments or correspondence related to the Property that may be material to Buyer's determination of whether to proceed with this transaction (collectively, the "**Due Diligence Materials**"). To the extent possible, Seller shall deliver the Due Diligence Materials to Buyer in an electronic format acceptable to Buyer.

5. **Due Diligence Period.** Buyer shall have sixty (60) days from and after its receipt of the Due Diligence Materials ("**Due Diligence Period**") to complete its review of all Due Diligence Materials and Delivery Documents and conduct and obtain any property inspections, surveys, title work and such tests, studies, examinations and audits as Buyer may deem necessary or advisable including, but not limited to, drainage, soils, hazardous waste, environmental, topographical, geological tests and studies and any such related engineering studies and tests as Buyer deems necessary with regard to Buyer's or Buyer's affiliate's proposed use of the Property and the Obligations. In the event that any of such matters is not satisfactory to Buyer, or Buyer for any reason, or no expressed reason, determines that it does not want to acquire the Obligations, Buyer shall have the right, at its sole option, to terminate this Agreement by written notice to Seller on or before the end of the Due Diligence Period, and upon such termination, (i) Buyer and Seller shall have no further obligations hereunder; (ii) any outstanding indebtedness of the Infrastructure Loan shall be forgiven, and the Infrastructure Loan shall be deemed satisfied and released; and (iii) any unexpended and uncommitted sums held by Escrow Agent shall be released to Seller.

6. **Closing.** The closing (the "**Closing**") of the transactions contemplated by this Agreement shall take place at such time, day and place as the parties hereto mutually agree upon, but, if not otherwise so agreed upon, the Closing shall take place on or before ten (10) days following the expiration of the Due Diligence Period, at the offices of Buyer, in Montgomery, Alabama, or by wire transfer and overnight courier service. The actual date of the Closing shall be referred to as the "**Closing Date**".

7. **Conditional Sale/Assignment/Repurchase Obligation:** Notwithstanding anything to the contrary in this Agreement, Buyer shall have the absolute and unconditional right to assign and require the Seller to repurchase the Obligations at the Purchase Price in the event: (1) Buyer is unable to obtain assignments, acceptable to Buyer in its sole discretion, of all outstanding debts and liens relating to the Property owned or alleged to be owned by Gary M. Reynolds or by any entity in which Gary M. Reynolds owns, directly or indirectly, a beneficial interest or receives, directly or indirectly, an economic benefit (collectively, "**Reynolds**"); (2) Reynolds and Cadence Bank fail to enter into a forbearance agreement containing such terms and

in such form acceptable to Buyer, in its sole and absolute discretion, related to any and all indebtedness owed by Reynolds to Cadence Bank; (3) Buyer is unable to obtain and/or enter into any additional agreements or documents from and with Reynolds that Buyer, in its sole discretion, deems necessary or desirable; (4) Reynolds fails to agree to a “friendly” uncontested foreclosure sale on any and all of the Obligations that Buyer, in its sole and absolute discretion, believes is necessary to foreclose and take title to the Property (“Foreclosure Sale”); or (5) until May 1, 2014, for any and all other reasons, or no reason whatsoever, at the sole discretion of Buyer.

In the event that Buyer shall require Seller to repurchase the Obligations pursuant to this Paragraph 7, Buyer shall so notify Seller that it is exercising its rights under this Agreement and requiring Seller to repurchase and accept an assignment and conveyance of the Obligations, Delivery Documents and the Assigned Rights and Property from the Buyer. On or before seven (7) days after receiving such written notice to repurchase from the Buyer, Seller shall be obligated to accept the Obligations, Delivery Documents and the Assigned Rights and Property from the Buyer. Seller shall accept the assignment of the Obligations, Delivery Documents and the Assigned Rights and Property from Buyer by accepting an assignment in a form substantially similar to that set forth in Exhibit F hereto, except that paragraph “(2)” provided in Exhibit F shall be excluded from such assignment (“Buyer Assignment”). Upon Buyer executing and delivering the Buyer Assignment to Seller, neither party shall have any rights or obligations under this Agreement, except with respect to such rights and obligations pursuant to Paragraph 14(a) in this Agreement. Upon Buyer’s delivery of the Buyer Assignment to Seller, the Seller Loan, Acquisition Loan and Infrastructure Loan shall be deemed satisfied, terminated and canceled, and Seller shall execute any other documents reasonably requested by Buyer in order to memorialize such satisfactions, terminations and cancellations. Any unexpended and uncommitted funds held by Escrow Agent at the time of Buyer’s delivery of the Buyer Assignment to Seller shall be released to Seller.

THE PROVISIONS OF THIS SECTION 7 SHALL SURVIVE THE CLOSING.

8. Representations and Warranties of Seller. Seller represents and warrants that each of the following are true on and as of the Effective Date and will continue to be true and correct in all material aspects on and as of the Closing Date:

- (a) Seller has full corporate power and authority to execute and deliver this Agreement and the related assignments contemplated herein, and has duly authorized the execution, delivery and performance of this Agreement and such related assignments by all necessary consents and actions;
- (b) Except for any assignment to Reynolds contained in the Consolidated Financing Agreement, to the best of Seller’s knowledge, Seller owns one hundred percent (100%) of the Obligations and the Assigned Rights and Property, has full title to same, and such ownership and title are not subject to any lien, security interest or encumbrance;
- (c) Except for any assignment to Reynolds contained in the Consolidated Financing Agreement, to the best of Seller’s knowledge, no other person or entity has any

assignment, participation or other legal or equitable interest in and to the Obligations or the Assigned Rights and Property, nor is the consent of any other person or entity required to consummate the obligations of the Seller hereunder and under the assignments contemplated by this Agreement and the sale and assignment contemplated hereby and thereby;

- (d) To the best of Seller's knowledge, the execution, delivery and performance of this Agreement and the related assignments contemplated herein does not conflict with or contravene any agreement or contract to which the Seller is a party or by which it is bound or any applicable law, statute, or regulation, or consent decree of any regulatory authority to which it is subject or bound or require any governmental approval or consent not already obtained;
- (e) To the best of Seller's knowledge, the Delivery Documents are the only operative documents that evidence the Obligations being conveyed pursuant hereto;
- (f) According to Assignor's records, the unpaid accrued interest and outstanding principal balance of the Obligations, as of the Effective Date is as set forth on Exhibit A attached hereto;
- (g) Other than matters, if any, described or disclosed in any files given to Buyer prior to the date of this Agreement, Seller has not received written notice of pending or threatened litigation which might affect the validity or enforceability of the Obligations; and
- (h) To the best of Seller's knowledge, except for any assignment to Reynolds contained in the Consolidated Financing Agreement, the Obligations constitute the valid and enforceable obligations of the parties thereto, except as such may be limited by applicable liquidation, conservatorship, bankruptcy, insolvency, reorganization, fraudulent transfer, moratorium or other similar laws affecting creditors' rights generally from time to time in effect.
- (i) Other than the Obligations listed in Exhibit A, the Seller holds no other indebtedness with respect to or impacting (1) the Property or Property operations; (2) the current owner of the Property; (3) any former owner of the Property; or (4) Reynolds; and, to the extent that such other indebtedness is held by Seller, such other indebtedness shall be deemed satisfied, as of the Closing Date.

9. **Seller's Conditions to Closing.** The obligation of Seller to sell and assign the Assigned Rights and Property as evidenced by the Delivery Documents to Buyer at Closing is subject to the fulfillment of the following conditions, to Seller's satisfaction, prior to or at the Closing:

- (a) The representations and warranties of Buyer set forth in Section 11 hereof shall be true and correct in all material respects on and as of the Closing Date.
- (b) Buyer shall have executed documents evidencing the Acquisition Loan, the Seller Loan and Infrastructure Loan.

10. **Buyer's Conditions to Closing.** The obligation of Buyer to purchase from Seller at the Closing the Assigned Rights and Property as evidenced by the Delivery Documents is subject to the fulfillment of the following conditions, to Buyer's satisfaction, prior to or at the Closing, any or all of which may be waived by Buyer and shall be deemed waived if not objected to in writing by Buyer at Closing:

Seller shall have delivered to Buyer at the Closing:

- (i) A duly executed assignment in the form annexed hereto as Exhibit F;
- (ii) Seller shall have placed in escrow the funds associated with the Seller Loan;
- (iii) Seller shall have advanced the funds associated with the Infrastructure Loan in accordance with this Agreement; and
- (iv) (A) The original executed promissory notes or, if the original are not available, lost note affidavits in form and substance acceptable to Buyer together with copies of promissory notes; along with originals of any other instruments or Delivery Documents, assigned by Seller to Buyer;
- (B) All other Delivery Documents;

11. **Representations and Warranties of Buyer.** Buyer hereby represents and warrants to Seller that:

- (a) Buyer has all requisite power and authority to execute and deliver, and to perform all of its obligations under, this Agreement and all instruments and other documents executed and delivered by Buyer in connection herewith.
- (b) The execution, delivery and performance of this Agreement has been duly authorized by all necessary action on the part of Buyer and does not require any consent or approval of any party that has not been obtained.
- (c) In the event Buyer has engaged any broker or finder or incurred or become obligated to pay any broker's commission or finder's fee in connection with the transactions contemplated by this Agreement, Seller shall not be obligated in any event to pay any fee, expense or other remuneration to or in connection with such broker or finder, directly or indirectly, and any such fee, expense or other remuneration shall be Buyer's sole responsibility.

12. **Covenants of Seller.**

- (a) Seller shall use its reasonable efforts to satisfy each of the conditions to closing set forth in Section 10 hereof.

- (b) Seller shall notify Buyer promptly if any of the representations set forth in Section 8 hereof shall become inaccurate prior to the Closing Date or if any of such representations is discovered to be inaccurate prior to the Closing Date.
- (c) Seller and Seller's counsel shall cooperate with Buyer and Buyer's counsel in the defense of any claims or counterclaims made against Buyer, or any of Buyer's parents, subsidiaries, affiliates, employees, officers, directors, shareholders, agencies, parents, representatives, attorneys, accountants or consultants, in any litigation, arbitration proceeding, mediation or other forum involving or relating to the Obligations or the Assigned Rights and Property.

THE PROVISIONS OF THIS SECTION 12 SHALL SURVIVE THE CLOSING.

13. **Covenants of Buyer.**

- (a) Buyer shall use its reasonable efforts to satisfy each of the conditions to closing set forth in Section 9 hereof.
- (b) Buyer shall notify Seller promptly if any of the representations set forth in Section 11 hereof shall become inaccurate prior to the Closing Date or if any of such representations is discovered to be inaccurate prior to the Closing Date.

THE PROVISIONS OF THIS SECTION 13 SHALL SURVIVE THE CLOSING.

14. **Buyer's/Seller's Indemnities/Limitation on Liability.**

- (a) To the extent permitted by law, Seller agrees to indemnify, defend (with counsel chosen by Seller) and hold harmless Buyer and Buyer's subsidiaries, affiliates, officers, directors, shareholders, employees, agents, representatives and attorneys (the "Indemnified Parties"), from and against any and all loss, liability, claim, damage and expense whatsoever (including attorneys' fees) directly or indirectly arising out of, based upon, resulting from or otherwise relating to (i) any act or omission of Seller or any of its affiliates or assignees in connection with the Delivery Documents, the Assigned Rights and Property or otherwise, including but not limited to any action taken by Seller in connection with the collection, enforcement or other activity related to any Delivery Document (and including the application or allocation of money paid to Seller as Benefits Accruing to Seller), (ii) the material inaccuracy of any of Seller's representations or warranties herein, (iii) the material breach of any of Seller's covenants herein, or (iv) any commissions, finder's fees or similar fees due or claimed by any broker, agent or salesperson claimed directly against Buyer as a result of an agreement entered into by Seller, except to the extent that such losses, liabilities, claims, damages or expenses are attributable to the acts or failure to act of one or more of the Indemnified Parties.
- (b) Buyer's liability along with any exposure under any indemnity, warranty or representation provided by Buyer, shall be limited to the loss of any capital

already expended by Buyer in furtherance of the transactions contemplated herein.

15. **Events of Default.** In the event of a default or other circumstance or condition by the Seller under the terms and conditions of the Agreement between the parties caused by or resulting from the actions or inactions of the Seller, Buyer shall be entitled to: (a) demand and receive from the Seller the amount of \$35,000, as liquidated damages for such default, it being acknowledged and agreed by the Seller and Buyer that it would be difficult or impossible to determine Buyer's exact damages; or (b) seek specific performance against the Seller.

16. **Further Covenants.**

(a) For purposes of this Agreement, the following terms shall have the following meanings:

(1) **"Benefits Accruing to Seller"** shall mean all principal and interest payments received on the Obligations through the close of business on _____ (the "Cut-Off Date").

(b) **"Benefits Accruing to Buyer"** shall mean all principal and interest payments made on the Obligations after the Cut-Off Date. If Seller shall receive any payments of interest and/or principal on the Obligations or other consideration distributed or paid which represent "Benefits Accruing to Buyer," and provided the Closing has occurred, Seller shall accept such payments or other consideration as Buyer's agent and hold the same on behalf of and for the benefit of Buyer, and shall remit (within two (2) business days) the same following the Closing to Buyer with the endorsement of Seller when necessary or appropriate.

17. **Risk of Loss.** From the Effective Date of this Agreement until Closing, all risk of loss for the Obligations shall be borne by Seller.

18. **Intentionally Omitted.**

19. **Intentionally Omitted.**

20. **Survival of Representations and Warranties.** The representations, warranties and covenants of the parties contained herein shall survive the consummation of the transactions contemplated in this Agreement, subject to any time period limitations specified herein.

21. **Further Assurances.** Seller and Buyer shall each execute and deliver to the other all further documents or instruments reasonably requested by either of them in order to effect the intent of this Agreement and to obtain the full benefit of this Agreement. Any request by either party under this Section 21 shall be accompanied by the document proposed for signature by the party requesting it, in form and substance satisfactory to the party of whom the request is made and its attorneys. The party making the request shall bear and discharge any fees or expenses

incident to the preparation, filing or recording of documents requested pursuant to this Section 21.

22. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Alabama.

23. **Entire Agreement.** THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. The parties make no representations or warranties to each other, except as contained in this Agreement or in the accompanying exhibits or the certificates or other closing documents delivered according to this Agreement. All prior agreements and understandings between the parties hereto with respect to the transactions contemplated hereby, whether oral or written, are superseded by, and are deemed to have been merged into, this Agreement unless otherwise expressly provided herein. This Agreement shall be binding on, and inure to the benefit of, the parties hereto and their successors and assigns, but no other party shall have or claim any third party beneficiary rights under this Agreement.

24. **Modifications.** This Agreement may not be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

25. **Severability.** If any provision of this Agreement shall be determined to be invalid, illegal or unenforceable, the balance of this Agreement shall remain in full force and effect and if any provision is inapplicable to any person or circumstance, it shall nevertheless remain applicable to all other persons and circumstances.

26. **Assignment.** This Agreement may not be assigned by either party without the express written consent of the other party, except that Buyer may assign this Agreement to an affiliated party.

27. **Notices.** All notices between the parties shall be in writing and shall be served either personally, by certified mail or by overnight courier services. If served personally, notice shall be deemed given or made at the time of such service. If served by certified mail, notice shall be presumed given and made five (5) business days after the deposit thereof in the United States mail, postage prepaid, addressed to the party to whom said notice is to be given or made. If served by an overnight courier service promising delivery not later than 10:00 a.m. on the first business day after receipt by such service, notice shall be presumed given and made one business day after the deposit thereof with such courier service, addressed to the party to whom such notice is to be given or made, if such deposit is timely and appropriate in accordance with the requirements of such courier service.

All notices to Seller shall be given to it at:

Attention: Mayor of the City of Huntsville
Email Address: _____

with a copy to:

Attention: City Attorney
Email Address: _____

All notices to Buyer shall be given to it at:

Lowe Mill Development, LLC
c/o Veristar Development Services, LLC
1 Walworth Terrace
White Plains, NY 10606
Attention: David C. Greenberg
Email Address: dgreenberg@veristarcompanies.com

With a copy to:

William I. Eskridge, Esq.
Rushton, Stakely, Johnston & Garrett, P.A.
184 Commerce Street
Montgomery, Alabama 36104
Email Address: wie@rushtonstakely.com
Fax: (334) 481-0806

28. **References in this Agreement.** Whenever the context of this Agreement requires, references to the singular number shall include the plural, and the plural shall include the singular, where appropriate; words denoting gender shall be construed to include the masculine, feminine and neuter where appropriate, and specific enumeration shall not exclude the general, but shall be considered as cumulative.

29. **Jurisdiction and Venue.** Buyer hereby consents to the jurisdiction of any state or federal court located within Madison County, Alabama, waives personal service of any and all process upon it, consents to service of process by registered mail directed to Buyer at the address stated in Section 27 above, and acknowledges that service so made shall be deemed to be completed upon actual receipt thereof. In addition, Buyer consents and agrees that venue of any action instituted under this Agreement shall be proper in Madison County, Alabama and hereby waives any objection to venue. This Agreement is and shall be performed in Madison County, Alabama. Buyer and Seller further agree to waive any right to a jury if such action is filed in or transferred to the federal court in the Northern District of Alabama and agree that any dispute between the parties with respect to this Agreement shall be pursuant to a lawsuit filed in Madison County, Alabama.

30. **Intentionally Omitted.**

31. **Time Shall be of the Essence.** Time shall be of the essence in this Agreement.

32. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page, and a facsimile copy or electronic mail portable document format of an executed counterpart shall constitute the same as delivery of the original of such executed counterpart. Any signature page of this Agreement (whether original, facsimile or .pdf file) may be detached from any counterpart of this Agreement (whether original, facsimile or .pdf file) without impairing the legal effect of any signatures thereof and may be attached to another counterpart of this Agreement (whether original, facsimile or .pdf file) identical in form hereto but having attached to it one or more additional signature pages (whether original, facsimile or .pdf file).

33. **Disclaimer As To Obligations.** The Seller is selling the Obligations to Buyer as is and without any recourse or warranty, except as provided in this Agreement. The Seller has made no representations to the Buyer regarding the Obligations (except as set forth in this Agreement), including, but not limited to, the value of the Obligations or the collectability of the Obligations.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned have duly executed this Sale and Assignment Agreement effective as of the date first above written.

CITY OF HUNTSVILLE

By: _____
Name: Tommy Battle
Its: Mayor

LOWE MILL DEVELOPMENT, LLC,
an Alabama limited liability company

By: Veristar Development Services, LLC
Its: Managing Member

By: Veristar Holdings, LLC
Its: Managing Member

By: _____
Name: David C. Greenberg
Its: Managing Member

EXHIBIT A

Obligations

(In addition to the items set forth in the attached, any and all other loans and repayment obligations evidencing, securing, or otherwise related to sums advanced by the City to the party or parties therein listed relating to the Property, a more complete list to be compiled and attached by the parties hereto, including, but not limited to The Modification Agreement dated July 8, 2009, recorded in the Probate Court of Madison County on July 17, 2009, 20090717000472820; and Consolidated Financing Agreement and Affordable Home Ownership Mortgage Financing Program dated September 30, 2008)

EXHIBIT "B"**"Mirabeau Financial Obligations"****1. Mirabeau Loan Obligations:**

	<u>Date</u>	<u>Loan Obligation</u>	<u>Original Principal Loan Amount</u>
a.	05/18/03	First Acquisition Loan	\$1,200,000.00
b.	03/23/04	Mezzanine Loan	\$ 171,000.00
c.	05/18/04	Second Acquisition Loan	\$ 390,000.00
d.	05/18/04	Third Acquisition Loan	\$ 100,000.00
e.	05/18/04	Fourth Acquisition Loan	\$ 19,000.00
f.	05/18/04	Fourth Acquisition Loan	\$ 99,116.00
g.	05/18/04	Fourth Acquisition Loan	\$ 772,000.00
h.	05/18/04	Fourth Acquisition Loan	\$ 475,000.00
i.	11/04/04	Heritage Acquisition Loan	\$1,982,000.00
j.	05/23/07	Short Term Loan	\$ 115,500.00
k.	08/15/08	CDP Loan	<u>\$ 75,000.00</u>
Total:			<u>\$5,378,616.00</u>

2. Mirabeau Guaranty Obligations:

	<u>Date</u>	<u>Guaranty Obligation</u>	<u>Guaranty Amount</u>
a.	09/17/07	City to Superior	\$ 300,000.00
b.	04/2006	City to Superior	\$1,350,000.00

EXHIBIT "C""Mirabeau Loan and Security Documents"A. March 14, 2002 Loan - \$3,150,000.00:

1. Mirabeau Loan Agreement dated as of November 8, 2001
2. Great American Loan Agreement dated as of November 8, 2001
3. February 13, 2002 Loan Commitment Letter
4. Participation Agreement dated as of March 7, 2002
5. Certificate of Authorization dated March 14, 2002
6. Rehabilitation/Term Loan Agreement dated March 14, 2002
7. Promissory Note in the original principal sum of \$3,150,000.00 dated March 14, 2002
8. Real Estate Mortgage and Security Agreement dated March 14, 2002, filed for record March 15, 2002 as Instrument Number 15993 and recorded in Mortgage Book 3000 at pages 971-77 in the Office of the Judge of Probate of Madison County, Alabama
9. Assignment of Lessor's Interest in Contract Rights dated March 14, 2002, filed for record March 15, 2002 as Instrument Number 15983 and recorded in Mortgage Book 3000 at pages 993-1002 in the Office of the Judge of Probate of Madison County, Alabama
10. Mortgage and Security Agreement dated March 14, 2002, filed for record March 26, 2002 as Instrument Number 18284 and recorded in Mortgage Book 3008 at pages 240-81 in the Office of the Judge of Probate of Madison County, Alabama
11. Mortgage and Security Agreement dated March 14, 2002, filed for record April 5, 2002 as Instrument Number 20731 and recorded in Mortgage Book 3018 at pages 12-33 in the Office of the Judge of Probate of Madison County, Alabama
12. Unconditional Limited Guaranty of Specific Debts dated March 14, 2002
13. Control Agreement dated March 18, 2002
14. First Amended Loan Agreement dated as of July 31, 2002
15. Second Amended Loan Agreement dated as of May 19, 2003
16. First Amendment to Mortgage dated November 26, 2003, filed for record December 12, 2003 as Instrument Number 97995 and recorded in Mortgage Book 3564 at pages 785-89 in the Office of the Judge of Probate of Madison County, Alabama
17. Transfer of Mortgage and Assignment of Lessor's Interest in Contract Rights dated November 4, 2004, filed for record November 23, 2004 and recorded as Document Number 20041123000525400 in the Office of the Judge of Probate of Madison County, Alabama

B. First Acquisition Loan - \$1,200,000.00:

1. Promissory Note in the original principal sum of \$1,200,000.00 dated March 14, 2002
2. Heritage Bank Irrevocable Standby Letter of Credit No. 00-279 dated March 14, 2002
3. City of Huntsville Community Development Department Affidavit dated June 17, 2003
4. Mirabeau, Community Development and Superior Bank letter dated May 15, 2003
5. Second Amended Loan Agreement dated as of May 19, 2003
6. Promissory Note in the original principal sum of \$1,200,000.00 dated May 19, 2003
7. Promissory Note in the original principal sum of \$950,000.00 dated March 14, 2002

- C. Mezzanine Loan - \$171,000.00:
1. Promissory Note in the original principal sum of \$171,000.00 dated March 14, 2002
 2. Promissory Note in the original principal sum of \$171,000.00 dated March 23, 2004
- D. Second Acquisition Loan - \$390,000.00:
1. Promissory Note in the original principal sum of \$390,000.00 dated March 14, 2002
 2. Promissory Note in the original principal sum of \$390,000.00 dated May 19, 2003
 3. Promissory Note in the original principal sum of \$390,000.00 dated May 18, 2004
- E. Third Acquisition Loan - \$100,000.00:
1. Promissory Note in the original principal sum of \$100,000.00 dated May 19, 2003
 2. Promissory Note Amended Third Acquisition Loan in the original principal sum of \$490,000.00 dated November, 2003
 3. Financing Agreement dated May 18, 2004
- F. Fourth Acquisition Loan:
1. Promissory Note Fourth Acquisition Loan in the original principal sum of \$19,000.00 dated May 18, 2004
 2. Promissory Note First Rehab Loan in the original principal sum of \$99,115.00 dated May 18, 2004
 3. Promissory Note Phase II Home Loan in the original principal sum of \$772,000.00 dated May 18, 2004
 4. Promissory Note Second Rehab Loan in the original principal sum of \$475,000.00 dated May 18, 2004
- G. \$275,000.00 Short Term Loan:
1. The Loan Agreement \$275K Short Term Loan dated September 9, 2005
 2. First Amended and Restated Loan Agreement \$275K Short Term Loan dated October 14, 2005
 3. Second Amended and Restated Loan Agreement \$275K Short Term Loan dated October 14, 2005
 4. Promissory Note in the original principal sum of \$275,000.00 dated September 15, 2005
 5. Contingent Guaranty \$275,000 Loan dated October 14, 2005 from Clifford W. Reynolds Trust
- H. \$1,962,000.00 Loan:
1. Opinion of Counsel of Wilmer & Lee, P.C. dated November 4, 2004
 2. Loan Agreement dated November 4, 2004
 3. Promissory Note in the original principal sum of \$1,962,000.00 dated November 4, 2004
 4. Unconditional Guaranty of Specific Debts dated November 4, 2004
 5. Minutes and Action of The General Partner of Mirabeau, L.P. dated November 4, 2004
 6. Mirabeau General Corp. Resolution dated November 4, 2004
 7. Compliance Agreement dated November 4, 2004
 8. Mirabeau Apartments, Ltd. Heritage Bank Loan Purchase Financing Summary
 9. Phase V Home Loan Agreement dated November 4, 2004
 10. Initial Phase V Loan Agreement dated December 4, 2004

11. Ratification and Assumption dated November 4, 2004
12. Assignment of Mortgages dated November 10, 2004, _____ in the Office of the Judge of Probate of Madison County, Alabama
13. Assignment and Subordination Agreement dated November 16, 2004
14. December 1, 2004 Letter
15. Promissory Note Initial Phase V Loan in the original principal sum of \$70,000.00 dated December 4, 2004
16. Mirabeau, LP Contingent Guaranty dated December 4, 2004
17. Resolution Authorizing the City of Huntsville Community Development Division to Assign a \$1,350,000.00 Portion of a \$3,150,000.00 Mortgage to The Bank dated October 31, 2005

I. City's Guaranty of Superior Bank \$1,350,000.00 Loan to Westland Apartments, Ltd.:

1. Promissory Note in the original principal sum of \$1,350,000.00 dated April 13, 2006
2. Accommodation and Intercreditor Agreement dated April, 2006
3. Loan and Security Agreement dated as of April 13, 2006
4. Continuing Guaranty of Gary M. Reynolds dated April 13, 2006
5. Opinion of Counsel of Wilmer & Lee dated April 12, 2006
6. Opinion of Counsel of City Attorney dated April 12, 2006
7. Assignment of Deposit Account dated April, 2006
8. Corporate Authorization Resolution dated April 13, 2006
9. Officer's Certificate dated as of April 13, 2006
10. IRS Form W-9 dated April 13, 2006
11. IRS Form W-9 dated April 17, 2006
12. Business Purpose Statement dated April 13, 2006
13. Borrower's Closing Affidavit dated April 13, 2006
14. Mortgage, Assignment of Rents and Leases, and Security Agreement from Mirabeau Gated and Mirabeau to City in the original principal sum of \$1,650,000.00, dated July 8, 2009, filed for record July 14, 2009 and recorded as Document Number 20090714000463840 in the Office of the Judge of Probate of Madison County, Alabama

J. City's Guaranty of Superior Bank \$300,000.00 Loan to Condominium Development Partners, LLC:

1. Master Financing Agreement dated December 7, 2007
2. Articles of Organization of Condominium Development Partners, LLC dated as of September 14, 2007, filed for record September 14, 2007 and recorded as Document Number 20070914000655950 in the Office of the Judge of Probate of Madison County, Alabama
3. September 17, 2007 Guaranty Letter
4. September 18, 2007 Guaranty Letter
5. March 26, 2008 Guaranty Letter
6. Promissory Note Condominium Development Partners, LLC-HOM in the original principal sum of \$375,000.00 dated April 15, 2008
7. Mortgage, Assignment of Rents and Leases, and Security Agreement from Mirabeau Gated and Mirabeau to City in the original principal sum of \$1,650,000.00, dated July 8, 2009, filed for record July 14, 2009 and recorded as Document Number 20090714000463840 in the Office of the Judge of Probate of Madison County, Alabama

1. Mirabeau Loan Obligations:

	<u>Date</u>	<u>Loan Obligation</u>
a.	05/18/03	First Acquisition Loan
b.	03/23/04	Mezzanine Loan
c.	05/18/04	Second Acquisition Loan
d.	05/18/04	Third Acquisition Loan
e.	05/18/04	Fourth Acquisition Loan
f.	05/18/04	Fourth Acquisition Loan
g.	05/18/04	Fourth Acquisition Loan
h.	05/18/04	Fourth Acquisition Loan
i.	11/04/04	Heritage Acquisition Loan
j.	06/23/07	Short Term Loan
k.	08/15/08	CDP Loan
Total:		

2. Mirabeau Guaranty Obligations:

	<u>Date</u>	<u>Guaranty Obligation</u>
a.	09/17/07	City to Superior
b.	04/2008	City to Superior

A. March 14, 2002 Loan - \$3,150,000.00:

1. Mirabeau Loan Agreement dated as of November 8, 2001
2. Great American Loan Agreement dated as of November 8, 2001
3. February 13, 2002 Loan Commitment Letter
4. Participation Agreement dated as of March 7, 2002
5. Certificate of Authorization dated March 14, 2002
8. Rehabilitation/Term Loan Agreement dated March 14, 2002
7. Promissory Note in the original principal sum of \$3,150,000.00 dated March 14, 2002
8. Real Estate Mortgage and Security Agreement dated March 14, 2002, filed for record March 15, 2002 as Instrument Number 15993 and recorded in Mortgage Book 3000 at pages 971-77 in the Office of the Judge of Probate of Madison County, Alabama
9. Assignment of Lessor's Interest in Contract Rights dated March 14, 2002, filed for record March 15, 2002 as Instrument Number 15983 and recorded in Mortgage Book 3000 at pages 993-1002 in the Office of the Judge of Probate of Madison County, Alabama
10. Mortgage and Security Agreement dated March 14, 2002, filed for record March 28, 2002 as Instrument Number 18284 and recorded in Mortgage Book 3008 at pages 240-81 in the Office of the Judge of Probate of Madison County, Alabama
11. Mortgage and Security Agreement dated March 14, 2002, filed for record April 5, 2002 as Instrument Number 20731 and recorded in Mortgage Book 3018 at pages 12-33 in the Office of the Judge of Probate of Madison County, Alabama
12. Unconditional Limited Guaranty of Specific Debts dated March 14, 2002
13. Control Agreement dated March 18, 2002
14. First Amended Loan Agreement dated as of July 31, 2002
15. Second Amended Loan Agreement dated as of May 19, 2003
18. First Amendment to Mortgage dated November 28, 2003, filed for record December 12, 2003 as Instrument Number 07995 and recorded in Mortgage Book 3564 at pages 785-89 in the Office of the Judge of Probate of Madison County, Alabama
17. Transfer of Mortgage and Assignment of Lessor's Interest in Contract Rights dated November 4, 2004, filed for record November 23, 2004 and recorded as Document Number 20041123000525400 in the Office of the Judge of Probate of Madison County, Alabama

B. First Acquisition Loan - \$1,200,000.00:

1. Promissory Note in the original principal sum of \$1,200,000.00 dated March 14, 2002
2. Heritage Bank Irrevocable Standby Letter of Credit No. 00-279 dated March 14, 2002
3. City of Huntsville Community Development Department Affidavit dated June 17, 2003
4. Mirabeau, Community Development and Superior Bank letter dated May 15, 2003
5. Second Amended Loan Agreement dated as of May 19, 2003
8. Promissory Note in the original principal sum of \$1,200,000.00 dated May 19, 2003
7. Promissory Note in the original principal sum of \$950,000.00 dated March 14, 2002

- (1)
- C. Mezzanine Loan - \$171,000.00:
1. Promissory Note in the original principal sum of \$171,000.00 dated March 14, 2002
 2. Promissory Note in the original principal sum of \$171,000.00 dated March 23, 2004
- D. Second Acquisition Loan - \$390,000.00:
1. Promissory Note in the original principal sum of \$390,000.00 dated March 14, 2002
 2. Promissory Note in the original principal sum of \$390,000.00 dated May 19, 2003
 3. Promissory Note in the original principal sum of \$390,000.00 dated May 18, 2004
- E. Third Acquisition Loan - \$100,000.00:
1. Promissory Note in the original principal sum of \$100,000.00 dated May 19, 2003
 2. Promissory Note Amended Third Acquisition Loan in the original principal sum of \$490,000.00 dated November, 2003
 3. Financing Agreement dated May 18, 2004
- F. Fourth Acquisition Loan:
1. Promissory Note Fourth Acquisition Loan in the original principal sum of \$19,000.00 dated May 18, 2004
 2. Promissory Note First Rehab Loan in the original principal sum of \$99,115.00 dated May 18, 2004
 3. Promissory Note Phase II Home Loan in the original principal sum of \$772,000.00 dated May 18, 2004
 4. Promissory Note Second Rehab Loan in the original principal sum of \$475,000.00 dated May 18, 2004
- G. \$275,000.00 Short Term Loan:
1. The Loan Agreement \$275K Short Term Loan dated September 9, 2005
 2. First Amended and Restated Loan Agreement \$275K Short Term Loan dated October 14, 2005
 3. Second Amended and Restated Loan Agreement \$275K Short Term Loan dated October 14, 2005
 4. Promissory Note in the original principal sum of \$275,000.00 dated September 15, 2005
 5. Contingent Guaranty \$275,000 Loan dated October 14, 2005 from Clifford W. Reynolds Trust
- H. \$1,962,000.00 Loan:
1. Opinion of Counsel of Wilmer & Lee, P.C. dated November 4, 2004
 2. Loan Agreement dated November 4, 2004
 3. Promissory Note in the original principal sum of \$1,962,000.00 dated November 4, 2004
 4. Unconditional Guaranty of Specific Debts dated November 4, 2004
 5. Minutes and Action of The General Partner of Mirabeau, L.P. dated November 4, 2004
 6. Mirabeau General Corp. Resolution dated November 4, 2004
 7. Compliance Agreement dated November 4, 2004
 8. Mirabeau Apartments, Ltd. Heritage Bank Loan Purchase Financing Summary
 9. Phase V Home Loan Agreement dated November 4, 2004
 10. Initial Phase V Loan Agreement dated December 4, 2004

11. Ratification and Assumption dated November 4, 2004
12. Assignment of Mortgage dated November 10, 2004, _____ in the Office of the Judge of Probate of Madison County, Alabama
13. Assignment and Subordination Agreement dated November 18, 2004
14. December 1, 2004 Letter
15. Promissory Note Initial Phase V Loan in the original principal sum of \$70,000.00 dated December 4, 2004
16. Mirabeau, LP Contingant Guaranty dated December 4, 2004
17. Resolution Authorizing the City of Huntsville Community Development Division to Assign a \$1,350,000.00 Portion of a \$3,150,000.00 Mortgage to The Bank dated October 31, 2005

I. City's Guaranty of Superior Bank \$1,350,000.00 Loan to Westland Apartments, Ltd.:

1. Promissory Note in the original principal sum of \$1,350,000.00 dated April 13, 2008
2. Accomodation and Intercreditor Agreement dated April, 2006
3. Loan and Security Agreement dated as of April 13, 2008
4. Continuing Guaranty of Gary M. Reynolds dated April 13, 2006
5. Opinion of Counsel of Wilmar & Loo dated April 12, 2008
6. Opinion of Counsel of City Attorney dated April 12, 2008
7. Assignment of Deposit Account dated April, 2008
8. Corporate Authorizaion Resolution dated April 13, 2008
9. Officer's Certificate dated as of April 13, 2008
10. IRS Form W-9 dated April 13, 2006
11. IRS Form W-9 dated April 17, 2008
12. Business Purpose Statement dated April 13, 2006
13. Borrower's Closing Affidavit dated April 13, 2006
14. Mortgage, Assignment of Rents and Leases, and Security Agreement from Mirabeau Gated and Mirabeau to City in the original principal sum of \$1,350,000.00, dated July 8, 2008, filed for record July 14, 2009 and recorded as Document Number 20090714000463840 _____ in the Office of the Judge of Probate of Madison County, Alabama

J. City's Guaranty of Superior Bank \$300,000.00 Loan to Condominium Development Partners, LLC:

1. Master Financing Agreement dated December 7, 2007
2. Articlea of Organization of Condominium Development Partners, LLC dated as of September 14, 2007, filed for record September 14, 2007 and recorded as Document Number 20070914000655850 in the Office of the Judge of Probate of Madison County, Alabama
3. September 17, 2007 Guaranty Letter
4. September 18, 2007 Guaranty Letter
5. March 28, 2008 Guoranty Lotter
6. Promissory Note Condominium Dvelopment Partners, LLC-HOM in the original principal sum of \$375,000.00 dated April 15, 2008
7. Mortgage, Assignment of Rents and Leases, and Security Agreement from Mirabeau Gated and Mirabeau to City in the original principal sum of \$1,850,000.00, dated July 8, 2009, filed for record July 14, 2009 and recorded as Document Number 20090714000463840 _____ in the Office of the Judge of Probate of Madison County, Alabama

EXHIBIT B

Property

(See Attached Site Map Subject To a Survey Before Final Closing)

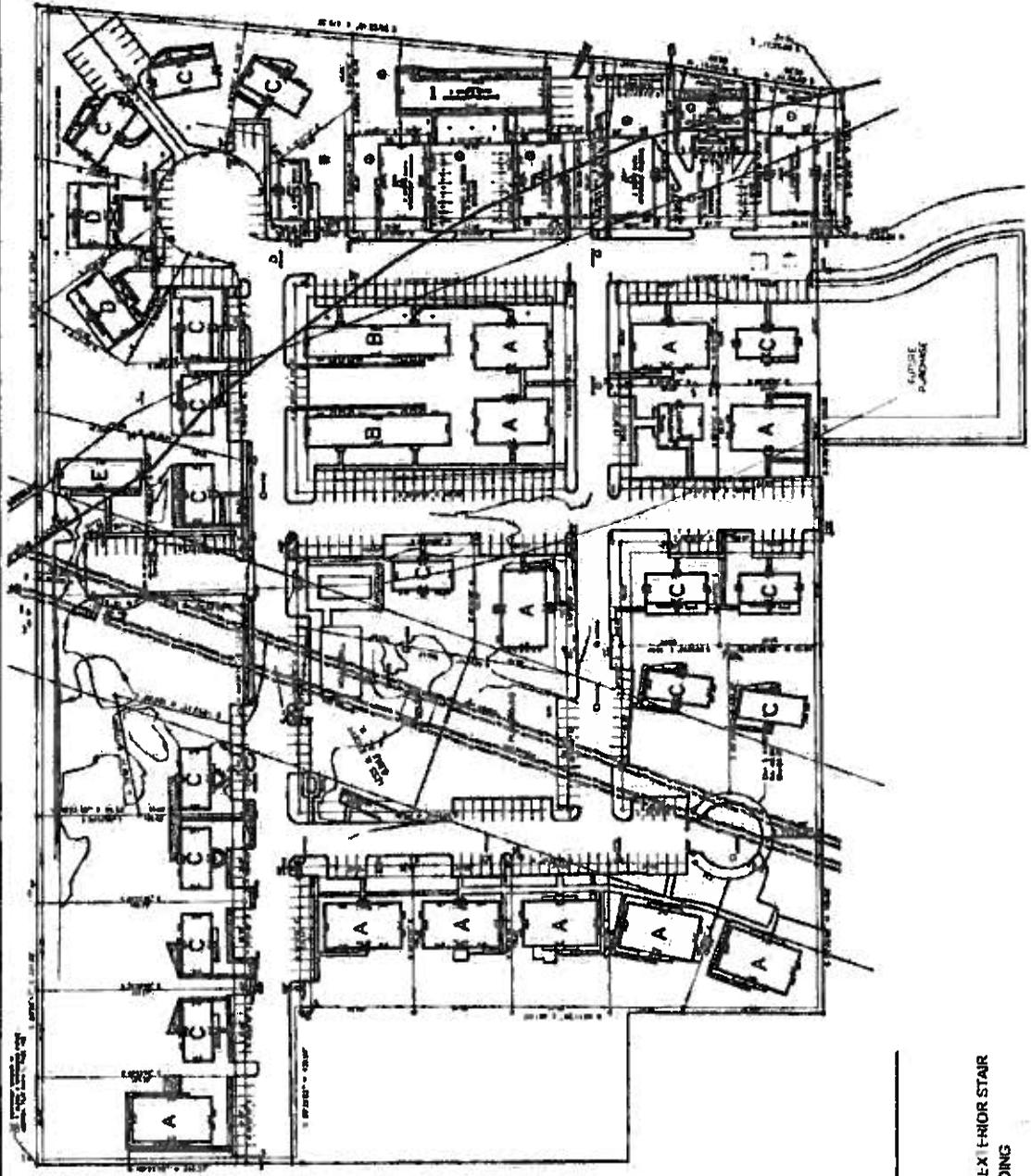


PASEUR & ASSOCIATES
 ARCHITECTS
 1000 ...
 ...



MIRABEAU GATED COMMUNITY

DATE	10/15/03
BY	J. PASEUR
CHK'D BY	J. PASEUR
SCALE	AS SHOWN
TITLE	SITE LAYOUT
NO.	1



SITE LAYOUT

- LEGEND**
- A 8-UNITPLEX BUILDING
 - B 6-UNITPLEX BUILDING
 - C 4-UNITPLEX BUILDING
 - D 4-UNITPLEX BUILDING W/ EXTERIOR STAIR
 - E 5-UNITPLEX STUDIO BUILDING

EXHIBIT C

Form of Acquisition Loan Note

\$1,386,000.00

Huntsville, Alabama

Date: _____

**NON-RECOURSE
PROMISSORY NOTE**

FOR VALUE RECEIVED, the undersigned, **Lowe Mill Development, LLC**, an Alabama limited liability company, whose address is _____ (hereinafter referred to as "Borrower") hereby promises to pay to the order of **City of Huntsville** (hereinafter referred to as "Note Holder") at _____, or such other place as the holder may designate in writing, the sum of One Million Three Hundred Eighty-Six Thousand and No/100 Dollars (\$1,386,000.00), with interest therein from date at the rate stated below and principal being payable in lawful money of the United States of America in the manner and at the time following, to-wit:

INTEREST RATE:

- (a) Commencing on the date hereof and continuing through and including the Maturity Date (as hereinafter defined), the interest rate payable hereunder on all amounts shall be equal to one percent (1.00%) per annum.
- (b) The maturity date under this Note shall be (i) one (1) year from the date upon which Borrower or an affiliate of Borrower takes title to the Property (as such term is defined in the Sale and Assignment Agreement between Borrower and Note Holder dated _____, 2013, hereinafter the "Agreement"); and (ii) one hundred eighty (180) days after the date of Note Holder's final settlement agreement with HUD/OIG relating to any ongoing matters impacting or in any way pertaining to said Property (the "Maturity Date").

PAYMENT:

- (a) All accrued interest and unpaid principal shall be due and payable upon the Maturity Date.

The Borrower reserves the right to prepay the indebtedness evidenced hereby at any time, in whole or in part, without penalty, and interest on the amount so prepaid shall abate as of the date of said prepayment.

This Note is secured by a non-recourse collateral assignment of the Obligations (as such term is defined in the Agreement), hereinafter described as "Collateral Assignment", in favor of the Note Holder until such time as Borrower or an affiliate of Borrower takes title to the Property. In the event Buyer takes title to the Property, the Collateral Assignment shall be deemed released and satisfied and Borrower shall execute a non-recourse first-priority mortgage ("Mortgage") on the Property in favor of the Note Holder

securing the indebtedness evidenced by this Note.

Notwithstanding any provision hereof to the contrary, the liability of undersigned with respect to principal payable hereunder shall be "nonrecourse," and in the event of any default hereunder, the holder hereof may pursue such remedies as are available hereunder or under law or in the event the Collateral Assignment is not deemed released, to have the Obligations serving as security for the indebtedness foreclosed to satisfy the indebtedness or in the event the Collateral Assignment is deemed released, and the Mortgage is securing the indebtedness evidenced by this Note, to have the Property serving as security for the indebtedness foreclosed to satisfy the indebtedness; but, following any such application, no deficiency judgment for any unsatisfied amount of principal owed hereunder, under the Collateral Assignment or under the Mortgage shall be rendered against the undersigned.

This Note shall be governed by the laws of the State of Alabama.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed by its duly authorized _____ on the date first above written.

LOWE MILL DEVELOPMENT, LLC,
an Alabama limited liability company

By: _____
Its: _____

EXHIBIT D

Form of Seller Loan Note

\$200,000.00

Huntsville, Alabama

Date: _____

**NON-RECOURSE
PROMISSORY NOTE**

FOR VALUE RECEIVED, the undersigned, **Lowé Mill Development, LLC**, an Alabama limited liability company, whose address is _____ (hereinafter referred to as "Borrower") hereby promises to pay to the order of **City of Huntsville** (hereinafter referred to as "Note Holder") at _____, or such other place as the holder may designate in writing, the sum of Two Hundred Thousand and No/100 Dollars (\$200,000.00), with interest therein from date at the rate stated below and principal being payable in lawful money of the United States of America in the manner and at the time following, to-wit:

INTEREST RATE:

- (a) Commencing on the date hereof and continuing through and including the Maturity Date (as hereinafter defined), the Interest rate payable hereunder on all such amounts disbursed hereunder from escrow to Borrower shall be equal to one percent (1.00%) per annum.
- (b) The maturity date under this Note shall be December 31, 2017 (the "Maturity Date").

PAYMENT:

- (a) In the event that Borrower is not in default of its obligations relating to 40-unit HOME set-aside (as hereinafter defined) at the Maturity Date, then all outstanding indebtedness, including, but not limited to all accrued interest and unpaid principal, under this Note shall be forgiven, and this Note shall be deemed satisfied and released.
- (b) In the event that Borrower is in default of its obligations related to the said 40-unit HOME set-aside as of the Maturity Date, then all accrued interest and unpaid principal shall be due and payable upon the Maturity Date.

The Borrower reserves the right to prepay the indebtedness evidenced hereby at any time, in whole or in part, without penalty, and interest on the amount so prepaid shall abate as of the date of said prepayment.

Notwithstanding any provision hereof to the contrary, the liability of undersigned with respect to principal payable hereunder shall be "nonrecourse" and "unsecured."

This Note shall be governed by the laws of the State of Alabama.

[Additional language to be inserted in final version of Note: 40-unit HOME set-aside ("40-unit HOME set-aside") currently applicable to the Property (as such term is defined in the Sale and Assignment Agreement between Borrower and Note Holder), which set-aside shall be as set forth in that certain Consolidated Financing Agreement and Affordable Home Ownership Mortgage Financing Program agreement dated September 30, 2008 by and between Mirabeau, LP and Mirabeau Gated Community LP and the City of Huntsville Community Development Department.]

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed by its duly authorized _____ on the date first above written.

LOWE MILL DEVELOPMENT, LLC,
an Alabama limited liability company

By: _____
Its: _____

EXHIBIT E

Form of Infrastructure Loan Note

\$75,000.00

Huntsville, Alabama

Date: _____

**NON-RECOURSE
PROMISSORY NOTE**

FOR VALUE RECEIVED, the undersigned, **Low Mill Development, LLC**, an Alabama limited liability company, whose address is _____ (hereinafter referred to as "Borrower") hereby promises to pay to the order of **City of Huntsville** (hereinafter referred to as "Note Holder") at _____, or such other place as the holder may designate in writing, the sum of Seventy-Five Thousand and No/100 Dollars (\$75,000.00), with interest therein from date at the rate stated below and principal being payable in lawful money of the United States of America in the manner and at the time following, to-wit:

INTEREST RATE:

- (a) Commencing on the date hereof and continuing through and including the Maturity Date (as hereinafter defined), the interest rate payable hereunder on all such amounts disbursed hereunder from escrow to Borrower shall be equal to three percent (3.00%) per annum.
- (b) The maturity date under this Note shall be December 31, 2033 (the "Maturity Date").

PAYMENT:

- (a) In the event (1) Borrower does not acquire the Obligations (as such term is defined in the Sale and Assignment Agreement between Borrower and Note Holder dated _____, 2013, hereinafter the "Agreement") pursuant to Paragraph 5 of the Agreement; OR (2) Borrower or an affiliate of Borrower does not take title to the Property (as such term is defined in the Agreement) due to the condition subsequent matters set forth in Paragraph 7 of the Agreement, then all outstanding indebtedness, including, but not limited to all accrued interest and unpaid principal, under this Note shall be forgiven, and this Note shall be deemed satisfied and released.
- (b) In the event one of the conditions set forth in Paragraph (a)(1) & (2) immediately above does not occur, all accrued interest and unpaid principal shall be due and payable upon the Maturity Date.

The Borrower reserves the right to prepay the indebtedness evidenced

hereby at any time, in whole or in part, without penalty, and interest on the amount so prepaid shall abate as of the date of said prepayment.

Notwithstanding any provision hereof to the contrary, the liability of undersigned with respect to principal payable hereunder shall be "nonrecourse" and "unsecured."

This Note shall be governed by the laws of the State of Alabama.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed by its duly authorized _____ on the date first above written.

LOWE MILL DEVELOPMENT, LLC,
an Alabama limited liability company

By: _____
Its: _____

EXHIBIT F

Form of Assignment

ASSIGNMENT

This Assignment is entered into by and between **CITY OF HUNTSVILLE** (“**Seller**”), and _____ [TBD] (“**Buyer**”).

RECITALS:

A. Seller and Buyer entered into that certain Sale and Assignment Agreement dated as of _____ (the “**Sale and Assignment Agreement**”).

B. The Sale and Assignment Agreement provides for the sale and transfer by Seller to Buyer of certain Assigned Rights and Property (such term and all other capitalized terms used herein and not otherwise defined herein have the definitions ascribed to them in the Sale and Assignment Agreement).

C. In exchange for the Purchase Price set forth in the Sale and Assignment Agreement and such other good and valuable consideration as provided in the Sale and Assignment Agreement, Seller hereby sells to Buyer the Assigned Rights and Property identified below on and subject to the terms, conditions and provisions hereof.

AGREEMENT:

NOW, THEREFORE:

(1) Seller hereby transfers, assigns and conveys all of Seller’s right, title and interest in and to the Obligations set forth on Schedule A attached hereto and made a part hereof for all purposes, the Delivery Documents and the Assigned Rights and Property associated therewith;

(2) Seller expressly retains all of Seller’s duties, obligations and responsibilities to third parties that arose out of the Seller’s ownership of the Obligations.

(3) Seller agrees without additional consideration to execute and deliver to Buyer any and all additional forms of assignment and other instruments and documents that may be reasonably necessary or desirable to transfer or evidence the transfer to Buyer of any of Buyer’s right, title and interest to any of the Obligations.

[EXECUTION BEGINS ON FOLLOWING PAGE]

DATED this _____ day of _____, 2013.

CITY OF HUNTSVILLE

By: _____
Name: _____
Its: _____

_____,
an _____

By: _____
Name: _____
Its: _____

STATE OF _____)

COUNTY OF _____)

I, the undersigned, a Notary Public in and for said county in said State, hereby certify that _____, whose name as _____ of **CITY OF HUNTSVILLE**, a municipal corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of City.

Given under my hand and official seal this _____ day of _____, 2013.

Notary Public

AFFIX SEAL

My commission expires: _____

STATE OF _____)

COUNTY OF _____)

I, the undersigned, a Notary Public in and for said county in said State, hereby certify that _____, whose name as _____ of _____, a(n) _____ limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she, as such _____ and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this _____ day of _____, 2013.

Notary Public

Notary Public

AFFIX SEAL

My commission expires: _____

SCHEDULE A
(of Assignment)

Obligations

(In addition to the items set forth in the attached, any and all other loans and repayment obligations evidencing, securing, or otherwise related to sums advanced by the City to the party or parties therein listed relating to the Property, a more complete list to be compiled and attached by the parties hereto, including, but not limited to The Modification Agreement dated July 8, 2009, recorded in the Probate Court of Madison County on July 17, 2009, 20090717000472820; and Consolidated Financing Agreement and Affordable Home Ownership Mortgage Financing Program dated September 30, 2008)

1. Mirabeau Loan Obligations:

	<u>Date</u>	<u>Loan Obligation</u>
a.	05/19/03	First Acquisition Loan
b.	03/23/04	Mezzanine Loan
c.	05/18/04	Second Acquisition Loan
d.	05/18/04	Third Acquisition Loan
e.	05/18/04	Fourth Acquisition Loan
f.	05/18/04	Fourth Acquisition Loan
g.	05/18/04	Fourth Acquisition Loan
h.	05/18/04	Fourth Acquisition Loan
i.	11/04/04	Heritage Acquisition Loan
j.	05/23/07	Short Term Loan
k.	08/15/08	CDP Loan
	Total:	

2. Mirabeau Guaranty Obligations:

	<u>Date</u>	<u>Guaranty Obligation</u>
a.	09/17/07	City to Superior
b.	04/2008	City to Superior

A. March 14, 2002 Loan - \$3,150,000.00:

1. Mirabeau Loan Agreement dated as of November 8, 2001
2. Great American Loan Agreement dated as of November 8, 2001
3. February 19, 2002 Loan Commitment Letter
4. Participation Agreement dated as of March 7, 2002
6. Certificate of Authorization dated March 14, 2002
8. Rehabilitation/Term Loan Agreement dated March 14, 2002
7. Promissory Note in the original principal sum of \$3,150,000.00 dated March 14, 2002
8. Real Estate Mortgage and Security Agreement dated March 14, 2002, filed for record March 15, 2002 as Instrument Number 15993 and recorded in Mortgage Book 3000 at pages 971-77 in the Office of the Judge of Probate of Madison County, Alabama
9. Assignment of Lessor's Interest in Contract Rights dated March 14, 2002, filed for record March 15, 2002 as Instrument Number 15983 and recorded in Mortgage Book 3000 at pages 999-1002 in the Office of the Judge of Probate of Madison County, Alabama
10. Mortgage and Security Agreement dated March 14, 2002, filed for record March 28, 2002 as Instrument Number 18284 and recorded in Mortgage Book 3008 at pages 240-61 in the Office of the Judge of Probate of Madison County, Alabama
11. Mortgage and Security Agreement dated March 14, 2002, filed for record April 5, 2002 as Instrument Number 20731 and recorded in Mortgage Book 3018 at pages 12-33 in the Office of the Judge of Probate of Madison County, Alabama
12. Unconditional Limited Guaranty of Specific Debts dated March 14, 2002
13. Control Agreement dated March 18, 2002
14. First Amended Loan Agreement dated as of July 31, 2002
16. Second Amended Loan Agreement dated as of May 19, 2003
18. First Amendment to Mortgage dated November 28, 2003, filed for record December 12, 2003 as Instrument Number 97995 and recorded in Mortgage Book 3564 at pages 785-89 in the Office of the Judge of Probate of Madison County, Alabama
17. Transfer of Mortgage and Assignment of Lessor's Interest in Contract Rights dated November 4, 2004, filed for record November 23, 2004 and recorded as Document Number 20041123000525400 in the Office of the Judge of Probate of Madison County, Alabama

B. First Acquisition Loan - \$1,200,000.00:

1. Promissory Note in the original principal sum of \$1,200,000.00 dated March 14, 2002
2. Heritage Bank Irrevocable Standby Letter of Credit No. 00-279 dated March 14, 2002
3. City of Huntsville Community Development Department Affidavit dated June 17, 2003
4. Mirabeau, Community Development and Superior Bank letter dated May 15, 2003
5. Second Amended Loan Agreement dated as of May 19, 2003
8. Promissory Note in the original principal sum of \$1,200,000.00 dated May 19, 2003
7. Promissory Note in the original principal sum of \$950,000.00 dated March 14, 2002

- C. Mezzanine Loan - \$171,000.00:
1. Promissory Note in the original principal sum of \$171,000.00 dated March 14, 2002
 2. Promissory Note in the original principal sum of \$171,000.00 dated March 23, 2004
- D. Second Acquisition Loan - \$390,000.00:
1. Promissory Note in the original principal sum of \$390,000.00 dated March 14, 2002
 2. Promissory Note in the original principal sum of \$390,000.00 dated May 19, 2003
 3. Promissory Note in the original principal sum of \$390,000.00 dated May 18, 2004
- E. Third Acquisition Loan - \$100,000.00:
1. Promissory Note in the original principal sum of \$100,000.00 dated May 19, 2003
 2. Promissory Note Amended Third Acquisition Loan in the original principal sum of \$490,000.00 dated November, 2003
 3. Financing Agreement dated May 18, 2004
- F. Fourth Acquisition Loan:
1. Promissory Note Fourth Acquisition Loan in the original principal sum of \$19,000.00 dated May 18, 2004
 2. Promissory Note First Rehab Loan in the original principal sum of \$99,115.00 dated May 18, 2004
 3. Promissory Note Phase II Home Loan in the original principal sum of \$772,000.00 dated May 18, 2004
 4. Promissory Note Second Rehab Loan in the original principal sum of \$476,000.00 dated May 18, 2004
- G. \$275,000.00 Short Term Loan:
1. The Loan Agreement \$275K Short Term Loan dated September 9, 2005
 2. First Amended and Restated Loan Agreement \$275K Short Term Loan dated October 14, 2005
 3. Second Amended and Restated Loan Agreement \$275K Short Term Loan dated October 14, 2005
 4. Promissory Note in the original principal sum of \$275,000.00 dated September 15, 2005
 5. Contingent Guaranty \$275,000 Loan dated October 14, 2005 from Clifford W. Reynolds Trust
- H. \$1,962,000.00 Loan:
1. Opinion of Counsel of Wilmar & Lee, P.C. dated November 4, 2004
 2. Loan Agreement dated November 4, 2004
 3. Promissory Note in the original principal sum of \$1,962,000.00 dated November 4, 2004
 4. Unconditional Guaranty of Specific Debts dated November 4, 2004
 5. Minutes and Action of The General Partner of Mirabeau, L.P. dated November 4, 2004
 6. Mirabeau General Corp. Resolution dated November 4, 2004
 7. Compliance Agreement dated November 4, 2004
 8. Mirabeau Apartments, Ltd. Heritage Bank Loan Purchase Financing Summary
 9. Phase V Home Loan Agreement dated November 4, 2004
 10. Initial Phase V Loan Agreement dated December 4, 2004

11. Ratification and Assumption dated November 4, 2004
12. Assignment of Mortgages dated November 10, 2004, _____ in the Office of the Judge of Probate of Madison County, Alabama
13. Assignment and Subordination Agreement dated November 18, 2004
14. December 1, 2004 Letter
15. Promissory Note Initial Phase V Loan in the original principal sum of \$70,000.00 dated December 4, 2004
16. Mirabeau, LP Contingent Guaranty dated December 4, 2004
17. Resolution Authorizing the City of Huntavills Community Development Division to Assign a \$1,350,000.00 Portion of a \$3,150,000.00 Mortgage to The Bank dated October 31, 2005

I. City's Guaranty of Superior Bank \$1,350,000.00 Loan to Westland Apartments, Ltd.:

1. Promissory Note in the original principal sum of \$1,350,000.00 dated April 13, 2008
2. Accommodation and Intercreditor Agreement dated April, 2008
3. Loan and Security Agreement dated as of April 13, 2006
4. Continuing Guaranty of Gary M. Reynolds dated April 13, 2006
5. Opinion of Counsel of Wilmar & Loo dated April 12, 2008
6. Opinion of Counsel of City Attorney dated April 12, 2008
7. Assignment of Deposit Account dated April, 2006
8. Corporate Authorization Resolution dated April 13, 2008
9. Officer's Certificate dated as of April 13, 2008
10. IRS Form W-9 dated April 13, 2006
11. IRS Form W-9 dated April 17, 2008
12. Business Purpose Statement dated April 13, 2000
13. Borrower's Closing Affidavit dated April 13, 2006
14. Mortgage, Assignment of Rents and Leases, and Security Agreement from Mirabeau Gated and Mirabeau to City in the original principal sum of \$1,650,000.00, dated July 8, 2009, filed for record July 14, 2009 and recorded as Document Number 20090714000463840 in the Office of the Judge of Probate of Madison County, Alabama

J. City's Guaranty of Superior Bank \$300,000.00 Loan to Condominium Development Partners, LLC:

1. Master Financing Agreement dated December 7, 2007
2. Articles of Organization of Condominium Development Partners, LLC dated as of September 14, 2007, filed for record September 14, 2007 and recorded as Document Number 20070914000655950 in the Office of the Judge of Probate of Madison County, Alabama
3. September 17, 2007 Guaranty Letter
4. September 18, 2007 Guaranty Letter
5. March 26, 2008 Guaranty Letter
6. Promissory Note Condominium Development Partners, LLC-HOM in the original principal sum of \$375,000.00 dated April 15, 2008
7. Mortgage, Assignment of Rents and Leases, and Security Agreement from Mirabeau Gated and Mirabeau to City in the original principal sum of \$1,650,000.00, dated July 8, 2009, filed for record July 14, 2009 and recorded as Document Number 20090714000463840 in the Office of the Judge of Probate of Madison County, Alabama

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Legal

Council Meeting Date: 4/25/2013

Department Contact: Peter Joffrion

Phone # 427-5026

Contract or Agreement: Sale and Assignment Agreement

Document Name: Sale and Assignment Agreement with Lowe Mill Development, LLC

City Obligation Amount:

Total Project Budget: 1,386,000

Uncommitted Account Balance:

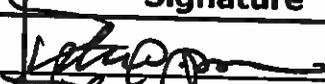
Account Number:

Procurement Agreements

<u>Not Applicable</u>	<u>Not Applicable</u>
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Grant-Funded Agreements

<u>Not Applicable</u>	Grant Name:
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Department	Signature	Date
1) Originating		4-18-13
2) Legal		4-18-13
3) Finance		4/20/13
4) Originating		4-18-13
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		