

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 5/23/2013

Action Requested By:
Legal

Agenda Item Type
Resolution

Subject Matter:

Lot Purchase and Sale Agreement

Exact Wording for the Agenda:

Resolution authorizing the Mayor to execute a Lot Purchase and Sale Agreement between the City of Huntsville and Acanthus Industrial Properties, 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.

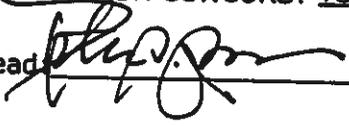
Lots 38, 39, 43, 44, 46, 48 & 50, Block H of the Demasters & Buford Subdivision.

Associated Cost:

Budgeted Item: Not applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head



Date: 5-22-13

RESOLUTION NO. 13-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor is hereby authorized to execute a Lot Purchase and Sale Agreement on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said document is substantially in words and figures similar to that certain document attached hereto and identified as a "Lot Purchase and Sale Agreement between the City of Huntsville and Acanthus Industrial Properties, LLC, consisting of Twelve (12) pages including Exhibits A & B, and the date of May 23, 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 23rd day of May, 2013.

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

ADOPTED this the 23rd day of May, 2013.

Mayor of the City of
Huntsville, Alabama

STATE OF ALABAMA)
 :
MADISON COUNTY)

LOT PURCHASE AND SALE AGREEMENT

This **LOT PURCHASE AND SALE AGREEMENT** (the "Agreement") is hereby made and entered into by and between **ACANTHUS INDUSTRIAL PROPERTIES, LLC**, an Alabama limited liability company (the "Purchaser"), and the **CITY OF HUNTSVILLE, ALABAMA**, a municipal corporation (the "Seller"). Seller and Purchaser are sometimes referred to herein as the "Parties" or additionally as a "party."

WITNESSETH:

A. The Seller is the owner of Lots 38, 39, 43, 44, 46, 48, 50 and 52 (collectively, the "Lots"), all located in Block H of the Demasters & Buford Subdivision in Madison County, Alabama as reflected on the final plat of such subdivision recorded in Plat Book 1, Page 90.

B. Seller has agreed to sell, and Purchaser has agreed to purchase, the Lots, less and except any right-of-way taken or to be taken by the Seller for the widening of Church Street/Hundley Drive (the "Property"). A copy of the plat of the Lots highlighted in yellow and showing the location of the future, widened right-of-way for Church Street/Hundley Drive is attached hereto, marked **Exhibit A** and incorporated herein by reference on the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the premises, the mutual promises, benefits and burdens of the parties hereto, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties agree:

1. **The Property.** Seller is the current owner of the Property.
2. **Purchase of the Property.** Subject to and in accordance with the terms and conditions contained in this Agreement, and provided that neither Party is in default hereunder, Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, the Property.
3. **Purchase Price.** The determination of the purchase price for the Property shall be made pursuant to an appraisal or a confirmation of the value of the Property performed by the Alabama Department of Transportation.
4. **Earnest Money.** Upon execution of this Agreement, Purchaser will deposit One Thousand Dollars (\$1,000.00) in earnest money (the "Earnest Money") with Seller. Subject to paragraph 10 hereof, the Earnest Money shall be applied to the purchase price of the Property upon closing.

President of the City Council of the
City of Huntsville, Alabama
Date: _____

5. **Title/Inspections.**

(a) **Title Examination of the Property.** Within five (5) days following the Effective Date (as hereinafter defined) of this Agreement or such longer period as the parties may agree, Purchaser shall, at its expense, obtain and deliver to Purchaser and Seller a title insurance commitment for the Property (the "Commitment"). The Commitment shall show Seller to be vested with good and marketable and insurable fee simple title to the Property, insurable in an amount equal to the purchase price, all in accordance with commercially reasonable standards, free and clear of all liens, encumbrances, leases, tenancies, covenants, conditions, restrictions, right-of-ways, easements and other matters affecting title.

(b) **Title Defects in the Property.** If within five (5) days, or such longer period as the parties may agree, of the title commitment being delivered to Purchaser, the Purchaser finds title to the Property to (i) include exceptions that would negatively affect the proposed use of the Property or (ii) be defective, Purchaser shall notify Seller in writing specifying the title defect(s) ("Title Defects"). Seller shall have five (5) days to agree to correct the Title Defects or to terminate this Agreement and return the Earnest Money to Purchaser unless such Title Defects are waived by Purchaser. If Seller does not notify Purchaser of its willingness to correct the Title Defects within the said five (5) day period, or such longer period as the parties may agree, the Purchaser may terminate this Agreement and the Seller shall return the Earnest Money to Purchaser, unless the Purchaser waives such Title Defects. Seller shall correct such agreed to Title Defects as set out in this paragraph (b) prior to the closing date as set forth in paragraph 6.

(c) **Inspections.** Purchaser, its agents and representatives, shall at all times before the closing have the privilege, opportunity and right of entering upon the Property in order to conduct such investigations of the Property, including, but not limited to, the physical and environmental conditions thereof, as purchaser deems necessary or desirable to satisfy itself as to the condition of the Property. Purchaser may perform Phase II environmental testing and other invasive investigations with respect to the Property so long as Purchaser returns the Property to its original condition. Purchaser agrees to indemnify, defend and hold harmless Seller from and against (i) any and all damages to person or property, and (ii) any and all liabilities, damages, costs and expenses (including without limitation reasonable attorneys' fees and court costs), which arise as a result of or in connection with Purchaser's exercise of its rights pursuant to this paragraph. In connection with Purchaser's inspections of the Property, within three (3) business days after the Effective Date of this Agreement, Seller shall provide Purchaser for its review with copies of all environmental reports, surveys, engineering plans and specifications, title insurance policies, agreements, materials, material correspondence and other documents in its possession pertaining to the Property. In the event Purchaser is not satisfied with the results of its inspections of the Property, or for any other reason, Purchaser may, by delivery of written notice to Seller on or before the closing date, terminate this Agreement, whereupon all Earnest Money shall be refunded to Purchaser and this Agreement shall be deemed null and void and of no further force or effect with Purchaser and Seller having no further rights, obligations or liabilities hereunder except for those which expressly survive any such termination.

6. **Closing and Acquisition of the Property.** Seller and Purchaser agree that the Property shall be purchased by Purchaser upon the later of (a) May 31, 2013, or (b) within ten (10) days after Seller's receipt of all applicable approvals for this transaction from the Alabama

Department of Transportation, or such later date mutually agreeable to Seller and Purchaser in writing. The closing shall occur at the offices of Bradley Arant Boult Cummings LLP, in Huntsville, Alabama, or at such other location as the parties may agree.

7. **Costs and Fees.** At closing, Seller shall at its own cost provide a statutory warranty deed. Purchaser shall pay its closing costs, including but not limited to deed recording fee and tax, attorney's fees for closing, all costs incurred in connection with any financing obtained by Purchaser, the owner's and mortgagee title insurance premiums and the title examination fee for issuance of owner's and mortgagee title policies. Each party shall be responsible for its own attorney's fees and other costs associated with each closing. Seller shall be responsible for the cost of the appraisal or confirmation up to the first \$1,000.

8. **Conveyance and Payment of Purchase Price.** On the closing date, Seller will deliver to Purchaser at Seller's expense, a statutory warranty deed for the Property free from any and all encumbrances, except any title exceptions waived and approved by Purchaser in writing. On the closing date, Purchaser shall pay the purchase price to Seller, less the Earnest Money and as adjusted pursuant to a closing statement to be executed by the parties at closing.

9. **Short Term Lease.** Purchaser agrees to enter into a separate lease agreement on the closing date, for and in consideration of \$1.00, whereby Purchaser shall lease to Seller, and Seller shall rent from Purchaser, from the closing date until May 22, 2014 (with no right to hold over), that certain storage building and the immediately surrounding property as depicted on **Exhibit B** attached hereto, for the use by the Huntsville-Madison County Emergency Management Agency, an agency of Seller, for storage purposes and for no other use. The lease agreement shall provide for customary commercial lease terms which shall include that (i) Seller shall pay all utilities used on or about the leased premises directly to the applicable utility providers; (ii) Seller shall pay the ad valorem taxes, if any, regarding the leased premises; (iii) Seller accepts the leased premises on an "as-is" basis, and Seller, at Seller's expense shall make all necessary repairs, replacements and maintenance to the leased premises, structural and nonstructural, it being the intent that Purchaser shall have no maintenance or repair obligations with respect to the lease premises; (iv) Seller may not make any changes, alterations, or additions to the leased premises without first obtaining the written consent of the Purchaser; (v) Purchaser shall have no obligation to insure the improvements on the leased premises against the perils of fire, explosion, and extended coverage, including, but not limited to, windstorm, hurricane, hail and tornado, acts of war, acts of terrorism, acts of God or any other events whatsoever; (vi) If Seller desires such coverages, Seller must obtain the same at its own expense; (vii) Seller shall carry public liability and property damage insurance on the leased premises naming Purchaser as an additional insured therein; (viii) Seller shall be responsible for any and all loss, damage or expense (including reasonable attorney's fees) incurred as a result of the Seller's use or occupancy of the leased premises by Seller or any of its agencies, or their respective employees, agents, contractors, invitees, and guests; (ix) Seller may not assign this Agreement, sublet the leased premises or any portion thereof or change the use of the leased premises without the written consent of Purchaser; and (x) Seller acknowledges that Seller is currently utilizing the leased premises for the use stated herein. Seller understands that Purchaser intends to raze the storage building upon the Seller vacating the leased premises as part of Purchaser's industrial expansion plans. Purchaser is willing to enter into this short term lease to assist the Seller in finding other suitable facilities for such storage use.

10. **Pro-Ration of Taxes.** Ad valorem taxes for the current year, if any, shall be prorated as of the closing date.

11. **Default.**

(a) In the event Purchaser fails to close on the Property on or before the closing date for any reason other than Seller's failure to carry out the terms of this Agreement, the Earnest Money shall be forfeited by Purchaser and the proceeds retained by Seller as liquidated damages and as Seller's sole and exclusive remedy for Purchaser's failure to perform the obligations of this Agreement, upon which this Agreement shall terminate. The parties hereto acknowledging that it is impossible to estimate more precisely the damages which might be suffered by Seller upon Purchaser's default and that Seller's retention of such sums paid to Seller pursuant to this Agreement is intended not as a penalty, but rather is a reasonable pre-breach estimation of the probable loss to Seller.

(b) In the event the sale of the Property is not consummated on or before the closing date as a result of Seller's failure to carry out the terms of this Agreement, Purchaser may choose as its sole and exclusive remedy to either (i) have the Earnest Money returned to Purchaser and this Agreement will be terminated or (ii) proceed for specific performance.

(c) Should either party to this Agreement institute litigation against the other for relief, the prevailing party in such litigation shall be entitled to recover all costs incurred, including a reasonable attorney's fees.

12. **Fees, Expenses, or Brokerage Fees.** Each party to this Agreement shall be responsible for attorney's fees and other expenses incurred by them, and each party agrees to indemnify and hold harmless the other in the event a claim is made for any brokerage commission or other brokerage compensation incurred by them in connection with this transaction. Each party represents to the other that no brokers have been involved in this transaction other than Progressive Realty (Tony McCormack). Neither party has received any written notice concerning any unpaid real estate commission which could give rise to a broker's lien under Ala. Code (1975), §§ 35-11-450, et seq.

13. **Notices.** All notices provided for or permitted hereunder will be in writing and will be deemed to have been duly given upon (a) the date of personal delivery, (b) if sent by United States registered or certified mail, with postage prepaid, as indicated by the return receipt, (c) the date of receipt of such notice if sent by a nationally recognized express courier delivery service, or (d) the date transmitted by facsimile transmission with evidence of confirmation prior to 5:00 p.m. (Huntsville, Alabama time) on the date sent, otherwise the next business day following evidence of such confirmation, and addressed or sent to the parties at the following addresses:

TO SELLER:

City of Huntsville, Alabama
City Attorney's Office
Attn: Peter Joffrion
308 Fountain Circle SW
Huntsville, AL 35801

Telephone: (256) 427-5026
Fax: (256) 427-5043

TO PURCHASER:

Acanthus Industrial Properties, LLC
Attn: David Sosa
1003 Orchard Street
Huntsville, AL 35801
Telephone: (256) 534-8426
Fax : (256) 533-4783

14. **Entire Agreement.** This Agreement and all exhibits hereto state the entire agreement of the parties and merges into this Agreement all statements, representations, and covenants heretofore made, and any agreements not incorporated herein are void and of no force and effect. This Agreement and all exhibits hereto may not be varied, altered or amended, except by a written instrument executed by the parties as provided herein.

15. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama, without regard to its provisions for conflicts of law.

16. **Binding Effect.** All terms and provisions of this Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

17. **Severability.** In the event that any condition or covenant herein contained is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or conditions herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

18. **Number and Gender.** Whenever the singular number is used herein and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and the word "person" shall include a corporation, limited liability company, firm, partnership, joint venture, trust or estate.

19. **Effective Date.** The effective date of this Agreement shall be May 23, 2013.

20. **Captions and Interpretations.** Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or any provision hereof.

21. **Time of the Essence.** Time is of the essence as to each provision of this Agreement.

22. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument.

23. **Construction of Agreement.** This Agreement shall be construed in its entirety according to its plain meaning. The parties hereby agree that this Agreement shall be construed as an Agreement negotiated at arms-length between equally sophisticated business-persons, each represented and advised by separate counsel of such party's choosing and this Agreement shall not therefore be construed against the party who provided or drafted all or any portion of this Agreement.

24. **Introduction and Recitals.** The introduction and recitals to this Agreement, including all definitions contained therein, are an integral part of this Agreement.

25. **Survival.** The parties agree that the representations, warranties, covenants and agreements set forth herein, shall survive closing or termination of this Agreement.

IN WITNESS WHEREOF, the undersigned parties hereto have caused these presents to be executed by their duly authorized representatives on separate signature pages attached hereto effective as of the 23rd day of May, 2013.

(SIGNATURES ON FOLLOWING PAGES)

LOT PURCHASE AND SALE AGREEMENT

[Signature Page for the City of Huntsville, Seller]

SELLER:

**THE CITY OF HUNTSVILLE,
ALABAMA, a municipal
corporation in the State of Alabama**

**By: _____
Tommy Battle, Its Mayor**

ATTEST:

**By: _____
Charles Hagood, City Clerk-Treasurer**

**STATE OF ALABAMA)
 :
MADISON COUNTY)**

I, the undersigned, a notary public in and for said county in said state, hereby certify that Tommy Battle, whose name as Mayor, and Charles Hagood as City Clerk-Treasurer, of the City of Huntsville, Alabama, an Alabama municipal corporation, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of said instrument, they, in their capacities as such officers, and with full authority executed the same voluntarily for and as the act of said municipal corporation.

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

Notary Public
My Commission Expires: _____

[NOTARIAL SEAL]

LOT PURCHASE AND SALE AGREEMENT

EXHIBIT A

(Subdivision Plat)

LOT PURCHASE AND SALE AGREEMENT

EXHIBIT B
(Depiction of Storage Facility)



Only One Remaining (EMA)

**ROUTING SLIP
CONTRACTS AND AGREEMENTS**

Originating Department: Legal

Council Meeting Date: 5/23/2013

Department Contact: Peter Joffrion

Phone # 427-5026

Contract or Agreement: Lot Purchase and Sale Agreement

Document Name: Lot Purchase and Sale Agreement with Acanthus Industrial Properties

City Obligation Amount:

Total Project Budget:

Uncommitted Account Balance:

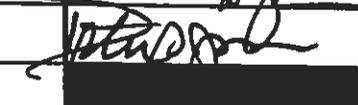
Account Number:

Procurement Agreements

Not Applicable	Not Applicable
-----------------------	-----------------------

Grant-Funded Agreements

Not Applicable	Grant Name:
-----------------------	-------------

Department	Signature	Date
1) Originating		5-22-13
2) Legal		5-22-13
3) Finance		5/23/13
4) Originating		5-22-13
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		