

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Administration

Council Meeting Date: 1/22/2015

Department Contact: Mayor Battle

Phone # 5005

Contract or Agreement: Purchase and Sale Agreement between the City of Huntsville and Diltina Devel...

Document Name: Purchase and Sale Agreement between the City of Huntsville and Diltina Development...

City Obligation Amount:

Total Project Budget:

Uncommitted Account Balance:

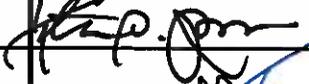
Account Number:

Procurement Agreements

Not Applicable	Not Applicable
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Grant-Funded Agreements

Not Applicable	Grant Name: _____
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Department	Signature	Date
1) Originating		
2) Legal		1-22-15
3) Finance		1/22/15
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 1/22/2015

Action Requested By:
Administration

Agenda Item Type
Resolution

Subject Matter:

Purchase and Sale Agreement between the City of Huntsville and Diltina Development Corporation.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into a Purchase and Sale Agreement between the City of Huntsville and Diltina Development Corporation.

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

Item to be considered for: Action

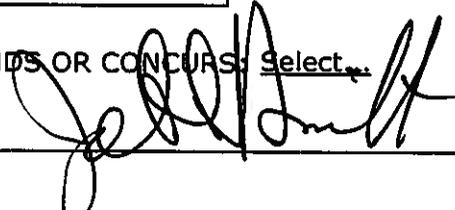
Unanimous Consent Required: No

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:

Budgeted Item: Not applicable

MAYOR RECOMMENDS OR CONCURS: Select...

Department Head:  _____

Date: _____

RESOLUTION NO. 15-_____

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 Purchase and Sale Agreement by and between the City of Huntsville and Diltina Development Corporation, 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 "Resolution authorizing the Mayor to enter into a Purchase and Sale Agreement by and between the City of Huntsville and Diltina Development Corporation," consisting of seven (7) pages, including Exhibits A and B and the date of January 22, 2015 appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, and 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 22nd day of January, 2015.

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

APPROVED this the 22nd day of January, 2015.

Mayor of the City of
Huntsville, Alabama

STATE OF ALABAMA)
)
COUNTY OF MADISON)

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement is made as of the 22nd day of January, 2015 between Diltina Development Corporation (“Seller”) and the City of Huntsville, Alabama (the “Purchaser”)

WITNESSETH

WHEREAS, Seller owns certain real property located at 13200 South Shawdee Road, Huntsville, Alabama 35803 (the “Property”); and

WHEREAS, the legal description of the Property is contained in Exhibit “A”, which is attached hereto and incorporated herein by reference; and

WHEREAS, Purchaser desires to purchase the Property from the Seller upon the agreements, covenants, conditions, provisions and terms set forth herein.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants of the parties and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Purchase and Sale. Seller agrees to sell the Property to Purchaser and Purchaser agrees to purchase the same from Seller upon all the agreements, covenants, conditions, provisions and terms set forth herein.

2. Purchase Price. Purchaser will pay Seller the total sum of Two Hundred Fifty Thousand Dollars (\$250,000.00), which shall be due and payable at Closing.

3. Earnest Money Deposit. Upon the execution of this Agreement, the City of Huntsville will deposit with Wolfe, Jones, Conchin, Wolfe, Hancock, & Daniel, LLC (the "Escrow Agent"), One Hundred Dollars (\$100.00) as an earnest money deposit (the "Earnest Money Deposit"). The Earnest Money Deposit will be held in escrow in a non-interest bearing account and will be fully refundable to the City at the City’s sole and absolute discretion during

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

the Due Diligence Period (as defined herein). At closing, the earnest money will be credited toward the Purchase Price.

4. Conditions Precedent to Closing. Purchaser's obligation to purchase the Property shall be expressly conditioned upon the fulfillment of each of the following conditions precedent:

a) The Green Mountain Civic League, Inc. and/or the Community Foundation of Huntsville/Madison County delivering the sum of One Hundred Twenty-five Thousand Dollars (\$125,000.00) in cash to the City of Huntsville on or before February 2, 2015. The City shall have sole discretion as to whether this condition has been met.

b) Adoption and approval of this Agreement by the City Council of Huntsville.

c) Purchaser's not having exercised its right to terminate this Agreement during the Due diligence period (as defined in Section 6 herein).

5. Closing. The Closing of the proposed transaction (the "Closing") will occur on or before February 20, 2015. At closing, Seller shall provide Purchaser a statutory warranty deed to the Property. The said deed shall transfer sole title to the Property to Purchaser free from any and all liens and encumbrances except for (i) the liens for the current and future ad valorem taxes, (ii) applicable zoning ordinances, subdivision regulations and other applicable land use laws, rules and regulations, (iii) existing and recorded restrictions, (iv) easements and minimum building lines of record, and (v) matters of survey (said items (i), (ii), (iii), (iv) and (v) collectively are the "Permitted Title Exceptions").

Property taxes will be prorated between the parties on an annual basis. All other closing costs, including the transfer tax, title examination, title insurance, updated survey of the Property, as well as any escrow fees or other closing costs associated with closing will be paid by Purchaser. Each party will bear its own legal expenses in connection with the proposed transaction. Possession will be given to the City on the Closing Date.

6. Due Diligence Period. Purchaser will have until the Closing to complete its due diligence investigations of the Property (the "Due Diligence Period"). During the Due Diligence Period, Purchaser will have a reasonable right of entry to the Property in order to conduct all tests that Purchaser may deem necessary to determine the suitability of the Property, to be determined in Purchaser's sole and absolute discretion, and Seller will cooperate fully in providing Purchaser with any information reasonably necessary for Purchaser's investigation and evaluation of the Property, to the extent such information is reasonably available to Seller. Purchaser will have an unrestricted right to terminate the agreement for any reason whatsoever

during the Due Diligence Period. Within 5 days after the execution of this Agreement, Seller will deliver to Purchaser a survey of the Property and all other due diligence materials currently in its possession or control, including without limitation all environmental reports, title commitments or policies, all plans and specifications, and all leases for the property. The parties understand and agree that Seller makes no representations as to the accuracy of the due diligence documents provided to Purchaser.

7. Brokerage Commissions. Purchaser and Seller acknowledge that no brokers/advisors have been or will be involved in the sale of the Property. In the event of any claim for any additional broker's, agent's or finder's fees or commissions or other similar amounts in connection with the negotiation, execution or consummation of the Purchase Agreement, each party whose actions or alleged actions or commitments form the basis of any such claim, will indemnify and hold the other parties harmless from any claims for other brokerage/advisory fees or commissions arising from the proposed transaction.

8. Use of the Property. After Closing, Purchaser shall retain the Property as green space, with Purchaser having the right to later develop up to 50% of the Property for use as a public facility such as a fire station or other use to provide public services required to serve the needs of the Green Mountain Community. Within the initial twenty-four (24) months after closing, Purchaser shall grade, level and plant grasses and trees and shall also install a sidewalk along the street frontage as depicted in the drawing attached hereto and incorporated herein by reference as Exhibit "B".

9. Reservation of Easement. Seller reserves a perpetual 50' x 50' easement in the northeast corner of the Property at the intersection of South Shawdee and South Village Square for purposes of construction and maintenance associated with signage at the intersection. The architectural feature shall be constructed at Seller's sole cost and expense, shall comply with all applicable city ordinances, and be subject to Location, Character and Extent approval by the City of Huntsville Planning Commission. The design, construction and maintenance of the said signage shall further be subject to the approval of the City of Huntsville Director of Planning.

10. Condition of the Property. Purchaser acknowledges that it is purchasing the Property in its "AS IS WHERE IS" condition with all faults and Seller has not made any warranties of any kind with respect to the condition or prospective use of the Property.

11. Applicable Law/Jurisdiction/Venue. This Contract shall be interpreted, construed and enforced in accordance with the laws of the State of Alabama. For any action concerning this Contract and/or the Property (a) jurisdiction shall be in the appropriate state or federal courts sitting in Alabama and (b) venue (i) in Alabama state courts shall be in Madison County,

Alabama and (ii) in Alabama federal courts shall be in the United States District Court for the Northern District of Alabama, Northeastern Division.

12. Entire Agreement. This Agreement embodies the entire agreement and understanding of the Owner and Purchaser as to the transaction contemplated and evidenced hereby and merges herein all agreements, covenants, representation, statements and understandings heretofore made by and between Owner and Purchaser as to such transaction, whether written, oral or both. Any agreements, covenants, representations, statements or understandings by and between Owner and Purchaser as to such transaction not contained herein are and shall be null and void and of no force and effect.

13. Amendment. Owner and Purchaser hereto expressly, intend and understand that neither this Agreement nor any provision or term hereof, shall be amended, changed or modified in any respect, nor may any estoppels, novation or waiver regarding the same be effectuated, without the parties first executing a writing, in equal dignity to this Agreement, embodying their complete and full agreement and understanding as to such amendment, change, modification, novation or waiver.

14. Construction. This Agreement shall be construed in its entirety to its plain meaning and shall be considered as a negotiated agreement and shall not be construed against the party who provided or drafted it.

15. Remedies. Upon default by either party, the non-defaulting party shall have the right to pursue any and all remedies available at law or in equity.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date indicated above.

Signatures follow on the next page.

**DILTINA DEVELOPMENT CORPORATION,
an Alabama corporation**

By: _____

Name: Mike Friday

Title: President

Date:

ATTEST:

**CITY OF HUNTSVILLE, ALABAMA,
A municipal corporation**

By: _____

Charles E. Hagood
Clerk-Treasurer, City of Huntsville

By: _____

Tommy Battle
Mayor, City of Huntsville

EXHIBIT "A"

LEGAL DESCRIPTION

**GREEN MOUNTAIN EST II: R/S OF LOT 2 OF R/S OF TRACT 23 GREEN
MOUNTAIN AUCTION PROPERTY.**

