

**CITY COUNCIL AGENDA ITEM COVER MEMO**

Agenda Item Number: \_\_\_\_\_

Meeting Type: Regular

Meeting Date: Nov 19, 2015

Action Requested By: Administration

Agenda Type: Resolution

Subject Matter:

Real estate purchase agreement for the old Terrys Pizza property located at 2514 North Memorial Parkway.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to execute a Real Estate Purchase and Sales Agreement among the City of Huntsville and Donna Marie Miller and Carol Ann McBroom, as personal representatives of the estate of Louis Albin Pejza; and Donna Marie Miller as personal representative of the estate of Doris Laverne Pejza (as to PPIN 14378); and Terry's Pizza, Inc. (as to PPIN 14375).

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

Item to be considered for: Action

Unanimous Consent Required: No

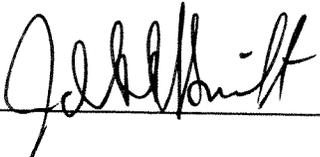
Briefly state why the action is required; why it is recommended; what council action will provide, allow and accomplish and; any other information that might be helpful.

This agreement is regarding the North Memorial Parkway Redevelopment Project.

Associated Cost: \$90,000

Budgeted Item: Not Applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: 

Date: \_\_\_\_\_

## ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Administration

Council Meeting Date: 11/19/2015

Department Contact: Mayor Tommy Battle

Phone # 427-5000

Contract or Agreement: Real Estate Purchase Agreement for old Terry's Pizza

Document Name: Real Estate Purchase Agreement for old Terry's Pizza

City Obligation Amount: \$90,000

Total Project Budget:

Uncommitted Account Balance:

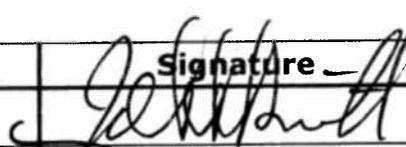
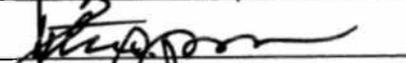
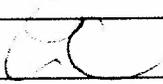
Account Number: 7680-71-0000-530000-0200220-

### Procurement Agreements

<b>Not Applicable</b>	<b>Not Applicable</b>
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### Grant-Funded Agreements

<b>Not Applicable</b>	<b>Grant Name:</b>
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Department	Signature	Date
1) Originating		11/19/15
2) Legal		11-13-15
3) Finance 		11/16/15
4) Originating		11/18/15
5) Copy Distribution		
a. Mayor's office (1 copies)		11/16/15
b. Clerk-Treasurer (Original & 2 copies)		

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 real estate agreement by and among the City of Huntsville and Donna Marie Miller and Carol Ann McBroom, as personal representatives of the estate of Louis Albin Pejza; Donna Marie Miller as personal representative of the estate of Doris Laverne Pejza; and Terry's Pizza, Inc., which said agreement is substantially in words and figures the same as that certain document attached hereto and identified as "Real Estate Purchase and Sales Agreement among the City of Huntsville and Donna Marie Miller and Carol Ann McBroom, as personal representatives of the estate of Louis Albin Pejza; and Donna Marie Miller as personal representative of the estate of Doris Laverne Pejza (as to PPIN 14378); and Terry's Pizza, Inc. (as to PPIN 14375)", consisting of eight (8) pages including attachments, an executed copy of said document after being signed by the Mayor, shall be permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

**ADOPTED** this the 19th day of November, 2015.

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

**APPROVED** this the 19th day of November, 2015.

\_\_\_\_\_  
Mayor of the City of Huntsville,  
Alabama

## REAL ESTATE PURCHASE AND SALES AGREEMENT

This Real Estate Purchase and Sales Agreement (this "Agreement") is entered into as of the 19<sup>th</sup> day of November, 2015, by and between THE CITY OF HUNTSVILLE, an Alabama municipal corporation (hereinafter referred to as "Purchaser") who agrees to purchase the real property described as PPIN 14378 in Section One (1) from **DONNA MARIE MILLER** and **CAROL ANN McBROOM** as **personal representatives of the estate of LOUIS ALBIN PEJZA, deceased**, and **DONNA MARIE MILLER** as **personal representative of the estate of DORIS LAVERNE PEJZA, deceased**, and agrees to purchase the real property described as PPIN 14375 from **TERRY'S PIZZA, INC.** (hereinafter jointly referred to as "Sellers"), who agree to sell the real property.

In consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of such by Sellers is hereby acknowledged, the parties hereby agree as follows:

1. Sale and Purchase.

Sellers hereby agree to grant, bargain, sell and convey to Purchaser that certain real property located at 2514 Memorial Parkway North, Huntsville, Alabama, and more particularly described in the Madison County Tax Assessment information as Parcel Number 1407261001016000 and PPIN Number 14375, and that certain real property, also located at 2514 Memorial Parkway North, Huntsville, Alabama, and more particularly described in the Madison County Tax Assessment information as Parcel Number 1407261001005000 and PPIN Number 14378 (both parcels hereinafter referred to as "the Real Property").

2. Purchase Price.

The Purchase Price for the Real Property shall be NINETY THOUSAND AND 00/100 DOLLARS (\$90,000.00), which shall be payable at Closing.

3. Conditions of Sale.

(A) Purchaser's obligation to close on the purchase the Real Property is contingent upon the following:

(1) Purchaser's written approval of an owner's title commitment from Wilmer & Lee, P.A. Purchaser shall have sixty (60) days from the date of this Agreement in which to obtain and review the title commitment. Purchaser shall have the right, in its sole discretion, to terminate this Agreement in the event any matters of title are unacceptable to Purchaser. Purchaser may only exercise this right of termination as a result of unacceptable title concerns by giving Seller written notice of the termination within sixty (60) days of the date of this Agreement.

\_\_\_\_\_  
 President of the City Council of the  
 City of Huntsville, Alabama  
 Date: \_\_\_\_\_

(2) The results of an environmental assessment being acceptable to Purchaser. Purchaser shall have sixty (60) days from the date of this Agreement in which to perform Phase I and Phase II Environmental Site Assessments. Sellers hereby grant access to the Real Property to Purchaser and Purchaser's environmental consultants to perform the environmental assessment. Purchaser shall have the right, in its sole discretion, to terminate this Agreement in the event the results of the environmental assessment are unacceptable to Purchaser. Purchaser may only exercise this right of termination as a result of unacceptable environmental concerns by giving Seller written notice of the termination within sixty (60) days of the date of this Agreement.

(3) The results of a survey being acceptable to Purchaser. Purchaser shall have sixty (60) days from the date of this Agreement in which to obtain a survey of the Real Property. Sellers hereby grant access to the Property to Purchaser and Purchaser's surveying consultants to survey the Real Property. Purchaser shall have the right, in its sole discretion, to terminate this Agreement in the event the survey is unacceptable to Purchaser. Purchaser may only exercise this right of termination as a result of unacceptable survey concerns by giving Sellers written notice of the termination within sixty (60) days of the date of this Agreement.

4. Title.

The Real Property shall be conveyed to Purchaser by General Warranty Deed, satisfactory in manner and form to Purchaser and in accordance with the laws of the State of Alabama; conveying the Real Property, free and clear of all liens, encumbrances and other matters affecting title except a lien for taxes not yet due and payable, matters of survey and existing easements and restrictions of record. Any existing mortgages on the Property shall be paid and/or satisfied at or prior to Closing. Sellers shall provide customary affidavits in order to establish clear title to the Real Property.

5. Closing.

The Closing shall take place within sixty (60) days after approval of the transaction by City Council and signing of this Agreement by the Mayor, if all contingencies are met. The parties further agree as follows:

- a. Real property taxes for the current year shall be prorated between Sellers and Purchaser as of the Closing Date.
- b. Sellers shall deliver an affidavit attesting that there are no liens and that Sellers are in sole possession of the Property.

c. Purchaser shall pay all costs of Closing, other than as specifically stated herein. Each party shall pay its own attorneys' fees in connection with this transaction.

d. Sellers shall provide a General Warranty Deed at Closing, to be prepared by Purchaser's counsel, at Purchaser's expense. Sellers shall have all beneficiaries under the Last Wills and Testaments of Louis Albin Pejza and Doris Laverne Pejza execute the General Warranty Deed.

7. Commissions.

The parties represent that neither has incurred nor is obligated for any brokers' or finders' fees, and that no real estate commission are due on account of this transaction. Each party agrees to indemnify, defend and hold the other harmless from any claims, including attorneys' fees, that they may suffer as a result of any claim or action brought by any broker or real estate agent, acting on behalf of that party.

8. Time of the Essence.

Time is of the essence of this Agreement.

9. Attorneys' Fees.

In the event of a dispute between the parties pursuant to the terms of this Agreement, the prevailing party in any court of competent jurisdiction shall be entitled to collect reasonable attorneys' fees. In the event of dispute, the provisions of this Agreement shall not be construed against the party drafting this Agreement.

10. Successors.

All rights and obligations of Sellers and Purchaser under this Agreement shall inure to the benefit of and be binding upon their successors and assigns. Purchaser reserves the right to assign its interest in this Agreement.

11. Amendment.

No modification or amendment of this Agreement shall be of any force or effect unless the same shall be made in writing and executed by each party hereto. To the extent that escrow, closing or settlement instructions and/or documents are inconsistent with the terms and conditions of this Agreement, this Agreement shall control and further shall survive recordation of the deed.

12. Entire Agreement.

This Agreement contains the entire agreement between the parties. No promise, representation, warranty or covenant not included in this Agreement has been relied upon by either party. Each party has

had a full opportunity to examine this Agreement and/or has had the opportunity to have its counsel review said Agreement on its behalf.

13. Interpretation.

This Agreement shall be interpreted in accordance with Alabama law, without regard for Alabama's conflict of laws provisions.

14. Email or Facsimile Signatures.

The parties agree that this document may be executed and the signatures transmitted to the other parties by facsimile, email or similar electronic transmission. Upon transmission and receipt by another party, such signature shall be effective as an original. Notwithstanding the preceding sentence, the parties agree that they will transmit original signature pages to the other parties and their counsel promptly after execution.

15. Execution by Counterpart Originals.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

16. Counsel Acknowledgment.

The parties all acknowledge that Purchaser's counsel, JOSEPH A. JIMMERSON, and the law firm of Wilmer & Lee, P.A. (collectively "Counsel") prepared this Agreement on behalf of and in the course of their representation of Purchaser. For the purposes of this transaction, Purchaser's counsel represents Purchaser's interest and no other interests. Any conflicts of interest due to counsel's past representation of Sellers are hereby waived.

17. Waiver.

The waiver of default by either party of any provision of this Agreement shall not operate as a waiver of subsequent defaults.

18. Corporate Authority.

The parties acknowledge that all necessary action has been taken to authorize the entering into of this Agreement of behalf of each party. The parties acknowledge that once this Agreement is signed by the persons shown below, the agreement is binding on the parties.

19. Acceptance.

In order to be binding, a copy of this Agreement must be executed by both parties on or before 5:00 p.m. C.D.T., on December 15, 2015.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the respective dates set forth below.

**PURCHASER:  
THE CITY OF HUNTSVILLE**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
\_\_\_\_\_

**SELLERS:**

By: Donna Marie Miller  
**DONNA MARIE MILLER, AS PERSONAL REPRESENTATIVE OF THE ESTATES OF LOUIS ALBIN PEJZA AND DORIS LAVERNE PEJZA**

Date: 10/30/15

**WITNESS:**

Elizabeth Wister  
10/30/15

By: \_\_\_\_\_  
**CAROL ANN MCBROOM, AS PERSONAL REPRESENTATIVE OF THE ESTATES OF LOUIS ALBIN PEJZA AND DORIS LAVERNE PEJZA**

Date: \_\_\_\_\_

**WITNESS:**

\_\_\_\_\_  
\_\_\_\_\_

**TERRY'S PIZZA, INC.**

By: Donna Marie Miller  
**Donna Marie Miller**  
Its: President

Date: 10/30/15

**ATTEST:**

By: \_\_\_\_\_  
**Carol Ann McBroom**  
Its: Treasurer

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the respective dates set forth below.

**PURCHASER:  
THE CITY OF HUNTSVILLE**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
\_\_\_\_\_

**SELLERS:**

By: \_\_\_\_\_  
**DONNA MARIE MILLER, AS PERSONAL REPRESENTATIVE OF THE ESTATES OF LOUIS ALBIN PEJZA AND DORIS LAVERNE PEJZA**

Date: \_\_\_\_\_

**WITNESS:**

*Shirley Bluker*  
\_\_\_\_\_  
10-30-15

By: *Carol Ann McBroom*  
\_\_\_\_\_  
**CAROL ANN MCBROOM, AS PERSONAL REPRESENTATIVE OF THE ESTATES OF LOUIS ALBIN PEJZA AND DORIS LAVERNE PEJZA**

Date: 10-30-15

**WITNESS:**

\_\_\_\_\_  
\_\_\_\_\_

**TERRY'S PIZZA, INC.**

By: \_\_\_\_\_  
Donna Marie Miller  
Its: President

Date: \_\_\_\_\_

**ATTEST:**

By: *Carol Ann McBroom*  
\_\_\_\_\_  
Carol Ann McBroom  
Its: Treasurer

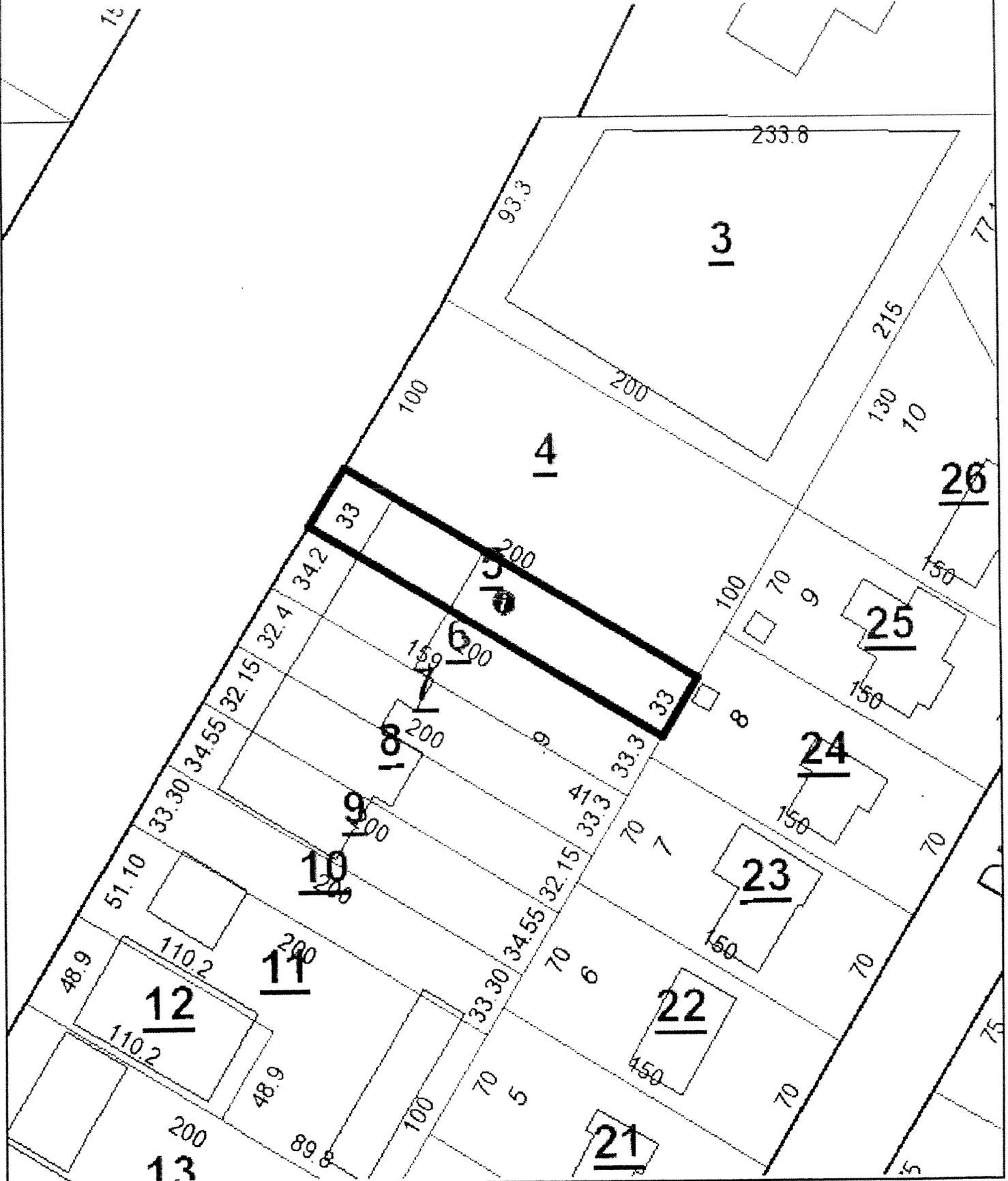
# Cliff Mann Tax Assessor Madison County

PPIN 14378

Printed Thu Nov 5 2015

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# Cliff Mann Tax Assessor Madison County

PPIN 14375

Printed Thu Nov 5 2015

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