



Huntsville, Alabama

308 Fountain Circle
Huntsville, AL 35801

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 11/10/2022

File ID: TMP-2270

Department: Urban Development

Subject:

Type of Action: Approval/Action

Resolution authorizing the Mayor to enter into a Purchase Option Agreement between the City of Huntsville and Vision Composite Products, L.L.C.

Type of Document: Resolution No.

Does this item need to be published? No

If yes, please list preferred date(s) of publication: N/A

Finance Information:

Account Number: 3700-00-00000-460300-00000000

City Cost Amount: N/A

Total Cost: \$10,000.00 Revenue

Special Circumstances:

Grant Funded: N/A

Grant Title - CFDA or granting Agency: N/A

Resolution #: N/A

Location:

Address: N/A

District: District 1 ☐ District 2 ☐ District 3 ☐ District 4 ☐ District 5 ☐

Additional Comments:

RESOLUTION NO. 22-

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be and is hereby, authorized to enter into a Purchase Option Agreement, by and between the City of Huntsville and Vision Composite Products, L.L.C., which said agreement is substantially in words and figures similar to that document attached hereto and identified as "Purchase Option Agreement between the City of Huntsville and Vision Composite Products, L.L.C.," consisting of sixteen (16) pages including Exhibits "A" and "B", and the date of November 10, 2022, appearing on the first page, together with the signature of the President or President Pro Tem of the City Council, 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.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Mayor be and is hereby authorized to execute and enter into the Purchase Option Agreement, on behalf of the City of Huntsville, with such changes as the Mayor deems desirable and necessary, including the authority to execute, perform, amend, and assign said document and/or the authority to execute all such closing documents relevant or relating to effect and complete the real estate transaction and land transfer contemplated therein.

ADOPTED this the 10th day of November, 2022.

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

APPROVED this the 10th day of November, 2022.

Mayor of the City of Huntsville, Alabama

STATE OF ALABAMA

COUNTY OF MADISON

PURCHASE OPTION AGREEMENT

This Purchase Option Agreement (the "Agreement") is entered into on this the 10th day of November, 2022 (the "Effective Date"), by and between the **City of Huntsville**, an Alabama municipal corporation (the "City" or "Seller"), and **Vision Composite Products, L.L.C.**, an Alabama limited liability company, its successors and assigns ("Purchaser").

WITNESSETH:

WHEREAS, Purchaser owns and operates a manufacturing facility located in Decatur, Alabama with its corporate headquarters located at 3512 6th Avenue SE, Decatur, Alabama 35603 ("Headquarters"), and Purchaser is looking to purchase some additional property within Cummings Research Park West ("CRP") in order that it may expand its research and design operations; and

WHEREAS, Seller owns property located within CRP, consisting of approximately 10.987 acres, more or less, identified by Madison County Tax Assessor records as PPIN 522274, and being more particularly described in Exhibit "A", attached hereto and incorporated herein (the "Property"); and

For in consideration of the sum of the recitals, which are incorporated herein by reference, and the promises and mutual covenants hereinafter set forth, and for other and valuable consideration hereinafter provided, the parties do hereby agree as follows, to wit:

1. **Option to Purchase.** For and in consideration of Ten Thousand and no/100 Dollars (\$10,000.00) and other good and valuable consideration paid to Seller ("Option Fee"), the receipt and sufficiency of which is hereby acknowledged by Seller, Seller hereby grants Purchaser an exclusive right and option to purchase the Property (the "Option") at the purchase price and upon the terms and conditions set forth herein.

2. **Option Term.** The term of the Option herein granted is for a period of one hundred eighty (180) days commencing on the date this Agreement is duly executed by all parties, and expiring at midnight one hundred eighty (180) days thereafter (the "Term"). If the Option is not exercised or extended in writing prior to expiration of the Term, this Option shall automatically and without notice expire and any consideration (*i.e.*, the Option Fee) therefore shall be retained by Seller, and neither party shall have any further liability or obligation hereunder.

3. **Exercise of Option.** Notice of election by Purchaser to exercise the Option shall be delivered to Seller in accordance with the Notice provision provided in Section 11 below.

President of the City Council of the City of
Huntsville, AL

Date: November 10, 2022

4. **No Obligation to Purchase.** Nothing in this Agreement is intended or shall operate to require Purchaser to purchase the Property from Seller.

5. **Due Diligence Period.**

A. **Inspection of Property.** Purchaser shall have until the expiration of the Term to perform such investigations, examinations, tests and inspections as Purchaser shall deem necessary or desirable to determine whether the Property is suitable and satisfactory for Purchaser's intended use (the "Due Diligence Period"). During the Due Diligence Period, Purchaser and Purchaser's agents, employees, contractors, representatives and other designees (collectively the "Purchaser's Designees") shall have the right to enter the Property for the purposes of inspecting the Property, conducting soil tests, conducting surveys, mechanical and structural engineering tests, and conducting any other investigations, examinations, tests and inspections as Purchaser may reasonably require to assess the condition of the Property; provided however, that (i) any activities by or on behalf of Purchaser, including, without limitation, the entry by Purchaser or Purchaser's Designees with respect to the Property ("Purchaser's Activities") shall not damage the Property in any manner whatsoever, and (ii) in the event the Property is altered or disturbed in any manner in connection with any of Purchaser's Activities, Purchaser shall immediately return the Property to the condition existing prior to Purchaser's Activities. In the event that Purchaser shall determine, in its sole and absolute discretion, that the Property is not suitable and satisfactory to Purchaser, Purchaser shall have the right to terminate the Agreement by delivering written notice to the Seller prior to the expiration of the Due Diligence Period. In the event Purchaser gives Seller notice of termination, the Option Fee shall be retained by Seller, all rights and obligations of the parties under this Agreement shall expire, and this Agreement shall become null and void.

B. **Objections to Title.** Purchaser shall have until the expiration of the Due Diligence Period in which to examine title to the Property and in which to give Seller written notice of any objections thereto. Seller, at Seller's option, shall have a reasonable time (but not in excess of thirty (30) days following the receipt of Purchaser's written notice of objections) within which to satisfy all objections specified in Purchaser's initial notice of title objections, and a reasonable time prior to Closing Date in which to satisfy all objections specified in any subsequent notice by Purchaser of title objections. If the defects or objections are not timely cured, then, at the option of Purchaser, Purchaser may: (i) waive such defects and proceed to close; or (ii) cancel this Agreement by notice in writing to Seller, and any money paid to Seller pursuant to this Agreement shall be refunded to Purchaser within five (5) business days of such notice and each of the parties shall be released from further liability to the other.

C. **Option to Close Prior to Expiration of Due Diligence Period.** Notwithstanding anything to the contrary, Purchaser may, at any time prior to the expiration of the Due Diligence Period, upon written notice to Seller, waive its right to terminate this Agreement under this Section 5, exercise its Option, and proceed to Closing in accordance with Section 7.

6. **Purchase Price.** In consideration of the City's agreement to sell the Property to Purchaser, Purchaser agrees to pay to the City the sum of Ninety-Nine Thousand Five Hundred and No/100 Dollars (\$99,500.00) per acre of the Property ("Acreage Price"), for a total purchase price of One Million Ninety-Three Thousand Two Hundred Six and no/100 Dollars

(\$1,093,206.00) ("Purchase Price"). The Purchase Price shall be paid by Purchaser to Seller at Closing in cash or other immediately available funds.

7. **Conveyance of the Property.**

A. **Statutory Warranty Deed.** Seller agrees to convey said Property and will furnish to Purchaser a good and merchantable title by a properly executed statutory warranty deed substantially in the form attached hereto as Exhibit "B", free from any and all encumbrances, subject only to easements, restrictions set out in the attached deed, rights-of-way of record, ad valorem taxes not yet due and payable, City Ordinances regarding CRP, and the protective covenants of CRP, as recorded in Deed Book 626 at Page 602 in the Office of the Judge of Probate of Madison County (the "Deed"). Purchaser understands said restrictions are binding on the property and may be amended in a reasonable manner from time to time and Purchaser agrees that Purchaser shall comply with said restrictions as amended. If, subsequent to the Effective Date, Purchaser determines to finance this venture, through Industrial Development Bonds, or to apply for an industrial development grant, then upon Purchaser's request said Deed shall be delivered in the name of the Industrial Development Board of the City of Huntsville, an Alabama public corporation, as Grantee.

B. **Closing.** The closing of this transaction ("Closing") shall occur on or within sixty (60) days following Purchaser's exercise of the Option, or at a date and time mutually agreeable to the parties ("Closing Date"). Closing shall occur at the offices of Wilmer & Lee, P.A., located at 100 Washington Street, Suite 200, Huntsville, Alabama 35801, which shall serve as both closing and title agent ("Closing Agent"). The parties may deliver all documents and deposit all closing funds with Closing Agent on or prior to Closing Date, such that neither party shall be required to be physically present at Closing.

C. **Miscellaneous Closing Provisions.**

i. Seller shall deliver to Closing Agent a customary lien and possession affidavit. Said affidavit is to contain no indemnity provisions.

ii. Purchaser shall pay all recording taxes, title insurance, loan costs, and title examination fees. Each party shall pay its own attorney's fees in connection with Closing. Any other expense shall be paid by the party incurring the same.

iii. Seller shall prepare and provide Purchaser with the properly prepared Deed upon Closing, at the sole cost of Seller.

iv. All ad valorem taxes levied against the Property for the current tax year shall be prorated between the parties. Seller shall be responsible for any unpaid ad valorem taxes levied against the Property for any prior tax years, if any. If the amount of the ad valorem tax for the current tax year is not known with reasonable certainty as of the date of Closing, the same shall be estimated based on the best available information, if any.

v. Purchaser, at its option, may obtain an owner's title insurance policy on the Property, with the owner's title policy premium, if any, to be paid by Purchaser at Closing.

vi. Seller and Purchaser shall be required to prepare and furnish all other documents reasonably requested by Closing Agent or the other party hereto necessary to carry out the transaction contemplated by this Agreement, including but not limited to, mandatory IRS or tax disclosures, any corporate or company documents, certifications or resolutions, broker's affidavits and other customary documents establishing Purchaser is duly authorized and empowered to enter into this Agreement and/or to perform its obligations hereunder.

8. **Construction.**

A. **Option to Repurchase.** Force Majeure Events (hereinafter defined) excepted, Purchaser agrees to (i) obtain a building permit, complete all site preparation, and to commence construction of the facility thereon (and for purposes hereof, such "commence construction" shall mean foundations and footings have been poured and completed and actual physical construction of the structure has begun), as approved by the Architectural Control Committee, within twelve (12) months following the Closing, and (ii) continue without interruption the construction of the said facility until completed according to the plans and specifications as approved by the Architectural Control Committee. As used herein, the term "Force Majeure Events" shall mean any events or occurrences whatsoever which prevent or delay Purchaser's performance hereunder and which are beyond the reasonable control of Purchaser, including without limitation, an act of God, war, riot, civil commotion, or other disturbance, pandemic, sovereign conduct, national emergencies, acts of civil or military authority, strike or other labor difficulties, fire, flood, catastrophe, insurrection, power or other utility failure, transportation failure, or governmental action.. In the event Purchaser fails to begin substantial construction on the Property within the time described above, then the Seller may, at its option, within three hundred sixty (360) days of Purchaser's failure, repurchase the Property for a sum equal to the total purchase price paid by the Purchaser. Purchaser also understands that there are certain building restrictions in existence with respect to property located within CRP as recorded in Deed Book 626 at Page 602 in the Office of the Judge of Probate of Madison County, and that certain approvals are necessary for the design and construction of any structure(s) on the Property.

B. **Compliance with Restrictive Covenants.** Purchaser agrees to comply with any and all governmental rules and regulations with respect to structures on the Property, as they may be amended from time to time. Purchaser will indemnify and hold harmless Seller from and against any and all liability arising out of the destruction of or damage to the Property, or injuries or loss to, or death of any person in connection with the development, improvement or construction upon the Property, or any activity or project conducted thereon, other liability for any loss, damages or injuries that may result from Seller's own intentional, wrongful or negligent acts; provided, however, that the foregoing indemnity shall not extend to any liability arising out of the negligence or willful misconduct of Seller, its employees, agents or contractors. The provisions of this Paragraph shall survive Closing.

9. **Default.**

A. Default of Purchaser. Should Purchaser fail to carry out the terms and conditions of this Agreement in accordance with all of its provisions, Seller may declare Purchaser in default and elect either of the following remedies as its sole and exclusive remedy: (i) Seller may reaffirm this Agreement and proceed against Purchaser for specific performance thereof; or (ii) terminate this Agreement with no further obligations between the Parties and retain the Option Fee as liquidated damages.

B. Default of Seller. Should Seller fail to carry out this Agreement in accordance with all of its provisions, Purchaser may: (i) terminate this Agreement by written notice to Seller, in which case the Option Fee shall be returned to Purchaser and this Agreement shall terminate and be of no further force and effect except as specifically provided herein; (ii) waive the default and proceed to Closing in accordance with this agreement, without adjustment or abatement of the Purchase Price; or (iii) seek specific performance to cause Seller to convey the Property to Purchaser pursuant to the terms and conditions of this Agreement.

10. Policies and Procedures, Hazardous Materials. Purchaser shall develop and implement policies and procedures for the storage, use, receipt and disposition of any hazardous materials that come onto its premises. Purchaser will not offer or accept, under these policies, hazardous materials for transportation in commerce unless said materials are properly classed, described, packaged, marked, labeled, and in such condition for proper shipment as required under Title 49 Code of Federal Regulations, Parts 171-179. The packaging of hazardous materials coming into or going out of its facilities shall be maintained in compliance with the regulations specified for each specific mode of transportation. This includes the proper handling and transport of all materials via air, highway, rail or water.

Materials handling, as part of all manufacturing operations, will be conducted within the confines of the building. This will include the inspection of product, material packing/unpacking, and all functions requiring product or by-product preparation for transportation. In the event by-product material removal becomes necessary, procedures will be placed into effect to ensure proper removal. Prior to the transport of materials, complete material evaluation will be conducted by Purchaser to ensure proper compliance with all applicable transportation requirements. All options will be evaluated for the beneficial reclamation or recycling for by-product material. Purchaser insures that its intrastate, interstate, and internal operations will be in compliance with all applicable requirements, and that it will fully comply with all federal, state, and local laws, regulations or ordinances regarding environmental, safety, industrial hygiene, and/or hazardous material requirements.

11. Contingency. This Agreement is contingent upon the approval of the Huntsville City Council with said approval to be verified by the issuance of a resolution substantial similar in form to the one shown and attached hereto and incorporated herein as Exhibit "C".

12. Miscellaneous Provisions.

A. Entire Agreement. This Agreement, with all Exhibits attached hereto, and the ordinances, restrictions and covenants of CRP as herein referenced, constitute the entire agreement

between the parties. All statements, representations and covenants heretofore made and any other agreements not incorporated herein are void and of no force and effect.

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

C. Amendments. This Agreement may only be modified or amended in a writing signed by both parties.

D. Governing Law. This Agreement shall be construed in accordance with the laws of the State of Alabama, without regard to its conflict of law provisions.

E. Notice. All notices shall be properly given only if made in writing and sent to the addresses set forth below and may be provided by any of the following methods: (i) hand delivery; (ii) certified U.S. Mail or other nationally-recognized overnight delivery service (such as UPS or FedEx); or (iii) electronic transmission (such as e-mail or PDF). Such notices shall be deemed received, (i) if delivered by hand, on the date of delivery, (ii) if sent by U.S. Mail or overnight delivery service, on the date the same is deposited with the applicable carrier, or (iii) if delivered by electronic transmission, on the date the transmission is sent. Notice shall be provided to the following:

If to the City:

The City of Huntsville
Attn: Shane Davis and Jim McGuffey
320 Fountain Circle
Huntsville, Alabama 35801
Email: Shane.davis@huntsvilleal.gov
Jim.mcguffey@huntsvillal.gov
Phone: 256-427-5300

With a Copy to:

Wilmer & Lee, P.A.
Attn: Sam Givhan and Katie Beasley
100 Washington Street
Huntsville, Alabama 35801
Email: sgivhan@wilmerlee.com
kbeasley@wilmerlee.com
Phone: 256-533-0202

If to the Purchaser:

Vision Composite Products, LLC
Attn: Roger Minor, John Mathew
3512 6th Avenue SE
Decatur, Alabama 35603
Email: roger@visionwheel.com
jmathew@visionwheel.com
Phone: 256-466-3763
256-221-6989

With a Copy to:

Bradley Arant Boult Cummings
LLP Attn: Benjamin W. Hutton
200 Clinton Avenue West, Suite 900
Huntsville, Alabama 35613
Email: bhutton@bradley.com
Phone: (256) 517-5173

G. Real Estate Commission. Seller and Purchaser acknowledge that no broker and/or finder arranged the sale of the Property on the terms and conditions contained herein. Seller and Purchaser do hereby agree to indemnify each other from all loss, damage, cost or expense,

including attorney's fees, that they may suffer as a result of any claim or action brought by any other broker, acting on behalf of Seller or Purchaser, respectively.

H. Attorneys' Fees. If any legal proceeding is commenced related to this Agreement, the prevailing party in such legal proceeding shall be entitled to recover its reasonable attorneys' fees, court costs and litigation expenses from the non-prevailing party therein.

I. Further Assurances. Upon Closing Agent's request, the parties shall execute and deliver any additional documents reasonably required to carry out the transaction contemplated by this Agreement or to correct any scrivener's error contained in this Agreement or any document executed pursuant hereto or in connection with the transaction contemplated herein.

J. Effective Date. For purposes hereof, the term "Effective Date" shall mean the date the Agreement is executed by the City.

K. Email, Facsimile, or Electronic 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. Handwritten signatures transmitted by facsimile, email, or other similar electronic transmission shall be valid and effective as to the party so signed. Notwithstanding the preceding sentence, the parties agree that they will transmit original signature pages to the other parties and Closing Agent promptly after execution. Furthermore, Purchaser understands that this Agreement cannot be placed as an item on a City Council Agenda for review and approval, until Purchaser's original signature page has been received by the City's legal department.

L. Counsel Acknowledgment. The parties all acknowledge that Seller's counsel, SAMUEL H. GIVHAN and KATHERINE AMOS BEASLEY, 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 Seller and, for the purposes of this transaction; Counsel represents Seller's interest and no other interests. All conflicts of interest due to Counsel's representation of the City are hereby waived.

M. Assignment. Purchaser shall have the right to assign this Option or any of its rights and responsibilities to any affiliated entity with or related to Purchaser hereunder at any time without consent of Seller; from and after the date of such assignment, the term Purchaser, as used herein, shall mean and include such assignee. Purchaser shall notify Seller in writing of any assignment and shall provide Seller with the name and contact information of the assignee.

N. Successors and Assigns. This Agreement shall be binding upon the heirs, personal representatives, successors and assigns of Purchaser.

O. Time is of the Essence. Time is of the essence of this Agreement. However, if the final date of any period which is set out in any provision of this Agreement falls on a Saturday, Sunday, or legal holiday under the law of the United States, or of the State in which the property is located, in such event, the time of such period shall be extended to the next day which is not a Saturday, Sunday, or legal holiday. A business day shall refer to Monday through Friday.

P. Survival. Any terms and covenants contained in this Agreement which require the performance of either party after Closing shall survive the Closing and delivery of the Deed.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date set forth below.

[Signatures and acknowledgements appearing on the following pages.]

[Seller Signature page to Real Estate Agreement.]

SELLER:

CITY OF HUNTSVILLE, an Alabama municipal
corporation

By: _____
Tommy Battle, Mayor

ATTEST:

By: _____
Kenneth Benion, City Clerk-Treasurer

Date: _____

[Purchaser Signature page to Real Estate Agreement.]

PURCHASER:

Vision Composite Products, LLC, an Alabama
limited liability company

By: _____

Name: _____

Its: _____

Witnessed:

By: _____

Name: _____

Date: _____

EXHIBIT "A"
(Legal Description of the Property)

Lot 1, according to that Final Plat of Lot 1 of a Resubdivision of Lot 3A of a Resubdivision of Lot 3 of a Resubdivision of Lot 4A of a Resubdivision of Lot 4 of a Resubdivision of Lot 4 of Bob Heath Drive at Cummings Research Park West, recorded as Document Number 20120719000445280 in the Probate Records in Madison County, Alabama.

EXHIBIT "B"

(Form of Statutory Warranty Deed)

STATUTORY WARRANTY DEED

THIS INDENTURE, made and entered into on this the 10th day of November, 2022, by and between the **City of Huntsville**, an Alabama municipal corporation, as party of the first part, hereinafter called "Grantor," and **Vision Composite Products, L.L.C.**, an Alabama limited liability, as party of the second part, hereinafter called "Grantee."

WITNESSETH: That for and in consideration of good and valuable consideration, to it paid this day by Grantee, receipt of which is hereby acknowledged, has this day given, granted, bargained, sold and conveyed and does by these presents give, grant, bargain, sell and convey unto Grantee, subject to the reservations and exceptions hereinafter made and with the restrictions and upon the covenants stated below, the following described real estate, lying and being situated in the City of Huntsville, County of Madison, State of Alabama, to-wit (the "Property"):

SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN.

SUBJECT TO any and all easements, and right of ways to the benefit of Grantor and all public utilities as currently in place, all of which are hereby RESERVED UNTO GRANTOR, and subject to all restrictions and other matters of record.

TO HAVE AND TO HOLD the real estate above described, together with all and singular the rights, privileges, tenements, hereditaments, appurtenances and improvements thereunto belonging or in anywise appertaining unto Grantee, its successors and assigns forever, in fee simple.

Grantor does hereby covenant with and represent unto Grantee, its successors and assigns, that Grantor is lawfully seized in fee of the tracts or parcels of land above described; that the same are free of encumbrances, that it has a good and lawful right to sell and convey the same; and that it will warrant and defend the title to the same unto Grantee, its successors and assigns forever, except as to ad valorem taxes, and any easements, rights of way and restrictions of record.

1. Use of the real estate shall be subject to the Protective Covenants to Cummings Research Park West, as recorded in Deed Book 626 at Page 602, as amended, in the Office of the Judge of Probate of Madison County, Alabama.

2. Use of the real estate shall be subject for a period of twenty (20) years to the following restrictions, which shall be deemed for all purposes covenants running with the land, violation of which may be enjoined at the suit of the within Grantor, its successors or assigns, including the immediate and remote Grantees of the within Grantor of other parcels of land within the area acquired and developed by the Grantor known as the "Cummings Research Park West." Such restrictions are as follows, to-wit:

(a) Said property shall be used only for the purposes of laboratories, offices and other facilities for basic and applied research and development, testing and consulting, whether public or private; production or assembly of prototype products, scientifically-oriented production, or the assembly of high-technology products which are related to the on-site research and development activities of the Grantee or its assigns; or any use permitted pursuant to Article 51 – “Research Park West District Regulations,” of the Zoning Ordinance of the City of Huntsville, Alabama, (Ordinance Number 63-93, as amended).

(b) Said property, or any portion thereof, or any building, structure or improvement thereon shall not be used, kept, maintained or offered for general rental or lease purposes, except that the Grantee or its assigns may use, keep, maintain or offer up to 25% of the heated floor space of a building, structure or improvement on the property for general rental or lease purposes, for a qualified use, if the portion thus used, kept, maintained or offered for general rental or lease purposes is reasonably necessary for the future expansion of the Grantee, its primary tenant or its assigns. In no event shall an entire building, structure or improvement on the subject property be occupied by more than a primary or base tenant, plus one (1) additional tenant for each 7,500 square feet of permitted excess rental/lease area.

(c) Any failure or delay on the part of the within Grantor to object or to bring suit to enjoin any violation of these restrictions shall in no event be deemed a waiver of same, except with respect to Architectural Control Committee approval, as specifically provided in the Protective Covenants referenced in Paragraph 1, above.

3. It is expressly agreed and acknowledged by and between the parties hereto that the hereinabove described tract of land is being sold and conveyed to the Grantee for the construction thereon of a facilities and/or improvements to be used in accordance with the permitted uses hereinabove specified in Paragraphs 2(a), 2(b) and 2(c), and that a part of the consideration for the conveyance of said property to the Grantee is the Grantee's agreement, subject to Force Majeure Events, (i) obtain a building permit, complete all site preparation, and to commence construction of the improvements thereon (and for purposes hereof, “commence construction” shall mean foundations and footings have been poured and completed and actual physical construction of the structure has begun), as approved by the Architectural Control Committee, within twelve (12) months from the date of this conveyance, and, (ii) to continue without interruption the construction of the said facility until completed according to plans and specifications as approved by the Architectural Control Committee. As used herein, the term “Force Majeure Events” shall mean any events or occurrences whatsoever which prevent or delay Grantee's performance hereunder and which are beyond the reasonable control of Grantee, including without limitation, an act of God, war, riot, civil commotion, or other disturbance, pandemic, sovereign conduct, national emergencies, acts of civil or military authority, strike or other labor difficulties, fire, flood, catastrophe, insurrection, power or other utility failure, transportation failure, or governmental action. The Grantee does for itself, its successors and assigns, agree that upon its failure to meet the requirements hereunder then the Grantor may, at its option, within 360 days of Grantee's failure, repurchase the above described tract of land for a sum equal to the total purchase price paid by the Grantee therefor plus the value of any improvements thereon.

4. The Grantee hereby agrees that in the event Grantee, or Grantee's assigns, shall

elect to sell or otherwise dispose of any unimproved portion of the above described property within twenty (20) years from the date of this conveyance, Grantee shall first offer such unimproved portion to Grantor at the purchase price per acre of such portion paid by Grantee to Grantor. Grantor and Grantee hereby further agree as follows:

(a) Before offering any unimproved portion of the above described property for sale or development, the Grantee shall submit its plan therefor to the Planning Commission of the City of Huntsville, Alabama, for approval as is required by law in the subdivision of land. The costs of such submission shall become a part of the purchase price of the property in the event the Grantor herein shall elect to exercise its right of first refusal as permitted in this Paragraph 4.

(b) Before consummating any sale of any unimproved portion of the real property involved, Grantee, or Grantee's assigns, shall notify Grantor in writing of its intention to sell the same as a separate parcel of property and shall offer such property to Grantor in writing at the price hereinabove specified. In the event Grantor shall elect so to repurchase said property, it shall so notify the Grantee, or Grantee's assigns, in writing, and shall pay the amount of the sale price in cash to Grantee or Grantee's assigns, upon delivery of a deed from the Grantee, or Grantee's assigns, reconveying such unimproved parcel of property to Grantor, subject only to ad valorem real property taxes for the then current year, and covenants, restrictions, reservations and rights-of-way then of record. In the event Grantor shall not so notify Grantee, or Grantee's assigns, in writing of its election to repurchase said property within forty-five (45) days from receipt of notification from Grantee, or having given such notice of its election to repurchase, shall not tender the purchase price thereof, as aforesaid, within forty-five (45) days after delivery of such notice from Grantor of its election to repurchase, Grantee, or Grantee's assigns, shall no longer be obligated to Grantor with respect to any repurchase of such unimproved real property. Such unimproved real property shall be selected by Grantee or Grantee's assigns, in such manner that no one (1) major dimension shall exceed any other major dimension by a factor in excess of two (2) and shall be in the configuration of a rectangle or square as nearly as practicable; provided, however, that if at least one boundary of said property, when so placed as to comply with building set-back provisions of applicable building codes and restrictions does not abut a public street, or streets, said area shall be enlarged by extension of the boundaries thereof in straight lines to the extent necessary to cause said area to abut the nearest public street providing access to said area.

(c) In the event Grantee, or Grantee's assigns, shall have made substantial improvements, including construction of a building, and desires to sell the entire tract of real property here involved to a single purchaser in one transaction, the Grantee or its assigns shall be under no obligation to Grantor with respect to offering the property for repurchase.

(d) Grantee, or Grantee's assigns, shall be under no obligation to Grantor with respect to offering the unimproved real property to Grantor as herein provided in this Paragraph 4, and shall be entitled to retain any consideration received, if the contemplated sale or transfer by Grantee, or Grantee's assigns, is:

(1) A sale or transfer to the United States or the State of Alabama or to any department, subdivision or agency thereof, including any legally established Industrial Development Board or other public corporation expressly authorized under Alabama Law, or to

any municipality or municipal corporation, whether voluntary or involuntary, or any other sale or transfer under threat of condemnation, or

(2) To a wholly owned subsidiary of the Grantee, or Grantee's assigns, or to a legal entity of which the Grantee, or Grantee's assigns, own more than 50% interest.

(3) In connection with a merger, consolidation, reincorporation, any reorganization of the types described in Section 368 of the Internal Revenue Code of 1986, as amended from time to time, or any similar provision of the Internal Revenue laws of the United States, or other corporate reorganization, except under the laws relating to bankruptcies, affecting or involving the Grantee, or

(4) To an investor pursuant to a sale and leaseback agreement whereby such investor shall have agreed to construct upon such property a facility in conformance with Paragraph 2 leased to or to be occupied by the Grantee or the Grantee's successor in title as a result of a sale or transfer by Grantee, or Grantee's assigns, of a type described in Subparagraph (2) or (3) above; or

(5) Any sale or conveyance approved in writing by Grantor; provided, however, that this option to repurchase and the restrictions elsewhere set out in this option shall continue in effect as to said land or part thereof, in the hands of any successor in title of Grantee as a result of a sale or transfer of a type described in Subparagraphs (2), (3), (4), above, or in this Paragraph. It is further provided that this option and said restrictions shall apply in the event of any involuntary transfer or conveyance of the above described property suffered by the Grantee or Grantee's assigns, (except an involuntary transfer or conveyance of the type described in Subparagraph (1) above) with like effect as to a voluntary sale, conveyance or transfer and shall be, in any case, deemed a covenant running with the land.

(e) In the event Grantee, or Grantee's assigns, shall wish to encumber all or any portion of the real property herein involved in conjunction with a building program for the improvement of such property, Grantor will, upon request, subordinate the rights contained in the foregoing paragraphs to any such encumbrances, provided, however, said mortgage or encumbrances will provide that in the event of default the within Grantor will be given thirty (30) days notice before foreclosure proceedings or any other action is instituted.

(f) Nothing in this Paragraph 4 shall be deemed to inhibit the right of Grantee, or Grantee's assigns, acting without the concurrence of Grantor, to grant easements or rights-of-way for the installation of utilities or roadways deemed necessary by Grantee, or Grantee's assigns, for appropriate utilization of the premises.

5. In the event Grantee or Grantee's assigns conveys less than the entire Property ("Partial Conveyance"), the Partial Conveyance shall be for no less than five (5) acres and the retained parcel must not be less than five (5) acres.

6. The foregoing agreements shall be valid for a period of twenty (20) years from the date of this conveyance.

7. The City Council of the City of Huntsville, Alabama, may grant a written exception to the restrictions herein contained, by resolution which shall clearly and specifically set forth the exception and the reasons therefore. The City Council shall hold a public hearing on any request for a written exception hereunder. No resolution granting any such exception shall be adopted until after such public hearing. Any such resolution shall be executed in the name of the City by the President of the City Council and the Mayor. No assigns or immediate or remote Grantees of the Grantor shall have the right to restrain the granting of any such exception or any use of the property pursuant to such exception.

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

THE CITY OF HUNTSVILLE, an Alabama
municipal corporation

By: _____
Tommy Battle, Mayor

ATTEST:

By: _____
Kenneth Benion, Clerk-Treasurer

STATE OF ALABAMA)

COUNTY OF MADISON)

I, the undersigned, a notary public in and for said County, in said State, hereby certify that Tommy Battle and Kenneth Benion, whose names as Mayor and City Clerk-Treasurer, respectively, of the City of Huntsville, an Alabama municipal corporation are signed to the foregoing document, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, as such officers and with full authority, executed the same for and as the act of said City on the day the same bears day.

GIVEN under my hand and official seal this the _____ day of _____, 202__.

Notary Public

THIS INSTRUMENT PREPARED BY: Samuel H. Givhan, Attorney for Grantor, 100 Washington Street, Huntsville, AL 35801; (256)-533-0202