

**MINUTES OF THE SPECIAL MEETING OF
THE CITY OF TARRANT, ALABAMA
HELD ON MONDAY, AUGUST 8, 2016**

The City Council of the City of Tarrant, Alabama met in special session on Monday, August 8, 2016 at 6:00 p.m., in the Council Chambers at City Hall.

Mayor Loxcil B. Tuck called the meeting to order.

Mayor Pro Tem Horton made a motion to appoint Gail Hill as acting secretary, for the Special Meeting of August 8, 2016, in the absence of City Clerk Lillian Keith. Councilmember Anderson seconded the motion and when put to a vote, the motion was passed by unanimous vote.

Gail Hill, acting secretary, called the roll. Upon roll call, the following officials answered present:

Catherine “Cathy” Anderson	Councilmember
John T. “Tommy” Bryant	Councilmember
Laura D. Horton	Mayor Pro Tem
Debra M. Matthews	Councilmember
Betty S. Middlebrooks	Councilmember
Loxcil B. Tuck	Mayor

It appears theretofore pursuant to letter, the Mayor caused the following notice to be properly served upon all members of the City Council:

August 4, 2016

**CALL FOR SPECIAL MEETING OF THE CITY COUNCIL
OF THE
CITY OF TARRANT, ALABAMA**

I hereby call a Special Meeting of the City Council of the City of Tarrant, Alabama to be held at the City of Tarrant, City Hall, 1604 Pinson Valley Parkway, Tarrant, Alabama 35217, on Monday, August 8, 2016 at 6:00 p.m.

Agenda Items

- A) Public Hearing – Expenditure of Public Funds – Development of and Subsequent Lease (with Purchase Option) – 2518 and 2528 Commerce Way
- B) Resolution – Project Development Agreement
- C) Ordinance – Lease – 2518 and 2528 Commerce Way
- D) Resolution – Bid Award – Project 2518 and 2528 Commerce Way

By: _____

Loxcil B. Tuck, Mayor

In addition thereof, all Council Members executed a waiver of notice of this special meeting as follows:

August 4, 2016

TO WHOM IT MAY CONCERN:

We, the undersigned Mayor and Council Members of the City of Tarrant, Alabama hereby acknowledge and accept service of the foregoing Notice of Meeting of the City Council of said City, and acknowledge having received such notice in ample time to attend such Meeting, and waive any and all irregularities in such notice and service thereof and any and all other or further notice and consent, and agree that said City Council shall meet at the time and place therein named and for the purpose therein, stated, and for the transaction of any and all other business that may come before said meeting.

This 4th day of August, 2016.

s/Loxcil B. Tuck
s/Cathy Anderson
s/John T. "Tommy" Bryant
s/Laura Horton
s/Debra Matthews
s/Betty S. Middlebrooks

Whereupon, Mayor Tuck addressed the Councilmembers regarding a letter she received from Franklin Hill of the EPA, stating that testing of all of the soil samples taken from the City of Tarrant had been completed. Mr. Hill stated that the samples had been thoroughly tested and there were no negative results, in fact, everything was well above their requirements. Mr. Hill stated the City of Tarrant had proven to be environmentally safe and the EPA had no reason to come back for future testing.

Mayor Tuck therefore opened the Public Hearing for Expenditure of Public Funds on the Development of and Subsequent Lease (with Purchase Option) – 2518 and 2528 Commerce Way, Tarrant, Alabama.

Mayor Tuck recognized City Attorney Ben Goldman. Attorney Goldman introduced Attorney Trey Hill, Representative for Montgomery Transport LLC. Attorney Hill explained to the Councilmembers that he was attending the meeting, in the absence of Rollins Montgomery. Mr. Montgomery had planned to meet with the Mayor and City Councilmembers, however due to an unforeseen illness in his family, was not able to be present.

Attorney Hill stated that he was speaking on behalf of Rollins Montgomery of Montgomery Transport LLC. Attorney Hill told the Mayor and Councilmembers that Mr. Montgomery had enjoyed doing business in the City of Tarrant and would like to grow his business here. Attorney Hill stated that Montgomery Transport had been in the City for approximately 5 years, and that Mr. Montgomery was excited to grow the business in the City. Attorney Hill stated that Montgomery Transport future plan, included creating 83 new jobs and purchasing 40 more new trucks, to add to the current fleet. Attorney Hill also stated that the company planned to create more office space for employees.

Attorney Goldman then addressed the Mayor and City Councilmembers to explain the Development of and subsequent lease, with the purchase option of 2518 and 2528 Commerce Way. Attorney Goldman presented a package to Mayor Tuck and Councilmembers, for discussion. General discussion followed.

Mayor Tuck asked if there were any questions in regards to the Expenditure of Public Funds or the Development of and Subsequent Lease (with purchase option) of 2518 and 2528 Commerce Way, Tarrant, Alabama. Mayor Tuck closed the public hearing, as there were no questions from anyone.

Whereupon, Councilmember Bryant introduced the following proposed resolution:

RESOLUTION NO. 8254

A RESOLUTION APPROVING TAX ABATEMENTS AND ECONOMIC AND INDUSTRIAL DEVELOPMENT INCENTIVES FOR MONTGOMERY TRANSPORT, LLC, AND MKM LEASING, LLC, AND AUTHORIZING A PROJECT DEVELOPMENT AGREEMENT IN CONNECTION THEREWITH.

This Resolution is made this 8th day of August, 2016 (the 'Effective Date') by the City of Tarrant, Alabama, a municipal corporation ("City") by and through the City Council of the City of Tarrant, Alabama ("City Council") to 1.) approve the Project Development Agreement attached hereto as Exhibit 1 hereof ("Project Development Agreement") 2.) to grant a tax abatement to Montgomery Transport, LLC, a Delaware limited liability company that is registered to do business in the State of Alabama, and MKM Leasing, LLC, a Delaware limited liability company that is registered to do business in the State of Alabama (together "the Companies"), and 3.) to grant certain economic and industrial development incentives to the Companies.

WHEREAS, the Companies have announced plans for a major addition to their existing facility ("Project"), located within the jurisdiction and corporate limits of the City; and

WHEREAS, pursuant to the Tax Incentive Reform Act of 1992 (Section 40-9B-1, *et seq.*, of the *Code of Alabama* (1975)) ("the Act"), and as set forth in the Project Development Agreement, the Companies have requested from the City an abatement of all state and local noneducational property taxes, of all construction related transaction taxes, except those construction related transaction taxes levied for educational purposes or for capital improvements for education, and all mortgage and recording taxes; and

WHEREAS, as set forth in the Project Development Agreement, the Companies have requested that the abatement of state and local noneducational property taxes be extended for a period of five (5) years in accordance with the Act; and

WHEREAS, the City has considered the request of the Companies and the completed applications for abatement of taxes (copies of which are attached as Exhibit D to the Project Development Agreement) filed with the City by the Companies in connection with their requests; and

WHEREAS, the City has found the information contained in the Companies' applications to be sufficient to permit the City to make a reasonable cost/benefit analysis of the proposed Project and to determine the economic benefits to the community; and

WHEREAS, the construction of the Project will involve an estimated capital investment of \$6,884,860; and

WHEREAS, the Companies are duly qualified to do business in the State of Alabama and have powers to enter into, and to perform and observe the agreements and covenants on their part contained in the Project Development Agreement and which contains certain provisions relating to tax abatements; and

WHEREAS, the City represents and warrants to the Companies that it has power under the constitution and laws of the State of Alabama (including particularly the provisions of the Act) to carry out provisions of the Project Development Agreement particularly concerning the subject tax abatements; and

WHEREAS, that certain amendment to the Constitution of the State of Alabama of 1901 proposed by Act No. 2004-94, adopted at the 2004 Regular Session of the Legislature of Alabama and ratified on November 2, 2004, codified as Section 94.01 of the Official Recompilation of the Constitution of Alabama of 1901 (“the Economic Development Amendment”), authorizes the City Council to 1.) “[u]se public funds to purchase, lease, or otherwise acquire real property, buildings, plants, factories, facilities, machinery, and equipment of any kind, or to utilize the properties heretofore purchased or otherwise acquired, and improve and develop the properties for use as sites for industry of any kind or as industrial park projects, including, but not limited to, grading and the construction of roads, drainage, sewers, sewage and waste disposal systems, parking areas, and utilities to serve the sites or projects,” 2.) “[l]ease, sell, grant, exchange, or otherwise convey, on terms approved by the [City Council] all or any part of any real property, buildings, plants, factories, facilities, machinery, and equipment of any kind or industrial park project to any individual, firm, corporation, or other business entity, public or private . . . for the purpose of constructing, developing, equipping, and operating industrial, commercial, research, or service facilities of any kind,” and 3.) “grant public funds and things of value in aid of or to any individual, firm, corporation, or other business entity, public or private, for the purpose of promoting the economic and industrial development of the” City; and

WHEREAS, the City Council finds that the Project Development Agreement would require the expenditure of approximately Two Hundred Fifty Two Thousand and 00/100 Dollars (\$252,500.00) in public funds plus certain materials on hand for the development of and subsequent lease (with purchase option) of 2528 Commerce Way and 2518 Commerce Way, Tarrant, AL 35217, on terms below fair market value; and

WHEREAS, the City Council finds that the following public benefits will be achieved by the Project Development Agreement: the enhancement of an environmental cap on property owned by the City; the allowance of a major addition to an existing business facility in the City; retaining, expanding, and increasing sales tax revenue, business license tax revenue, occupational license fee revenue, and future ad valorem revenue for the City from businesses that would not otherwise be able to remain located within the City; the generation of new jobs in the City; the potential recruitment of new ancillary businesses to the City; and the improvement of the quality of life in the City; and

WHEREAS, on July 31, 2016, which was more than seven days prior to the adoption of this resolution, a notice was published in the newspaper having the largest circulation in the City of Tarrant describing in reasonable detail the action proposed to be taken, a description of the public benefits sought to be achieved by the action, and identifying each individual, firm, corporation, or other business entity to whom or for whose benefit the City proposes to grant public funds or thing of value; and

WHEREAS, the City Council held a public hearing prior to the adoption of this resolution on the issue of whether to grant funds as set forth herein;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Tarrant, Alabama, while in special session on Monday, August 8, 2016, at 6:00 p.m. as follows:

Section 1. Pursuant to the Act, approval is hereby given to the applications of the Companies and, as set forth in and as limited by the Project Development Agreement, abatement is hereby granted of all state and local noneducational property taxes, of all construction related transaction taxes, except those construction related transaction taxes levied for educational

purposes or for capital improvements for education, and all mortgage and recording taxes as the same may apply to the fullest extent permitted by the Act. The period of abatement for the noneducational property taxes shall extend for a period of five (5) years measured as provided in Section 40-9B-3(a)(12) of the Act.

Section 2. The Mayor of the City of Tarrant, Alabama, is authorized to enter into an abatement agreement with the Companies to provide for the abatement granted in Section 1 according to the form set forth in the Project Development Agreement attached hereto as Exhibit 1 hereof.

Section 3. A certified copy of this resolution, with the applications and abatement agreement, shall be forwarded to the Companies to deliver to the appropriate local taxing authorities and to the Alabama Department of Revenue in accordance with the Act.

Section 4. The City Council has ascertained and found and hereby determines that the expenditure of public funds for the purposes specified herein and in the Project Development Agreement will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities.

Section 5. Pursuant to the applicable provisions of the constitution and laws of the State of Alabama, including particularly the Economic Development Amendment, the City hereby approves the terms of the Project Development Agreement. The Mayor is authorized to execute the Project Development Agreement and the City Clerk to provide the corresponding attestation.

Section 6. The Mayor, the City Clerk, and the City Attorney are hereby authorized to take any and all actions necessary or desirable to accomplish the purpose of this Resolution and the terms of the Project Development Agreement.

ADOPTED AND APPROVED THIS THE 8 DAY OF August, 2016.

Lorcil B Tuck
LOXCIL B. TUCK, MAYOR

ATTEST:

Lillian A Keith
Lillian A. Keith, City Clerk

CERTIFICATION OF CITY CLERK

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, Lillian A. Keith, City Clerk of the City of Tarrant, Alabama, do hereby certify that the above and foregoing is a true and correct copy of a Resolution duly adopted by the City Council of the City of Tarrant, Alabama, on the 8th day of August, 2016.

Witness my hand and seal of office this 8th day of August, 2016.

Lillian A Keith
Lillian A. Keith, City Clerk

EXHIBIT 1
TO THE RESOLUTION
Project Development Agreement

PROJECT DEVELOPMENT AGREEMENT

between

CITY OF TARRANT, ALABAMA

and

MONTGOMERY TRANSPORT, LLC

and

MKM LEASING, LLC

Dated as of August 8, 2016

PROJECT DEVELOPMENT AGREEMENT

This **PROJECT DEVELOPMENT AGREEMENT** (this "Agreement") is made and entered as of August 8, 2016, between the **CITY OF TARRANT, ALABAMA**, an Alabama municipal corporation (the "City"), **MONTGOMERY TRANSPORT, LLC**, a Delaware limited liability company that is registered to do business in the State of Alabama ("MT"), and **MKM LEASING, LLC**, a Delaware limited liability company that is registered to do business in the State of Alabama ("MKM," and together with MT and their respective successors and assigns collectively referred to herein as the "Developer").

Recitals

WHEREAS, the Developer has announced plans for a Major Addition to its existing facility located within the jurisdiction of the City; and

WHEREAS, the Project (as defined below) meets the qualifications of an industrial or research enterprise in accordance with Section 40-9B-3(10)a.2.(i) of the *Code of Alabama* (1975), as amended, as a "Distribution and Logistics" industry under the Accelerate Alabama Plan; and

WHEREAS, the Project is estimated to be completed by the 31st day of December, 2016; and

WHEREAS, the Project will be located in Jefferson County and inside the city limits of the City of Tarrant, Alabama; and

WHEREAS, pursuant to the Act (as defined below) the Developer has requested from the City an abatement of (1) all state and local noneducational property taxes with respect to the Parking Area (as defined below) for a specified period of time, (2) all construction related transaction taxes with respect to the Project, except those local construction related transaction taxes levied for educational purposes or for capital improvements for education, and (3) all mortgage and recording taxes with respect to mortgages, deed, and documents relating to issuing or securing obligations and conveying title into or out of the City with respect to the Parking Area; and

WHEREAS, the City has considered the request of the Developer and the completed applications filed with the City by the Developer in connection with its request; and

WHEREAS, the City has found the information contained in the Developer's applications to be sufficient to permit the City to make a reasonable cost/benefit analysis of the proposed Project and to determine the economic benefits to the community; and

WHEREAS, at its meeting held on the 8th day of August, 2016, the City approved the Developer's applications for abatement of (1) all state and local noneducational property taxes with respect to the Parking Area for a specified period of time, (2) all construction related transaction taxes with respect to the Project, except those local construction related transaction

taxes levied for educational purposes or for capital improvements for education, and (3) all mortgage and recording taxes with respect to mortgages, deed, and documents relating to issuing or securing obligations and conveying title into or out of the City with respect to the Parking Area; and

WHEREAS, the Project will consist of private use industrial development property, which is composed of all real and/or related personal property to be acquired, constructed, and installed thereon, as described in Exhibits A and B attached hereto; and

WHEREAS, the private use industrial development property for which the abatement is applied and defined below as the Parking Area shall be leased from the City as provided herein; and

WHEREAS, the City does not intend to issue bonds or warrants in connection with the private use industrial development property herein described; and

WHEREAS, for the purposes of abatement of all noneducational property taxes with respect to the Parking Area, it has been determined that no portion of the Parking Area has been placed in service or operation by the Developer or by a related party, as defined in 26 U.S.C. § 267, with respect to the Developer prior to the Commencement Date (as defined below) of this Agreement; and

WHEREAS, the Project is a Major Addition to an existing facility, and the request for abatement of all state and local noneducational property taxes and construction related transaction taxes does not include any capitalized repairs, rebuilds, maintenance, replacement equipment, or costs associated with the renovating or remodeling of existing facilities of industrial development property previously placed in service by the Developer; and

WHEREAS, the Major Addition to the existing facility equals at least thirty percent (30%) of the original cost of the industrial development property; and

WHEREAS, the Developer is duly qualified to do business in the State of Alabama, and has powers to enter into, and perform and observe the agreements and covenants on its part contained in this Agreement; and

WHEREAS, for the purposes of the abatement of construction related transaction taxes, no portion of the Project which has been requested for abatement of construction related transaction taxes has been purchased prior to the Commencement Date of this Agreement; and

WHEREAS, the Project meets the qualifications of an industrial or research enterprise in accordance with Section 40-9B-3(10)a.2.(i) of the *Code of Alabama* (1975), as amended, as a "Distribution and Logistics" industry under the Accelerate Alabama Plan; and

WHEREAS, the Developer expects and intends to expand its industrial facilities described herein and, in doing so, expects and intends (1) to expand and increase the tax and revenue base of the City, (2) to generate new jobs in the City, and (3) otherwise to improve the quality of life in the City; and

WHEREAS, the City and the Developer intend for this Agreement to satisfy the requirements of an agreement and inducement as required by Section 40-9B-6(b) of the *Code of Alabama* (1975); and

WHEREAS, estimates of the amount of taxes abated pursuant to this Agreement is set forth below, and the City and the Developer hereby acknowledge that these estimates reflect the amount of taxes abated for the periods stated, under current law, and that the actual abatements for such taxes may be for a greater or lesser amount depending upon the actual amount of such taxes levied during the abatement periods stated; and

WHEREAS, the estimated amount of the abatement of the noneducational property taxes set forth herein is \$3,808 per year and the maximum period for such abatement shall extend for a period of five (5) years, measured as provided in Section 40-9B-3(a)(12) of the Act, as amended from time to time; and

WHEREAS, the estimated amount of the abatement of the construction related transaction taxes, except those local construction related transaction taxes levied for educational purposes or for capital improvements for education, are expected to be approximately \$155,327 as provided for in Exhibit I hereof and such abatement shall not extend beyond the date the Project is placed in service; and

WHEREAS, the estimated amount of the abatement of the mortgage and recording taxes set forth herein is \$0; and

WHEREAS, the maximum exemption period for the abatements provided by this Agreement is set forth in Section 5.2 hereof; and

WHEREAS, this Agreement and the actions contemplated by it were approved in accordance with Section 94.01 (as defined below) at a public meeting of the City Council on August 8, 2016, by a resolution containing a determination by the City Council that the expenditure of public funds for the purpose specified will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities; and

WHEREAS, in accordance with Section 94.01, at least seven days prior to the public meeting of the City Council on August 8, 2016, a notice was published in the newspaper having the largest circulation in the City describing in reasonable detail the action proposed to be taken, a description of the public benefits sought to be achieved by the action, and identifying each individual, firm, corporation, or other business entity to whom or for whose benefit the City proposes to lend its credit or grant public funds or thing of value;

Agreement

NOW, THEREFORE, for and in consideration of the premises, and the mutual covenants and agreements herein contained, the City and the Developer hereby covenant and agree as follows:

ARTICLE 1

Definitions

For purposes of this Agreement, the definitions set forth in Section 40-9B-3 of the *Code of Alabama* (1975) shall apply; the definitions set forth in the Lease Agreement (as defined below) shall apply, except for the definition of "Term," which shall be given the meaning set forth below in the context of this Agreement; and the following terms shall have the following meanings:

"Accelerate Alabama Plan" shall mean the Accelerate Alabama Strategic Economic Development Plan adopted in January 2012 by the Alabama Economic Development Alliance, created by Executive Order Number 21 of the Governor of the State of Alabama on July 18, 2011, or any amended version or successor document thereto.

"Act" shall mean the Tax Incentive Reform Act of 1992 (Section 40-9B-1, *et seq.*, of the *Code of Alabama* (1975)).

"City Council" shall mean the City Council of the City of Tarrant, Alabama, which is the governing body of the City.

"City's Construction Obligations" shall have the meaning set forth in Section 5.5(6) hereof.

"City's Engineer" shall mean Goodwyn, Mills & Cawood, Inc.

"Commencement Date" shall mean August 8, 2016.

"Enabling Law" shall mean, collectively, (1) Section 94.01 (2) and Section 11-47-2 of the *Code of Alabama* (1975).

"Fencing Work" shall have the meaning set forth in Section 5.5(4) hereof.

"Lease Agreement" shall mean the Commercial Lease Agreement attached as Exhibit 1 to the form of the Ordinance approving the same that is attached to this Agreement as Exhibit C hereof.

"Lighting" shall have the meaning set forth in Section 5.5(2) hereof.

"Office Area" shall mean the real property that is described in Exhibit A.

"Parking Area" shall mean the real property that is described in Exhibit B.

"Project" shall mean the Major Addition planned by the Developer to the Office Area and the Parking Area.

"Section 94.01" shall mean Section 94.01 of the *Official Recompilation of the Constitution of Alabama of 1901*.

"Site Work" shall have the meaning set forth in Section 5.5(1) hereof.

“Term” shall mean the period of time beginning on the Commencement Date of this Agreement and ending on the Expiration Date as defined in the Lease Agreement.

ARTICLE 2

Representations and Warranties

SECTION 2.1 The City’s Representations and Warranties

- (1) The City hereby represents and warrants as follows:
 - (a) The City has by proper corporate action duly authorized the execution, delivery and performance of this Agreement.
 - (b) The City’s obligations set forth in this Agreement will result in direct financial benefits to the City.

SECTION 2.2 The Developer’s Representations and Warranties

- (1) The Developer hereby represents and warrants as follows:
 - (a) The Developer has all necessary corporate power and authority to enter into and perform its obligations hereunder and by proper corporate action the Developer has duly authorized the execution, delivery and performance of this Agreement.
 - (b) The Developer has announced plans for a Major Addition to its existing facility located within the jurisdiction and corporate limits of the City (i.e., the Project). The Project is constituted of the Office Area and the Parking Area. MKM Leasing, LLC is the owner in fee simple of the Office Area and, pursuant to the Ordinance attached hereto as Exhibit C hereof, Montgomery Transport, LLC is the authorized lessee of the Parking Area.
 - (c) Montgomery Transport, LLC is a limited liability company that is organized for profit. MKM Leasing, LLC is a limited liability company that is organized for profit. MKM Leasing, LLC is or will be treated as the owner of the Office Area for federal income tax purposes, and as provided by the terms of the Lease Agreement, Montgomery Transport, LLC and/or MKM Leasing, LLC will be treated as the owner of the Parking Area for federal income tax purposes. The Project is constituted of real and/or personal property acquired in connection with expanding an industrial or research enterprise in Alabama.
 - (d) The Developer’s Project is a qualifying industrial or research enterprise described in Section 40-9B-3(a)(10)a.2.(i) of the *Code of Alabama* (1975) because the Project is a “Distribution and Logistics” industry under the Accelerate Alabama Plan.
 - (e) The Developer has not previously placed the Major Addition to the Office Area or the Parking Area into service, nor has any private user that is a related party to the Developer.

(f) The Project is estimated to be completed by the 31st day of December, 2016.

(g) To the extent required by this Agreement, the Developer has all necessary power and authority to acquire and construct the Project as contemplated herein.

(h) The Developer hereby makes the following good faith projections:

- (i) The amount to be invested in the Project is \$6,884,860;
- (ii) The number of individuals to be employed initially at the Project is 3, 13 in Year 1, 43 in Year 2, and 83 in Year 3;
- (iii) The annual payroll initially at the Project is \$150,000, \$650,000 in Year 1, \$2,150,000 in Year 2, and \$4,150,000 in Year 3;

(i) Developer acknowledges that portions of the Parking Area are situated in a floodway (Zone AE) and other flood areas (Zone X) as designated by the applicable Flood Insurance Rate Map promulgated by the State of Alabama and the Federal Emergency Management Agency.

(i) Developer acknowledges receiving from the City a copy of the Final Preliminary Assessment, Pinson Valley Neighborhood Site, Tarrant, Jefferson County, Alabama, EPA ID No. AL.N000404036, dated June 29, 2015.

(k) Developer acknowledges that the portion of the Parking Area described in Exhibit B as 2528 Commerce Way, Tarrant, AL 35217 (PARCEL # 23 00 05 2 001 003.021) has no independent means of ingress and/or egress. Developer agrees that ingress and/or egress to 2528 Commerce Way, Tarrant, AL 35217 (PARCEL # 23 00 05 2 001 003.021) shall be exclusively through the Office Area and/or through the portion of the Parking Area described in Exhibit B as 2518 Commerce Way, Tarrant, AL 35217 (PARCEL # 23 00 05 2 001 003.019).

ARTICLE 3

Duration of Agreement

The obligations of the City and the Developer hereunder shall arise on the Commencement Date and shall continue until the end of the Term.

ARTICLE 4

Obligations of the Developer

SECTION 4.1 General

(1) In consideration of the agreements and covenants of the City in this Agreement, the Developer covenants and agrees that the Developer shall duly and punctually observe and perform all of the agreements hereof.

(2) The Developer is a business with an appropriate and current business license from the City, and the Developer will keep said business license in full-force and good standing during the Term.

(3) The Developer agrees that the Developer will continue with the same business activities in which it was engaged as of the Commencement Date in the Office Area throughout the Term and that it shall not relocate any of said operations to a location outside of the corporate limits of the City during the Term.

SECTION 4.2 Tax Abatements

(1) The Developer has submitted applications to the City Council at or about the time that the Developer is requesting inducement for an abatement of certain taxes allowed to be abated under Section 40-9B-4 of the *Code of Alabama* (1975). A copy of the applications are attached hereto as Exhibit D hereof.

(2) Pursuant to Section 40-9B-6(c) of the *Code of Alabama* (1975), the Developer shall file with the Alabama Department of Revenue within 90 days after the granting of the abatements provided for herein a copy of this Agreement. The Developer requests that, to the extent permitted by law, this Agreement be kept confidential.

SECTION 4.3 Completion Obligations of the Developer

(1) The Developer hereby agrees that, on or before December 31, 2016, it will have constructed or caused to be constructed the Project.

(2) The Developer agrees to complete the Major Addition to the Office Area according to the plans attached hereto as Exhibit F hereof.

(3) The Developer agrees to fund the City's Construction Obligations (as defined below) to the extent that any bid(s) or contract(s) approved by the City Council for the construction of the same or any part thereof exceed(s) any maximum amount or part of the City's Funding Obligations as expressly set forth in Section 5.5 of this Agreement.

(a) When demands for payment related to the City's Construction Obligations are presented to the City, the City will first satisfy those demands for payment as provided by and limited by the City's Funding Obligations set forth in Section 5.5 of this Agreement.

(b) Once the City's Funding Obligations expressly set forth in Section 5.5 of this Agreement have been exhausted for a particular item or contract, then the City will promptly tender the demand(s) for payment for any excess balance(s) to the Developer. In such case, the Developer shall timely pay to the person or persons/entity or entities the portion in excess of the City's Funding Obligations on or before the due date of the demand for payment.

(c) The City shall be severally responsible for any late fees and/or penalties caused by the City's own respective failure to timely satisfy a demand for payment that the City is obligated to pay when due. The Developer shall be severally responsible for any late fees and/or

penalties caused by the Developer's own respective failure to timely satisfy a demand for payment that the Developer is obligated to pay when due.

SECTION 4.4 License

(a) The City is hereby granted a license to enter upon the Office Area for the purpose of completing the City's Construction Obligations.

(b) The license granted by this Section shall expire upon completion of the Project.

(c) The City is hereby authorized to perform the Fencing Work described in Section 5.5.

SECTION 4.5 Lease Agreement

The Developer agrees to enter into and duly execute the Lease Agreement.

SECTION 4.6 Easements

The Developer agrees to enter into and duly execute any and all licenses and/or easements reasonably required by the City to perfect the rights and encumbrances in favor of the City and the Tarrant Electric Department described in Exhibit B to this Agreement, and the City is expressly authorized to record the same with the Office of the Judge of Probate of Jefferson County, Alabama, Birmingham Division.

ARTICLE 5

Obligations of the City

SECTION 5.1 General

(1) The City will take all necessary action required by the Enabling Law, to the extent applicable, to authorize this Agreement and the obligations hereunder.

(2) In consideration of the agreements and covenants of the Developer in this Agreement, the City covenants and agrees that the City shall duly and punctually observe and perform all of the agreements hereof.

SECTION 5.2 Tax Abatements

(1) As set forth in Exhibit I, the City agrees to approve an abatement of the Developer's construction related transaction taxes, except those local construction related transaction taxes levied for educational purposes or for capital improvements for education, imposed by the state, counties, municipalities, and other taxing jurisdictions of Alabama with respect to the Project to the extent permitted by Chapter 9B of Title 40 of the *Code of Alabama* (1975). Specifically, this abatement shall apply to the transaction taxes imposed by Chapter 23 of Title 40 of the *Code of Alabama* (1975) on the tangible personal property and taxable services to be incorporated into the Project, the cost of which may be added to the capital account with respect to the Project, except

for those local construction related transaction taxes levied for educational purposes or for capital improvements for education.

(a) The abatement of construction related transaction taxes shall apply only to tangible personal property and taxable services incorporated into the Project, the cost of which may be added to the capital account with respect to the property, determined without regard to any rule which permits expenditures properly chargeable to capital account to be treated as current expenses. See ALA. CODE § 40-9B-4(c) (1975).

(b) The abatement of construction related transaction taxes shall not extend beyond the date the Project is placed in service or ten years from the date of this Agreement, whichever occurs first. See ALA. CODE § 40-9B-4(c) (1975); ALA. CODE § 40-9B-5(b)(1) (1975).

(2) As set forth in Exhibit I, the City agrees to approve an abatement of the Developer's mortgage and recording taxes with respect to mortgages, deeds, and documents relating to issuing or securing obligations and conveying title into or out of the City imposed by the state, counties, municipalities, and other taxing jurisdictions of Alabama with respect to the Parking Area and any security documents and other recordable documents associated therewith to the extent permitted by Chapter 9B of Title 40 of the *Code of Alabama* (1975). Specifically, this abatement shall apply to all taxes imposed by Chapter 22 of Title 40 of the *Code of Alabama* (1975) relating to mortgages, deeds, and documents relating to issuing or securing obligations and conveying title into or out of the City with respect to the Project. This abatement of the Developer's mortgage and recording taxes shall not extend beyond ten years from the Commencement Date.

(3) As set forth in Exhibit I, the City agrees to approve an abatement of the Developer's noneducational ad valorem taxes imposed by the state, counties, municipalities, and other taxing jurisdictions of Alabama with respect to the Parking Area to the extent permitted by Chapter 9B of Title 40 of the *Code of Alabama* (1975). The maximum period for such abatement shall extend for a period of five (5) years, measured as provided in Section 40-9B-3(a)(12) of the Act, as amended from time to time.

(4) The parties agree that the City is not entitled to receive any payment, contribution, or other financial or in-kind award from the Developer as the result of granting the abatements provided by this Section 5.2.

(5) The City shall satisfy its obligation to approve the abatements set forth in Section 5.2 by adopting the Resolution of the City Council attached hereto as Exhibit E hereof (without Exhibit I thereof, which is a copy of this Agreement).

(6) The City shall have no obligation to pay any amount out-of-pocket to the Developer.

(7) The parties recognize that any abatement of county taxes granted by the City shall not be valid until the expiration of (i) ten days following the date of physical delivery to the Jefferson County Commission or (ii) thirteen days following the date of mailing by certified mail to the Jefferson County Commission, of a copy of the resolution granting such abatement.

SECTION 5.3 Lease of the Parking Area

- (1) The City will lease the Parking Area to the Developer on the terms set forth in the Lease Agreement attached hereto as Exhibit C-1 hereof.
- (2) The City will authorize the Lease Agreement by adopting the Ordinance of the City Council attached hereto as Exhibit C hereof.

SECTION 5.4 Sale of the Parking Area

If the Developer should elect to exercise its purchase option as set forth in the Lease Agreement, then the City will convey the Parking Area to the Developer as provided in the Lease Agreement on the terms set forth therein.

SECTION 5.5 Construction Obligations of the City

(1) The City will provide the following site work for the portions of the Parking Area not containing improvements as of the Commencement Date as set forth in the Construction Drawings attached hereto as Exhibit G hereof, including:

- (a) One (1) foot of clay soil cap over the existing ground; and
- (b) Over the clay soil cap provided for in Section 5.5(1)(a), a crushed aggregate base material, a minimum of eight inches (8") deep, consisting of ALDOT 825 (Type B) crusher run; and
- (c) A smooth transition of the grade work from the Parking Area to the Office Area; and
- (d) Erosion control measures, including, but not limited to, silt fencing and hay bales, required by any soil disturbance permit related to the work provided for by this Section (Exhibit G and items (a) through (d) altogether the "Site Work").

(2) The City's obligation to fund the Site Work shall not exceed Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00).

(3) At its own cost, Tarrant Electric Department, a department of the City, will install at the option of the Developer up to ten (10) poles with two (2) 1,000-Watt metal halide lights per pole ("Lighting"). However, after installation, the Developer shall be responsible for any and all monthly charges, electricity charges, and other customary charges, taxes, costs, or fees related to the use of the Lighting, and the City and Tarrant Electric Department shall expressly not be responsible for the same. In the event that the Developer later determines to discontinue usage of the Lighting or any portion thereof, Tarrant Electric Department shall be authorized to remove the same at its own cost.

(4) The City will remove only that fencing separating the Office Area and the Parking Area required to complete the connection of the two areas ("Fencing Work"), whether located in the Office Area or the Parking Area.

(5) The City's obligation to fund the Fencing Work shall not exceed Two Thousand, Five Hundred and 00/100 (\$2,500.00).

(6) The Site Work, the Lighting, and the Fencing Work shall, altogether, constitute the "City's Construction Obligations."

(7) The limitations set forth in Section 5.5(2) and (5) together with the obligation to install the Lighting shall, collectively, be referred to as the "City's Funding Obligations." Although the term "City's Funding Obligations" is a collective term, this shall in no way imply that the underlying obligations are cumulative. Each part of the City's Funding Obligations is separate in terms of the particular cap or funding authorization provided, and the same is particular to its respective part.

(8) The City shall have no responsibility to alter or remove any improvements in the Parking Area existing as of the Commencement Date.

ARTICLE 6

Events of Default and Remedies

SECTION 6.1 Events of Default

Any one or more of the following shall constitute an event of default by the City or the Developer hereunder (an "Event of Default") under this Agreement (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) default in the performance, or breach, of any covenant or warranty of the City in this Agreement, and the continuance of such default or breach for a period of thirty (30) days after there has been given, by certified mail, to the City by the Developer a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "notice of default" hereunder, provided that if such default is of a kind which cannot reasonably be cured within such thirty (30)-day period, the City shall have a reasonable period of time within which to cure such default, provided that it begins to cure the default promptly after its receipt of such written notice and proceeds in good faith, and with due diligence, to cure such default; or

(b) default in the performance, or breach, of any covenant or warranty of the Developer in this Agreement, and the continuance of such default or breach for a period of thirty (30) days after there has been given, by certified mail, to the Developer by the City a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "notice of default" hereunder, provided that if such default is of a kind which cannot reasonably be cured within such thirty (30)-day period, the Developer shall have a reasonable period of time within which to cure such default, provided that it begins to cure the default promptly after its receipt of such written notice and proceeds in good faith, and with due diligence, to cure such default.

SECTION 6.2 Remedies

(1) Each party hereto may (subject to Section 6.3) proceed to protect its rights and interests by suit in equity, action at law or other appropriate proceedings, whether for the specific performance of any covenant or agreement of any other party herein contained or in aid of the exercise of any power or remedy available at law or in equity.

(2) Developer recognizes that any benefits conferred to it by this Agreement shall not bear interest.

SECTION 6.3 Remedies Subject to Applicable Law

All rights, remedies and powers provided by this Agreement may be exercised only to the extent the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that the same will not render this Agreement invalid or unenforceable.

SECTION 6.4 Compliance

If the Developer fails to comply with any provision in this Agreement or if any of the material statements contained herein or in Exhibit D are determined to have been misrepresented whether intentionally, negligently, or otherwise, the City shall terminate this Agreement and take such equitable action available to it as if this Agreement had never existed. If it is determined that certain items, which are identified on the applications for abatement of taxes, are not in compliance with the Act or governing regulations, these items may be subject to taxation for all local and state taxing authorities.

ARTICLE 7

Provisions of General Application

SECTION 7.1 Severability Clause

The provisions of this Agreement and those contained in the exhibits to this Agreement shall be severable. In the event any provision in this Agreement or in its exhibits shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any of the remaining provisions hereof or thereof.

SECTION 7.2 Prior Agreements Cancelled

This Agreement, including its Exhibits, shall completely and fully supersede all other prior agreements, both written and oral, among the parties hereto relating to the matters contained herein. None of the parties hereto shall hereafter have any rights under any of such prior agreements but shall look to this Agreement and its Exhibits for definition and determination of all of their respective rights, liabilities and responsibilities relating to the matters contained herein. The parties expressly contemplate that contemporaneously with this Agreement they shall enter

into the Lease Agreement, and the fully executed Lease Agreement shall in no way be repealed or cancelled by operation of this Section.

SECTION 7.3 Counterparts

This Agreement may be executed in counterparts, each of which shall constitute but one and the same agreement.

SECTION 7.4 Binding Effect; Governing Law

This Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective successors and assigns except as otherwise provided herein. This Agreement is made and entered into in the State of Alabama, and shall in all respects be interpreted, enforced, and governed under the laws of said State. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties.

SECTION 7.5 Notices

(1) Each notice, request, and communication required under this Agreement shall be in writing. It will be deemed to have been received: (i) on personal delivery; (ii) on the first business day after its deposit for overnight delivery with a recognized overnight delivery service; (iii) if by electronic mail, on receipt of electronic confirmation of its receipt (but only if the electronic mail is followed by delivery by United States mail); or (iv) if mailed, on actual receipt (but only if sent by registered or certified mail, with return receipt requested, addressed to the other party's address below):

(a) if to the City:

Tarrant City Hall
City of Tarrant, Alabama
Attention: Mayor
1604 Pinson Valley Parkway
Tarrant, Alabama 35217

(b) if to the Developer:

Montgomery Transport, LLC
Attention: Rollins Montgomery
2563 Commerce Circle
Tarrant, Alabama 35217

With copy to:

Benjamin S. Goldman
2001 Park Place North, Ste. 1200
Birmingham, AL 35203

And with copy via email to:
bgoldman@handarendall.com

SECTION 7.6 Delegation and Assignment of this Agreement

(1) The City shall have no authority or power to, and shall not, delegate to any person the duty or obligation to observe or perform any agreement or obligation of the City hereunder. Nothing in this section, however, shall prevent the City from engaging appropriate consultants,

experts, agents or outside representatives to perform the City's obligations under this Agreement on behalf of the City.

(2) The City shall not have any authority or power to, and shall not, assign to any person any right of the City hereunder or any interest of the City herein.

(3) The Developer shall not have any authority or power to, and shall not, assign to any person any right of the Developer hereunder or any interest of the Developer herein without the express written consent of the City, which consent shall not be unreasonably withheld.

SECTION 7.7 Amendments

This Agreement may be amended or supplemented only by an instrument in writing duly authorized, executed and delivered by each party hereto.

SECTION 7.8 Survival; No Merger

All representations and warranties in this Agreement shall not be discharged or dissolved upon, but shall survive, the execution and delivery and any termination of this Agreement and shall not be merged into any deed given by the City to the Developer.

[Remainder of this page intentionally blank.]

Signatures appear on the following three (3) pages.]

IN WITNESS WHEREOF, the City has caused this Agreement to be executed in its name, under seal, and the same attested, all by officers thereof duly authorized thereunto, and the Developer has executed this Agreement under seal, and the parties have caused this Agreement to be dated the date and year first above written.

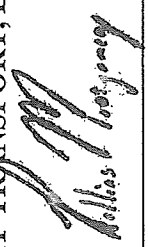
CITY OF TARRANT, ALABAMA

By: *Loxcil B. Tuck*
Name: Loxcil B. Tuck
Title: Mayor

[SEAL]

ATTEST: *Lillian A. Keith*
Its Clerk

MONTGOMERY TRANSPORT, LLC



Rollins Montgomery

By:

Name: Rollins Montgomery

Title: President

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Rollins Montgomery, whose name as President of Montgomery Transport, LLC, a limited liability company organized and existing under the laws of the State of Delaware, is signed to the foregoing Project Development Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer, executed the same voluntarily for and as the act of said limited liability company on the day the same bears date.

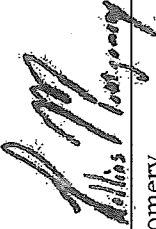
GIVEN under my hand and official seal this 8th day of August, 2016.



Notary Public

My commission expires: 7/10/19

MKM LEASING, LLC

By: 
Name: Rollins Montgomery
Title: President

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Rollins Montgomery, whose name as President of MKM Leasing, LLC, a limited liability company organized and existing under the laws of the State of Delaware, is signed to the foregoing Project Development Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer, executed the same voluntarily for and as the act of said limited liability company on the day the same bears date.

GIVEN under my hand and official seal this 8th day of August, 2016.


Notary Public

My commission expires: 7/10/19

EXHIBIT A
Description of Office Area

EXHIBIT A

Description of Office Area

2563 COMMERCE CIRCLE, TARRANT, AL 35217

PARCEL # 23 00 05 2 001 003.008

LOTS 8 & 9 TARRANT INDUSTRIAL PARK PB 170 PG 2

EXHIBIT B

Description of the Parking Area

EXHIBIT B

Description of Parking Area

DESCRIPTION FOR LOT 1 @

2518 COMMERCE WAY, TARRANT, AL 35217

PARCEL # 23 00 05 2 001 003.019

Lot 1, according to a Resurvey of Lot 15-B of a Resurvey of Lots 11 and 15-B of Tarrant Industrial Park, as recorded in Map Book 188, page 40, in the Probate Office of Jefferson County, Alabama.

SUBJECT TO:

A twenty foot (20') easement to establish and maintain a vegetative border for the reduction of ground water and storm water runoff, to improve surface water runoff, to provide for hydraulic control, and to provide a demonstration area for the City's Enviroplex as depicted in Exhibit B-1.

AND SUBJECT TO:

All easements for Tarrant Electric Department's transmission lines and any service lines required for the property herein described, including, but not limited to, as depicted in Exhibit G.

AND SUBJECT TO:

All other easements existing of record, including, but not limited to, the fifty foot (50') drainage easement.

AND SUBJECT TO:

The Agreement for Occupancy After Closing attached hereto as Exhibit H hereof.

AND TOGETHER WITH:

[DESCRIPTION CONTINUED ON NEXT PAGE.]

DESCRIPTION FOR LOT 2 @

2528 COMMERCE WAY, TARRANT, AL 35217

PARCEL # 23 00 05 2 001 003.021

Lot 3-AA, according to the Amended Map of the Resurvey of Lots 2, 3, and 15-C of a Resurvey of Lots 15-B of a Resurvey of Lots 11 and 15-B of Tarrant Industrial Park, as recorded in Map Book 203, page 91, in the Probate Office of Jefferson County, Alabama, Birmingham Division.

SUBJECT TO:

A twenty foot (20') easement to establish and maintain a vegetative border for the reduction of ground water and storm water runoff, to improve surface water runoff, to provide for hydraulic control, and to provide a demonstration area for the City's Enviroplex as depicted in Exhibit B-1.

AND SUBJECT TO:

All easements for Tarrant Electric Department's transmission lines and any service lines required for the property herein described, including, but not limited to, as depicted in Exhibit G and the May 26, 1945, Power Line Easement executed on behalf of James B. Clow & Sons, as recorded in Volume 3634, page 492, in the Probate Office of Jefferson County, Alabama.

AND SUBJECT TO:

All other easements existing of record, including, but not limited to, those depicted in The Amended Map of the Resurvey of Lots 2, 3, and 15-C of a Resurvey of Lots 15-B of a Resurvey of Lots 11 and 15-B of Tarrant Industrial Park, as recorded in Map Book 0203, page 0091.

EXHIBIT B-1

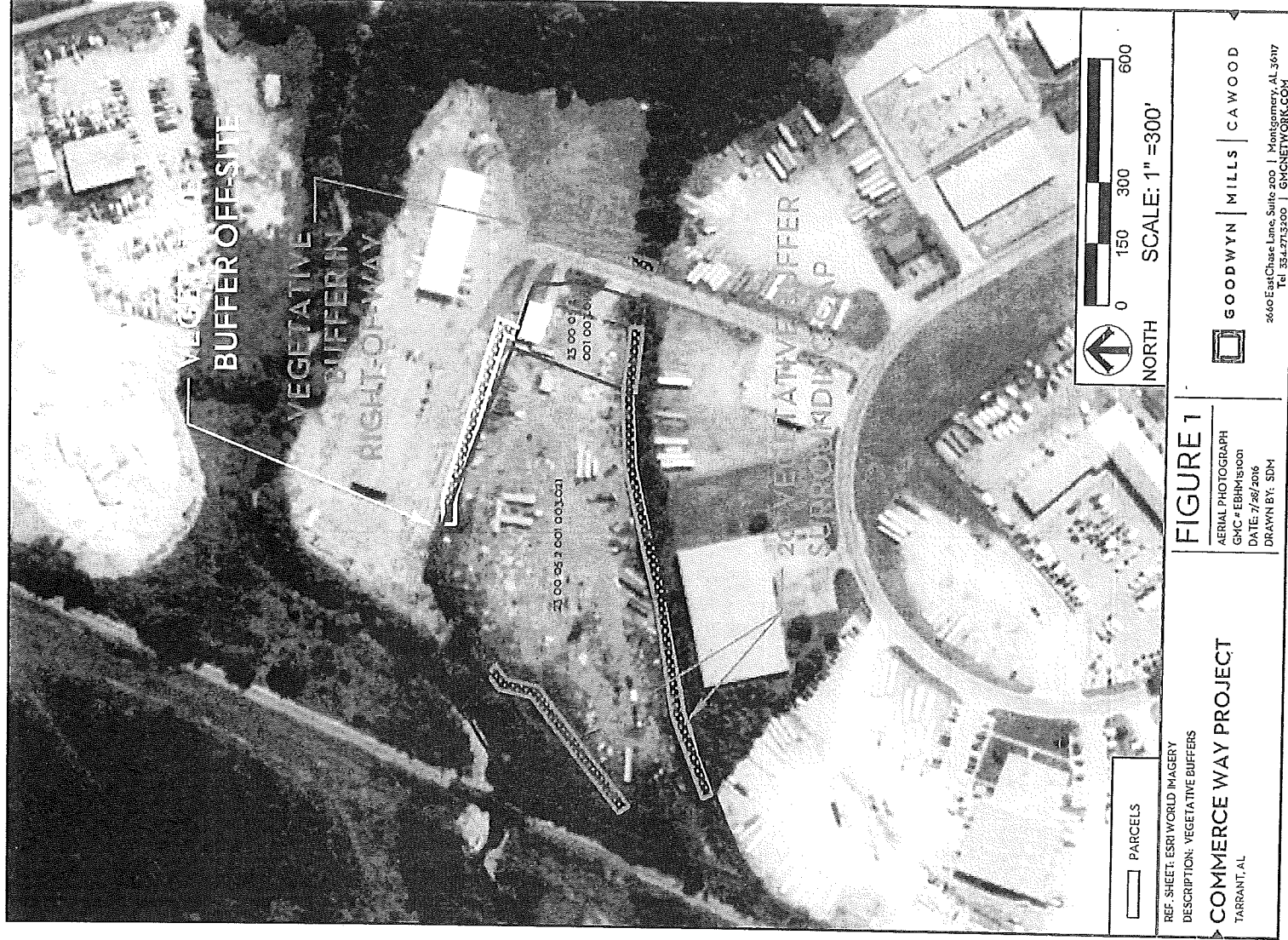


EXHIBIT C
Form of Ordinance Authorizing the Lease Agreement,
Including the Form of the Lease Agreement attached as Exhibit 1 Thereto

Whereupon, Councilmember Bryant moved for the adoption of Resolution Number 8254.

Motion for the adoption of Resolution Number 8254 was seconded by Mayor Pro Tem Horton, regularly put and upon roll call; the vote was as follows:

AYES: Councilmembers Anderson, Bryant, Horton, Matthews, Middlebrooks, and

Mayor Tuck

NAYS: None

ABSENT: None

The Recording Secretary announced the vote, whereupon Mayor Tuck declared Resolution Number 8254 duly and legally adopted.

Whereupon, Councilmember Middlebrooks introduced and read at length the following proposed ordinance:

ORDINANCE NO. 1091

AN ORDINANCE OF THE CITY OF TARRANT,
ALABAMA, TO AUTHORIZE THE LEASE OF CERTAIN
REAL PROPERTY.

WHEREAS, the City of Tarrant, Alabama (“the City”) desires to enter into the Commercial Lease Agreement attached hereto as Exhibit 1 hereof (the “Lease Agreement”) with Montgomery Transport, LLC and MKM Leasing, LLC (together “Lessees”);

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TARRANT AS
FOLLOWS:

Section 1. It is hereby established and declared that the following described real property of the City is no longer needed for public or municipal purposes, to-wit:

DESCRIPTION FOR LOT 1 @

Address

2518 Commerce Way, Tarrant, Alabama 35217

Parcel ID No.

23-00-05-2-001-003.019

Legal Description

Lot 1, according to a Resurvey of Lot 15-B of a Resurvey of Lots 11 and 15-B of Tarrant Industrial Park, as recorded in Map Book 188, page 40, in the Probate Office of Jefferson County, Alabama.

DESCRIPTION FOR LOT 2 @

Address

2528 Commerce Way, Tarrant, Alabama 35217

Parcel ID No.

23-00-05-2-001-003.021

Legal Description

Lot 3-AA, according to the Amended Map of the Resurvey of Lots 2, 3, and 15-C of a Resurvey of Lots 15-B of a Resurvey of Lots 11 and 15-B of Tarrant Industrial Park, as recorded in Map Book 203, page 91, in the Probate Office of Jefferson County, Alabama, Birmingham Division.

Section 2. The City having received an offer from Lessees to lease that real property described in Section 1, above, it is hereby declared to be in the best interest of the public and the City to lease said real property to Lessees under the terms and conditions set forth in the Lease Agreement.

Section 3. Pursuant to the authority granted by Section 11-47-21 of the *Code of Alabama* (1975), the Mayor of the City is hereby directed to execute the Lease Agreement in the name of the City. The City Clerk is hereby authorized to attest the Lease Agreement on behalf of the City. On behalf of the City, the Mayor is expressly authorized, in the Mayor's sole discretion, to provide or withhold any consent related to the Lease Agreement. On behalf of the City, the Mayor is expressly authorized to take all actions that are required by the Lease Agreement. On behalf of the City, the Mayor and City Attorney are authorized to enforce the City's rights under the Lease Agreement.

Section 4. This Ordinance shall become effective only upon the delivery to the Mayor of the Project Development Agreement, a copy of which is attached as Exhibit 1 to Resolution No. 8524 of the City, having been fully executed by and on behalf of Lessees.

ADOPTED AND APPROVED THIS THE 8th DAY OF AUGUST, 2016.

Loxcil B Tuck

LOXCIL B. TUCK, MAYOR

ATTEST:

Lillian A. Keith
Lillian A. Keith, City Clerk

CERTIFICATION OF CITY CLERK

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, Lillian A. Keith, City Clerk of the City of Tarrant, Alabama, do hereby certify that the above and foregoing is a true and correct copy of an Ordinance duly adopted by the City Council of the City of Tarrant, Alabama, on the 8th day of August, 2016.

The above and foregoing ordinance was published on the 8th day of August, 2016, by posting copies thereof in three public places within the City of Tarrant, one of which was the post office or the Mayor's office in the City of Tarrant.

Witness my hand and seal of office this 8th day of August, 2016.

Lillian A. Keith
Lillian A. Keith, City Clerk

EXHIBIT 1
TO ORDINANCE NO. 1091
Commercial Lease Agreement

Commercial Lease Agreement

between

City of Tarrant, Alabama, Lessor

and

Montgomery Transport, LLC, Lessee

and

MKM Leasing, LLC, Purchaser

dated as of

August 8, 2016

COMMERCIAL LEASE AGREEMENT

This COMMERCIAL LEASE AGREEMENT (the "Lease") is made and entered into as of this 8th day of August, 2016, by and between the CITY OF TARRANT, ALABAMA, an Alabama municipal corporation, having an office at 1604 Pinson Valley Parkway, Tarrant, Alabama 35217 ("Lessor"), MONTGOMERY TRANSPORT, LLC, a Delaware limited liability company that is registered to do business in the State of Alabama, having an office at 2563 Commerce Circle, Tarrant, Alabama 35217 ("Lessee"), and MKM Leasing, LLC, a Delaware limited liability company that is registered to do business in the State of Alabama, having an office at 2563 Commerce Circle, Tarrant, Alabama 35217 ("Purchaser").

Recitals:

Lessor desires to lease to Lessee and Lessee desires to lease from Lessor certain real property, including improvements thereon, for the purposes and subject to the terms and conditions set forth herein.

Agreement:

NOW THEREFORE, for and in consideration of the premises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, Lessor and Lessee hereby covenant and agree as follows:

Section 1. LEASED PROPERTY. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, those certain parcels of real property located at 2518 Commerce Way, Tarrant, Alabama 35217 and 2528 Commerce Way, Tarrant, Alabama 35217 as more particularly described on Exhibit A attached hereto and by reference made a part hereof, together with all of the beneficial appurtenances, privileges and easements pertaining thereto, and all improvements located thereon (the "Leased Property").

Section 2. TERM OF LEASE.

(a) **Initial Term.** The Leased Property shall be leased by Lessor to Lessee from the date hereof (the "Commencement Date") to the Expiration Date (as defined below) (the "Term"). "Expiration Date" shall mean the last day of the month in which occurs the sixty (60)-month anniversary of the Commencement Date, as same may be extended pursuant to Sections 2(b) and (c) hereof, or such earlier date on which the Term shall sooner end pursuant to any of the terms, covenants or conditions of this Lease or pursuant to Law.

(b) **Failure to Deliver Possession.** It is expressly contemplated by this Lease that Lessor shall not deliver vacant possession of the Leased Property to Lessee on the Commencement Date. Lessor shall have no liability to Lessee for any failure to deliver vacant possession of the Leased Property to Lessee on the Commencement Date. This Lease shall remain in full force and effect according to its terms, but the Term shall not commence until the

(b) **Late Charge.** If the Base Rent is not received on or before the tenth (10th) day of any month, Lessee shall pay a late charge equal to five percent (5%) of the total amount due for such month, and such payment shall be in addition to, and not in lieu of, any other remedy Lessor may have.

(c) **Determination of Base Rent for the Extension Term.** For each Extension Term, the Base Rent shall be Thirty-Six Thousand and 00/100 Dollars (\$36,000.00) per annum (Three Thousand Dollars and 00/100 Dollars (\$3,000.00) per month) to be paid in equal monthly installments, in advance, commencing on the first day of each month.

Section 4. NET LEASE PROVISION.

(a) **Net Rental.** The Base Rent provided for in Section 3 shall be net to Lessor. Accordingly, Lessee shall pay, as additional rent (collectively, the "Additional Rent"):

- (i) the insurance as provided in Section 7;
- (ii) the repairs and maintenance described in Section 9;
- (iii) all utilities as provided in Section 10; and
- (iv) the taxes and assessments as provided in Section 11.

The Base Rent and the Additional Rent are sometimes hereinafter referred to collectively as the "Rent". Unless otherwise specified herein, Lessee shall pay to Lessor all Additional Rent within ten (10) days after written demand therefore from Lessor. If Lessee shall fail to pay any demand for Additional Rent when due, then Lessee shall pay a late charge equal to five percent (5%) of the total amount due, and such payment shall be in addition to, and not in lieu of, any other remedy Lessor may have.

(b) **Proof of Payment.** Upon the request of Lessor, Lessee shall furnish to Lessor for its inspection, within ten (10) days after request therefor, official receipts of the appropriate authority, or such other proof as is reasonably satisfactory to Lessor, evidencing payment of any amount payable by Lessee under the provisions hereof.

(c) **Default in Payment.** All amounts which Lessee assumes or agrees to pay pursuant to this Lease, including any Additional Rent, which are not paid when due may be paid by Lessor. Any amount so paid by Lessor, together with interest at the rate of eighteen percent (18%) per annum (the "Default Rate") from the date of Lessor's payment, shall be due and payable by Lessee on demand by Lessor.

Section 5. CONDITION OF LEASED PROPERTY

(a) **Ordinances and Restrictions.** The Leased Property is leased to Lessee subject to existing easements, covenants and restrictions of record in the Probate Court of

Jefferson County, Alabama, and all laws, orders, ordinances, rules and regulations of governmental authorities.

(b) Improvements to Leased Property by Lessee. Lessee, at its option and at its sole cost and expense, may demolish, replace or materially alter any improvements, or any part thereof, or make any addition thereto, whether voluntarily or in connection with repairs required by this Lease ("Alteration" or "Alterations"). Each Alteration, when completed, shall be of such a character as not to reduce the value of the Leased Property below its value immediately before construction of such Alteration. In any event, the Rent owed by Lessee to Lessor pursuant to this Lease shall not be reduced or abated by the cost of any improvements constructed by Lessee on the Leased Property or by any increases in the value of the Leased Property as a result of improvements constructed by Lessee.

(c) Condition of Leased Property. Subject to the additional provisions of Section 5.5 of the Project Development Agreement entered into between Lessor, Lessee, and Purchaser on August 8, 2016, as it may be amended over time (the "Project Development Agreement"), Lessee accepts the Leased Property "AS IS, WHERE IS" in its present condition on the date of execution of this Lease, and as suited for the Business (as described herein). Lessor has made no representation or warranty as to the condition of the Leased Property or its suitability for any particular purpose. Lessor shall not be responsible for any latent defect or change of condition in the Leased Property, and the Base Rent shall in no event be withheld or diminished on account of any defect therein, nor any change of condition thereof, nor for any damage occurring thereto. Lessee acknowledges that Lessee is familiar with the Leased Property and is aware of all conditions and defects, latent or otherwise, existing on the Leased Property and is solely responsible for same in all respects. Furthermore, Lessee does hereby acknowledge and agree that Lessee is responsible in all respects for the condition of the Leased Property as of the execution and delivery of this Lease. Lessor has no obligation whatsoever for the repair, alteration, maintenance and replacement of the Leased Property except as expressly provided herein.

Section 6. USE OF LEASED PROPERTY.

(a) Business Use. Lessee covenants and agrees to use and occupy the Leased Property only for the operation of a Headquarters Facility, General Freight Trucking for Long Distance Truck Load, commercial offices, logistical operations, related operations, and parking (the "Business") and for no other purpose whatsoever, unless Lessor shall consent in advance in writing to any such purpose other than the Business.

(b) Compliance with Ordinances and Restrictions. Lessee shall comply with all laws, ordinances, orders, rules, regulations and requirements of governmental authorities regulating the use by Lessee of the Leased Property, including all environmental laws.

Section 7. INSURANCE.

(a) Lessee to Maintain Insurance. It is the intent of the parties that all risk of loss for the Leased Property be shifted to insurance to the maximum extent practicable. Accordingly, unless Lessor otherwise agrees in its sole discretion, Lessee shall maintain, or cause to be maintained, insurance covering the risks enumerated below. The premiums for such insurance shall be paid by Lessee, except for the coverages set forth in Section 7(j) below, which will be the responsibility for the party providing such insurance coverage. Such insurance shall be written on an occurrence basis unless Lessor otherwise consents in writing, which consent shall not be unreasonably withheld or delayed, but for errors and omissions insurance issued on a claims made basis, Lessor may condition such consent on the purchase of a one (1) year tail policy with such limits as Lessor may reasonably determine appropriate. The policy shall provide that: (a) such insurance shall be primary coverage without reduction or right of offset or contribution on account of any insurance provided by Lessor to itself or its officers, officials or employees; and (b) such insurance shall not be altered or cancelled without thirty (30) days' written notice to Lessor; such insurance shall name Lessor as an additional insured. The insurance policies purchased by Lessee must be issued by a company authorized to conduct business in the State or by a company acceptable to the Lessor and which has a rating of B++ or better by A.M. Best.

(b) Workers' Compensation, Employer's Liability. At all times prior to the expiration or earlier termination of this Lease during any construction conducted by or on behalf of Lessee in or on the Leased Property, Lessee shall maintain, and cause its contractors to maintain, Workers' Compensation Insurance as required by the Laws of the State. The Workers' Compensation policy must include Coverage B-Employer's liability limits of: Bodily Injury by Accident-\$2,000,000.00 for each accident; and Bodily Injury by Disease-\$2,000,000.00 for each employee. Lessee shall require all subcontractors performing work under this Lease to obtain an insurance certificate showing proof of Workers' Compensation and Employer's Liability Insurance.

(c) Property/Business Interruption. Lessee shall, at its sole cost and expense throughout the entire Term of this Lease:

(i) Keep any improvements on the Leased Property insured against loss or damage by fire, windstorm, flood, earthquake, and such other, further and additional risks as now are or hereafter may be embraced by the ISO special form and Builder's Risk extended coverage form or endorsements, with a deductible of no more than Five Thousand and 00/100 Dollars (\$5,000.00) per occurrence, in each case in amounts equal to the full replacement cost of the improvements from time to time. The full replacement cost shall be re-determined from time to time (but not more frequently than every two (2) years at the request of Lessor, by a Qualified Appraiser designated by Lessee and approved by Lessor; and

(ii) Maintain business interruption insurance covering loss of revenues or other income by Lessee by reason of total or partial suspension of, or interruption in, the operation of the Leased Property caused by damage or destruction of the Leased Property.

(d) **Public Liability.** At all times during the Term of this Lease, Lessee shall maintain a primary commercial general liability insurance ("CGL") policy covering all claims for bodily injury (including death) and property damage, including loss of use thereof, in an amount not less than Two Million and 00/100 Dollars (\$2,000,000.00) per occurrence and Five Million and 00/100 Dollars (\$5,000,000.00) aggregate, with deductible provisions not to exceed Ten Thousand and 00/100 Dollars (\$10,000.00) per occurrence, to include personal and advertising injury, general aggregate, products and completed operations aggregate insurance, and contract liability to cover all insurable obligations in this Lease. The policy limits shall be adjusted every two (2) years from the Commencement Date. Coverage shall be specific for this project or, upon approval of Lessor, covered under umbrella or pooled policies. The policy or policies must be on an "occurrence" basis unless waived by the Lessor. The CGL policy shall include contractual liability coverage, which shall be endorsed to state that indemnity obligations specified in this Lease are insured by the carrier.

(e) **Automobile.** At all times during the Term of this Lease, Lessee shall maintain business automobile insurance (with deductible provisions not to exceed Five Thousand and 00/100 Dollars (\$5,000.00) per occurrence) with liability limits of not less than One Million and 00/100 Dollars (\$1,000,000.00) combined single limit covering liability for Lessee's vehicles used in conjunction with the Leased Property, whether owned, non-owned or hired. The policy limits shall be adjusted every two (2) years from the Commencement Date.

(f) **Errors and Omissions.** Lessee shall obtain and maintain or cause to be obtained and maintained Professional Errors and Omissions Insurance covering all architects, engineers, specialists, and consultants in an amount and with coverage subject to the reasonable approval of Lessor. Coverages shall be specific for any construction work undertaken by Lessee on the Leased Property and not aggregated with insurance for other undertakings of the insureds.

(g) **Umbrella.** Lessee shall obtain and maintain an additional umbrella or all risk coverage in an amount of Two Million and 00/100 Dollars (\$2,000,000.00) for any one occurrence and Five Million and 00/100 Dollars (\$5,000,000.00) in the aggregate, which shall include all insured coverages required by this Section 7. The policy limits shall be adjusted every two (2) years from the Commencement Date.

(h) **No Invalidation of Insurance by Lessee.** Lessee agrees and covenants that it will not do or permit to be done in, to, or about the Leased Property any act or thing which will violate, suspend, invalidate or make inoperative any insurance pertaining to any buildings, other structures or improvements now located in or upon Leased Property or hereafter constructed and located thereon or therein; and, further, that Lessee will not permit any buildings, other structures or improvements at any time to be put, kept or maintained on the property in the condition that the same cannot be insured in the amount of the full insurable replacement value thereof.

(i) **Evidence of Payment of Premiums.** Lessee shall within ten (10) days of payment furnish to Lessor duplicate receipts or satisfactory evidence of the payment of all premiums on any and all insurance required to be carried by Lessee in accordance with this Lease. The insurance carrier shall give Lessor thirty (30) days' prior notice (with respect to nonpayment of premiums) of cancellation, modification or non-renewal.

(j) **Insurance Requirements for Subtenants, Contractors, and Managers.** Lessee also shall require the persons or entities described below to carry the following insurance:

- (i) Lessee shall require all of its subtenants to:
 - a. maintain customary insurance required of tenants in similar properties;
 - b. include Lessor and Lessee as additional insureds on their commercial general liability policies (or equivalent policies); and
 - c. obtain a waiver of subrogation endorsement in all policies in favor of Lessor and Lessee;
- (ii) Lessee shall require all of its subtenants' contractors, subcontractors, design-builders, construction managers, consultants, and other entities providing services, materials or labor to all or any portion of the Leased Property to:
 - a. include Lessor and Lessee as additional insureds in their commercial general liability policies; and
 - b. obtain a waiver of subrogation endorsement in all policies in favor of Lessor and Lessee.

(iii) Lessee shall require any third-party manager the Leased Property or any portion thereof to maintain at all times during the term of its management agreement:

- a. workers' compensation insurance as required by law and which shall include employer's liability insurance for all employees of the manager;
- b. liability insurance with a per occurrence combined single limit of at least Two Million and 00/100 Dollars (\$2,000,000.00) including the Lessor as additional insured;
- c. automobile liability insurance on owned, non-owned and hired motor vehicles used in connection with the operation of the Leased Property with a combined single limit for bodily injury and property damage of not less than One Million and 00/100 Dollars (\$1,000,000.00); and
- d. professional liability (Errors & Omissions) insurance coverage having a policy limit of not less than Two Million and 00/100 Dollars (\$2,000,000.00) per claim occurrence and Five Million and 00/100 Dollars (\$5,000,000.00) in the aggregate.
- e. The policy limits set forth above shall be adjusted every two (2) years from the Commencement Date.

Each of the required coverages, excluding the professional liability insurance, and automobile liability insurance, shall contain a waiver of subrogation endorsement, in form and substance reasonably satisfactory to Lessor, in favor of Lessor and Lessee.

Section 8. WAIVER OF SUBROGATION. Lessee hereby releases Lessor from any and all liability or responsibility to Lessee, or any other claim through or under Lessor by way of subrogation or otherwise, for any insured loss or damage covered by any insurance policies maintained on the Leased Property, whether pursuant to this Lease or otherwise.

Section 9. MAINTENANCE AND REPAIR.

(a) **Responsibility of Lessee.** Lessee shall throughout the Term, at Lessee's own cost and expense, put, keep and maintain the Leased Property in good condition, and shall make all necessary repairs and replacements to the Leased Property, including without limitation the plumbing system, heating and cooling systems, roofing and other interior and exterior structural and non-structural components. Any and all repairs for such damage shall be in quality and class at least equal to the original work prior to such work being damaged. Lessee shall be solely responsible for the maintenance and repair of the Leased Property (interior and

exterior, structural and non-structural), any and all fixtures, including but not limited to heating and cooling systems, furniture and personal property of Lessee. Lessee shall be responsible for repairing and/or replacing all damaged or broken window glass, whether as a result of the actions of Lessee (or its customers, business vendor or invitees) or as a result of any actions by third parties or acts of God, and shall be solely responsible for all damage occasioned thereby. Lessee shall also have the sole responsibility to maintain the exterior landscaping of the Leased Property, including mowing the grass, if any, on a regular basis as needed in the judgment of Lessor. Lessee hereby assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the Leased Property except to the extent not specifically assumed by Lessor herein.

(b) **Condition at End of Term.** Except as otherwise provided in this Lease, upon the expiration or termination of this Lease, Lessee will surrender the Leased Property to Lessor in substantially identical condition and repair as existed at the inception of this Lease, except for any improvements made pursuant to this Lease.

Section 10. UTILITIES.

(a) **Responsibility of Lessee.** Lessee shall furnish or arrange for the furnishing of all necessary utility services to the Leased Property, including, but not limited to, electricity, sewer service, gas and water, whether for heating, cooling, or otherwise. Lessor shall not be liable for any failure of water, gas, electric, or any other utility supply, or for injury or damage to person (including death) or property caused by or resulting from steam, gas, electricity, water, rain or snow which may flow or leak from any part of the Leased Property, or from any pipes, appliances or plumbing works, or from the street or other subsurface, or from any other place.

(b) **Payment to be Made by Lessee.** Lessee shall pay promptly all charges for heat, light, power, gas, water and other utilities used in or upon the Leased Property including sewer service, garbage service, water charges and any other utility-type charges imposed upon the Leased Property or any use thereof and shall indemnify and hold harmless Lessor from and against any and all liability on account thereof.

Section 11. TAXES AND ASSESSMENTS. Lessor shall deliver to Lessee a copy of any bills for real property taxes levied against the Leased Property at least thirty (30) days before the due date of such taxes. In the event the Leased Property is not assessed as a single tax parcel, both parties agree that Lessee shall only be liable to pay the proportion of real property taxes that the area of the Leased Property bears to the total area of the land included in the assessment. Lessee shall pay its part of any such bill on or before the due date of such taxes. Lessee shall exhibit to Lessor, from time to time upon reasonable request, official receipts evidencing payment of Lessee's share of such real property taxes.

Section 12. DESTRUCTION. If the Leased Property shall be partially damaged by any casualty which is not insurable under Lessee's insurance policy but which is insurable under Lessor's insurance policy, if Lessor shall have insurance on the Leased Property, Lessor shall, upon receipt of the insurance proceeds, repair the same. Nothing contained herein shall render

Lessor liable for any repairs to, rebuilding, or replacement of Lessee's property or the Leased Property. The provisions of this Section 12 shall be applicable only if Lessee's insurance shall not cover any damage to the Leased Property, and such damage is covered by Lessor's insurance policy, if any. Lessor and Lessee acknowledge and agree that Lessor shall not be required to obtain any insurance with respect to the Leased Property.

Section 13. PAYMENT FOR LESSEE BY LESSOR. If Lessee fails to procure the insurance required to be procured by Lessee under this Lease, or fails to pay any premium of insurance, fails to pay any utilities due as provided by this Lease, fails to satisfy its maintenance or repair obligations as provided by this Lease, fails to pay the taxes or assessments as provided by this Lease, or fails to pay any other sum in this Lease required to be paid by Lessee (other than Rent), Lessor may, after expiration of the applicable cure period, at Lessor's option, and as applicable, procure on behalf of Lessee any such insurance, and pay on behalf of Lessee any such payment or payments as may be necessary. Any sum(s) so paid or expended by Lessor on behalf of Lessee shall immediately be reimbursed and paid by Lessee to Lessor, as Additional Rent, within ten (10) days after demand by Lessor.

Section 14. CONDEMNATION.

(a) **Whole Taking.** If the whole of the Leased Property shall be acquired or taken by eminent domain or exercise of similar right by any governmental or quasi-governmental entity, then this Lease shall terminate as of the date Lessee is no longer permitted to use the Leased Property.

(b) **Partial Taking Rendering Remainder Unsuitable.** If any part of the Leased Property shall be taken rendering the remaining portion unsuitable for the Business, then this Lease shall terminate as of the date of such partial taking. If such partial taking is not extensive enough to render the Leased Property unsuitable for the Business of Lessee, then this Lease shall continue in full force and effect.

(c) **50% Taking.** If more than fifty percent (50%) of the Leased Property shall be taken, Lessor may, by written notice, terminate this Lease, such termination to be effective as of the date Lessee shall be deemed to have received such notice.

(d) **Proration of Prepaid Rents.** If this Lease is terminated as provided in this Section 14, Base Rent shall be paid up to the day that Lessee is no longer permitted to use the Leased Property and Lessor shall refund any Base Rent paid by Lessee in advance for any period subsequent to the date this Lease is terminated.

(e) **Waiver of Awards.** Lessee shall not be entitled to and expressly waives all claims to any condemnation award for any taking, whether whole or partial, and whether for the diminution in value of the leasehold or to the fee.

Section 15. MECHANIC'S LIENS.

(a) Lessee's Responsibility to Remove Liens. Should any mechanic's, materialmen's, or other lien be filed against the Leased Property, or any part thereof for any reason whatsoever by reason of Lessee's acts or omissions or because of a claim against Lessee, Lessee shall, at its own cost and expense, cause the same to be canceled and discharged of record by bond or otherwise within ten (10) days after notice by Lessor, and Lessee shall indemnify and hold harmless Lessor from and against all costs, liabilities, suits, penalties, claims and demands, including reasonable attorney's fees resulting therefrom.

(b) Ramifications for Failing to Remove Liens. If Lessee fails to comply with Section 15(a), Lessor shall have the option, without the necessity of investigating the validity thereof, of discharging or bonding any lien, charge order or encumbrance, and Lessee agrees to reimburse Lessor for all costs, expenses and other sums of money in connection therewith, as Additional Rent, with interest at the Default Rate specified herein.

Section 16. LIABILITY.

(a) Indemnification by Lessee. Lessee hereby agrees to indemnify, defend, and hold harmless Lessor, and Lessor's members, managers, officers, agents, contractors, affiliates, servants, licensees, invitees and employees, from and against, any and all suits, actions, causes of action, damages, liability, costs, expenses and attorney's fees, of any kind or nature whatsoever incurred, paid by or demanded to be paid by Lessor, its members, managers, officers, agents, contractors, affiliates, servants, licensees, invitees or employees, arising from, relating to or in connection with any loss of life, bodily or personal injury or property damage arising from or out of the use or occupancy of the Leased Property or any part thereof, including the parking areas and any common areas and facilities within the Leased Property, by any person or entities, including licensees and invitees of Lessee, and whether occasioned wholly or in part by any act or omission of Lessee, its agents, contractors, employees, servants, invitees, licensees or concessionaries or any other person, or otherwise. This indemnification is binding on the successors and assigns of the Lessee, and this indemnification survives the expiration or earlier termination of the Lease, or the dissolution or, to the extent allowed by law, the bankruptcy of the Lessee.

(b) Lessee Responsible for Leased Property. Lessee shall store its property in and shall occupy the Leased Property and all other portions of the Leased Property at its own risk, and hereby releases Lessor and its members, managers, officers, affiliates, servants, licensees, invitees and employees to the full extent permitted by law, from all claims of every kind resulting in loss of life, personal or bodily injury or property damage. Lessor and its members, managers, officers, affiliates, servants, licensees, invitees and employees shall not be responsible or liable at any time for any loss or damage to Lessee's merchandise, equipment, fixtures or other personal property of any nature whatsoever of Lessee, or to Lessee's Business.

(c) Lessor Not Liable to Others Claiming Through Lessee. Lessor and its members, managers, officers, affiliates, servants, licensees, invitees and employees shall not be responsible or liable to Lessee or to those claiming by, through or under Lessee, or Lessee's employees, agents, customers, invitees, licensees or visitors for any loss or damage to either the person or property of Lessee or any other person or entity whatsoever, that may be occasioned by

or through the acts or omissions of any persons or entities, whether occupying adjacent, connected or adjoining premises, or otherwise, and Lessee agrees to indemnify and hold harmless Lessor and its members, managers, officers, affiliates, servants, licensees, invitees and employees from and against all such loss or damage.

(d) **Defects: Lessor Not Liable.** Lessor shall not be responsible or liable to Lessee for any defect, latent or otherwise, in the building on the Leased Property or any of the equipment, machinery, utilities, appliances or apparatus therein, nor shall it be responsible or liable for any injury, loss or damage to any person or to any property of Lessee or other person caused by theft or otherwise; by or resulting from fire or explosion; by bursting, breakage, or by or from leakage of steam, snow, ice, or water; by or from running, backing up, seepage, dampness, or the overflow of water or sewerage in any part of said Leased Property; by broken glass; or from any injury or damage caused by or resulting from any defect or act or omission in the occupancy, construction, operation or use of any of the Leased Property, including the building, machinery, apparatus, or equipment thereon, by any person or by or from the acts of negligence of any occupant of the Leased Property.

(e) **Notice.** Lessee shall give prompt notice to Lessor in case of fire, destruction, casualty, damage or accidents in, on or around the Leased Property or of defects therein or in any fixtures or equipment.

Section 17. QUIET ENJOYMENT. Lessee, upon paying the rents and performing all of the terms of this Lease, shall peaceably and quietly enjoy the Leased Property, subject, nevertheless, to the terms of this Lease and to any mortgage, ground lease, or agreements to which this Lease is or shall become subordinated.

Section 18. FIXTURES AND EQUIPMENT.

(a) **Furniture, Trade Fixtures and Equipment of Lessee.** All improvements and additions to the Leased Property shall adhere thereto and become the property of Lessor, with the exception of: machinery, equipment, such additions as are usually classified as furniture and trade fixtures, and such other items (other than leasehold improvements) which have been brought onto the Leased Property by and at the expense of Lessee (collectively, "Lessee Property"). Any such Lessee Property shall remain the property of the Lessee, and Lessee may remove Lessee Property provided all terms and conditions of this Lease have been complied with by Lessee.

(b) **Damage Occasioned by Removal.** In case of damage to the Leased Property by reason of the removal of Lessee Property, Lessee shall, at its expense, make all repairs to the Leased Property reasonably required by Lessor.

(c) **Procedure at End of Term.** Notwithstanding anything contained in Section 18(a) hereof to the contrary, in the event Lessee does not remove any or all of the Lessee Property from the Leased Property before the expiration of this Lease ("Abandoned Lessee Property"), Lessee shall be deemed to have abandoned any such Abandoned Lessee Property.

Lessor may dispose of or otherwise deal with any Abandoned Lessee Property in whatever manner Lessor shall deem appropriate.

Section 19. SIGNS. Lessee shall have the right to place on or in the Leased Property such signs as it deems necessary and proper in the conduct of the Business; provided that: (i) such signs conform to all laws and municipal regulations; (ii) Lessee shall obtain such building permits or licenses as may be required for the erection and maintenance of any such signs and shall pay any required fees therefor; and (iii) such signs must be removed at the Lessee's expense at the termination of this Lease and any damage to the Leased Property occasioned thereby shall be repaired by Lessee, unless Lessor shall provide otherwise in writing.

Section 20. ASSIGNMENT AND SUBLEASING.

(a) Assignments. Lessee shall not assign this Lease in whole or in part without the prior written consent of Lessor, which may be withheld in Lessor's sole discretion. Any consent by Lessor to an assignment of this Lease shall not constitute a waiver of the necessity of such consent for subsequent assignment.

(b) Subleases.

(i) Lessee shall have the right, without the consent of Lessor, to enter into subleases with any person or entity who is not a debtor or debtor-in-possession in a voluntary or involuntary bankruptcy proceeding at the commencement of the sublease term for the use permitted by this Lease.

(ii) Each Sublease shall provide that: (i) it is subordinate and subject to this Lease; (ii) the fixed expiration date thereunder shall not extend beyond the Expiration Date; and (iii) at Lessor's option, on the earlier termination of this Lease pursuant to this Lease, the subtenant shall attorn to, or shall enter into a direct lease on the terms of its sublease with, Lessor for the balance of the unexpired term of the sublease, provided that, notwithstanding anything to the contrary contained in the sublease, Lessor shall not be: (A) liable for any previous act or omission of Lessee, as sublandlord under the sublease unless such act continues as a default under the sublease after the subtenant's attornment to Lessor and is the obligation of the sublandlord under the sublease; (B) responsible for any monies owing by Lessee to the credit of subtenant, except to the extent that Lessor is in possession of, or has control over, such monies; (C) subject to any offsets, claims, counterclaims, demands or defenses which subtenant may have against Lessee; (D) bound by any payments of rent which subtenant might have made for more than three (3) months in advance to Lessee; (E) bound by any covenant in the sublease to either: (1) undertake or complete any construction of, in or about the Leased Property (or

any part thereof); or (2) undertake or complete any construction of, in or about or the space demised by such sublease (or any part thereof); or (3) provide any money, by way of an allowance to subtenant or otherwise, to or for any such construction; (F) required to account for any security or other deposit hereunder, other any such deposit actually delivered to, or collected by, Lessor; (G) bound by any amendment or other modification of the sublease which was entered into in violation of this Lease; or (H) required to remove any person or entity occupying the space demised by the sublease (or any part thereof) unless Lessor shall have caused the space demised by such sublease to be occupied by a person or entity other than the subtenant.

(iii) Lessee shall not, without Lessor's consent, amend or modify any sublease in a manner which would cause such sublease (as amended or modified) to violate the provisions of this Section 20 and Lessee shall deliver to Lessor, or shall cause to be delivered to Lessor, within two (2) business days after the full execution and delivery thereof, a true and complete copy of any executed sublease or any material amendment and modification thereto.

(c) **Assumption.** Any proposed assignee or subtenant of Lessee shall assume the obligations hereunder and deliver to Lessee an assumption agreement in a form satisfactory to Lessor on the effective date of transfer; provided, however, except as is specifically set forth hereinabove, upon any sublease or assignment by Lessee hereunder, Lessee shall remain responsible for all obligations of Lessee hereunder and Lessor shall not be required to seek enforcement of the terms of this Lease against any such sublessee or licensee.

Section 21. PURCHASE OPTION.

(a) **Agreement to Sell.** At Lessee and Purchaser's joint election, Lessor agrees to sell and convey to Purchaser the Leased Property upon the terms and conditions hereinafter set forth, all right, title and interest of Lessor in and to the Leased Property, subject to and limited by the easement described in Exhibit B-1 to the Project Development Agreement ("Easement"). Notwithstanding anything herein to the contrary, "Leased Property" does not include any subtenant fixtures or other property belonging to the subtenants at the Leased Property, or any item leased from third-parties. Purchaser is not obligated to purchase the Leased Property from Lessor, but if Purchaser does so, it does so subject to the terms and conditions set forth herein.

(b) **Notice of Intention to Purchase.** Lessee and Purchaser may jointly give notice of their intention for Purchaser to purchase the Leased Property at any time during the Term, provided that notice is given in writing to Lessor no less than one hundred twenty (120) days before the Expiration Date.

(c) **AS-IS, WHERE IS Purchase.**

(i) Purchaser acknowledges that Purchaser has made thorough inspections and investigations of the Leased Property and Purchaser agrees to take title to the Leased Property "AS-IS, WHERE IS, AND WITH ALL FAULTS" and in the condition existing as of the Closing Date, subject to reasonable use, ordinary wear and tear and without any reduction in or abatement of the Purchase Price (as defined below). Purchaser has undertaken all such investigations of the Leased Property as Purchaser deems necessary or appropriate under the circumstances as to the status of the Leased Property and the existence or non-existence of curative action to be taken with respect to any hazardous or toxic substances on or discharged from the Leased Property, and based upon same, Purchaser is and will be relying strictly and solely upon such inspections and examinations and the advice and counsel of its own consultants, agents, legal counsel and officers.

(ii) Neither Lessor, Lessee, nor Purchaser is relying on any statement or representation not expressly stated in this Lease. Lessee and Purchaser specifically confirm and acknowledge that in entering into the agreement set forth in this Lease, Lessee and Purchaser have not been induced by, and have not relied upon, whether express or implied, warranties, guaranties, promises, statements, inducements, representations or information pertaining to the Leased Property or its uses, the physical condition, environmental condition, state of title, income, expenses or operation of the Leased Property, or any other matter or thing with respect thereto, written or unwritten, whether made by Lessor or any agent, employee or other representative of Lessor, or any broker or any other person representing (or purporting to represent) Lessor, which are not expressly set forth in this Lease. Lessor shall not be liable for or bound by any written or unwritten statements, representations, warranties, brokers' statements or other information pertaining to the Leased Property furnished by Lessor, any broker, any agent, employee or other actual (or purported) representative of Lessor, or any person, unless and only to the extent the same are expressly set forth in this Lease.

(iii) Lessor makes no warranty with respect to the presence of any hazardous or toxic substances on, above, beneath or discharged from the Leased Property (or any adjoining or neighboring property) or in any water on or under the Leased Property. The Closing hereunder shall be deemed to constitute an express waiver of Purchaser's right to recover from Seller, and forever releases, covenants not to sue and discharges Seller from, any and all damages, demands, claims, losses, liabilities, penalties, fines, liens,

judgments, costs or expenses whatsoever, including attorneys' fees and costs, whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with the physical condition of the Leased Property.

- (iv) The provisions of this Section shall survive the Closing and shall not be deemed to have merged into any of the documents executed or delivered at the Closing.

(d) **Purchase Price and Deposit.** "Purchase Price" shall mean Three Hundred Fifty-Thousand Dollars (\$350,000.00) less any amounts of Base Rent actually paid by Lessee to Lessor prior to the Closing (as defined below). The balance of the Purchase Price shall be paid to Lessor on the Closing Date (as defined below), subject to any credits or apportionments as provided for herein, simultaneously with delivery of the deed, by certified or official bank checks.

(e) **Closing Date.** The closing of the transaction contemplated by this Section (the "Closing") shall take place at a mutually agreeable time and date, not to occur more than sixty (60) days after the latest of the following (the "Closing Date"): (i) Lessee and Purchaser have provided written notice that they are jointly exercising the purchase option pursuant to this Section, (ii) the United States Environmental Protection Agency ("EPA")-determined closeout of Tarrant, AL EPA Region 4 Brownfield Cleanup Grant No. 00D47216-0, and (iii) the Alabama Department of Environmental Management ("ADEM")-determined closeout of all revolving loan funds for ADEM Voluntary Cleanup Program Site number 461-073-127. It is the intent of the parties that the inclusion of the purchase option in this Section in no way endanger or compromise the receipt of funding from the EPA or ADEM for the benefit of the Leased Property, and the parties agree to take all reasonable measures necessary to ensure the successful administration of such EPA grant and ADEM revolving loan funds. Lessor shall have the right to select the closing attorney, and the Closing shall take place at the offices of the closing attorney. In the event that Lessor sells and conveys the Leased Property to the Purchaser pursuant to this Section, the Expiration Date of this Lease shall be established as the date of the Closing.

(f) **Conveyance.** Lessor agrees to convey the Leased Property to Purchaser by statutory warranty deed, free and clear of all encumbrances except for the Permitted Exceptions as herein set forth. Lessor shall provide at Purchaser's expense within fourteen (14) days after the Lessee has provided the written notice that it is exercising its purchase option pursuant to this Section a standard owner's title insurance commitment for the issuance of an owner's title insurance policy by Land Title (or other title company specified by Lessor) in the amount of Three Hundred Fifty and 00/100 Dollars (\$350,000.00) showing fee simple title to the Leased Property to be in the City, together with the document relating to exceptions to the title referred to therein. Purchaser shall notify Lessor of any unacceptable liens, encumbrances, restrictions, or other defects or matters ("title objections") within ten days of having been provided the same. In the event that Purchaser does provide title objections within said time period, Lessor shall elect (by written notice to Purchaser) to cure or decline to correct such title objections. If Lessor advises Purchaser that Lessor is unwilling or unable to correct any or all

title objections or if Lessor fails to respond, within five (5) days thereafter, Purchaser may elect not to proceed with the sale contemplated by this Section by giving written notice to Lessor. In the event that Purchaser fails to provide such notice during such time, Purchaser shall be deemed to have accepted such title and such matters shall be deemed to be "Permitted Exceptions." At or before the Closing, Purchaser agrees to execute a permanent easement in favor of Lessor to provide for the Easement. Permitted Exceptions shall include the Easement.

(g) Costs. At closing, Purchaser shall pay for the owner's title insurance policy to be issued by Land Title pursuant to the title commitment and the closing attorney's fees.

(h) Proration. Because of the prior landlord/tenant relationship of the parties, there shall be no proration of items customarily prorated in connection with the closing of real estate, including all ad valorem taxes, as of the closing date. Purchaser shall be responsible for any and all such items.

(i) Acknowledgments. Lessor, Lessee, and Purchaser acknowledge that they have not relied upon advice or representations of anyone relative to (i) the legal or tax consequences of this the agreements set forth in this Lease and the sale, purchase or ownership of the Leased Property; (ii) the structural condition of the Leased Property, including condition of the roof and basement; (iii) construction materials; (iv) the nature and operating condition of the electrical, heating, air conditioning, plumbing, water heating systems and appliances; (v) the availability of utilities or sewer service; (vi) the character of the neighborhood; (vii) the investment or resale value of the Leased Property including projections of income or operating expenses; (viii) compliance requirements of the American with Disabilities Act; (ix) the existence of any hazardous or toxic waste, substance, or material, including without limitation any asbestos or any oil or pesticides; (x) any state of facts which would be disclosed by an accurate survey of the Leased Property; or (xi) any other matters affecting their willingness to sell or purchase the Leased Property on the terms and price herein set forth. Lessor, Lessee, and Purchaser have sought and obtained independent advice relative thereto.

Section 22. LESSOR'S RIGHT TO INSPECT LEASED PROPERTY. Lessor, its agents and representatives, shall have the right to enter into and upon the Leased Property, or any part thereof, at all reasonable hours for the purpose of examining the same.

Section 23. DEFAULT.

(a) Events of Default. The following shall constitute events of default hereunder: (i) failure by Lessee to pay any Rents or other charges when due when such failure continues for ten (10) days; (ii) failure by Lessee or Purchaser to comply with any provision of this Lease other than payments of Rent, when such failure is not cured within thirty (30) days after written notice to Lessee; (iii) Lessee deserts, abandons, vacates or fails to continuously operate its Business in all or any portion of the Leased Property; (iv) Lessee or Purchaser become the subject of an action or proceeding relating to bankruptcy or insolvency; (v) Lessee or Purchaser shall make any material misrepresentation herein, or other materials provided by Lessee or Purchaser in connection with negotiating or entering into this Lease; (vi) any

fraudulent conveyance or making of assignment by Lessee for the benefit of any or all of its creditors; (vii) Lessee does or permits to be done anything which creates a lien upon the Leased Property; (viii) failure by Lessee or Purchaser to comply with any term or condition of this Lease. The notice and cure periods provided herein are in lieu of, and not in addition to, any notice and cure periods provided by law.

(b) **Remedies.** Upon the occurrence of any of such events of default, Lessor shall have the option of pursuing any one or more of the following remedies, without notice or demand except as specifically provided herein: (i) to either annul and terminate this Lease on ten (10) days written notice to Lessee and Purchaser, and thereupon re-enter and take possession of the Leased Property and dispossess Lessee; (ii) to seek any declaratory, injunctive or other equitable relief, and specifically enforce this Lease, or restrain or enjoin a violation or breach of any provision hereof; (iii) to sue for and collect any unpaid rent or other amounts due; (iv) Lessor may without terminating or canceling this Lease declare all amounts and Rent due under this Lease for the remainder of the existing Term (or any applicable extension or renewal thereof) to be immediately due and payable, and thereupon all Rent and other charges due hereunder to the end of the Term of any renewal term, if applicable, shall be accelerated; and (v) upon ten (10) days written notice to Lessee and Purchaser, to re-enter, repossess and re-let the Leased Property from time to time as an agent of Lessee, it being agreed by Lessee that such reentry and/or re-letting shall not discharge Lessee from any liability or obligations hereunder, except that Base Rent plus Additional Rent collected as a result of such re-letting shall be a credit on the Lessee's liability for Rents under the terms of this Lease. Nothing herein, however, shall be construed to require Lessor to re-enter and re-let in such event. Any such re-entry upon default shall be allowed by Lessee without hindrance and Lessor shall not be liable in damages for any such reentry or guilty of trespass or forcible entry. Any and all rights and remedies given under this Lease to Lessor in the event of any such default shall be cumulative, in addition to, and without waiver of or in derogation of, any right or remedy given to Lessor under any law now or hereafter in effect.

Section 24. ATTORNEY'S FEES. In the event that Lessor brings legal action against Lessee or Purchaser arising out of this Lease, Lessor shall be entitled to recover from Lessee or Purchaser all costs of suit and reasonable attorney's fees.

Section 25. END OF TERM.

(a) **Extinguishment of Lessee's Rights.** Upon the termination or expiration of this Lease from any cause, all rights and interests of Lessee, and all persons whomsoever claiming by, through or under Lessee (with the exception of the rights of Lessor arising hereunder), shall immediately cease and terminate, and the Leased Property, all improvements and all personalty located thereon, shall thence forward constitute and belong to and be the absolute property of Lessor or Lessor's successors and assigns, without further act or conveyance, and without liability to make such compensation to Lessee or to anyone whomsoever, and free and discharged from all and every lien, encumbrance, claim and charge of any character created or attempted to be created by Lessee at any time. Lessee agrees, at the termination of this Lease, to surrender unto Lessor, all and singular the Leased Property with the then existing improvements constructed and located thereon and therein, in the same condition as

when the construction of improvements was completed, only natural and normal wear and tear excepted.

(b) **Prepaid Items Assigned.** Upon the expiration of the Term of this Lease, or upon the prior termination of this Lease from any cause, all expense items prepaid by Lessee with respect to constructing, operating, maintaining and protecting the Leased Property, including, but not limited to, prepaid insurance premiums, any tax and utility deposits, shall inure to the benefit of and become the property of Lessor and to this extent Lessee does hereby transfer, assign and convey any such prepaid expense items to Lessor.

(c) **Amounts Remaining in Funds and Accounts.** Upon the expiration of the Term of this Lease, or upon the prior termination of this Lease from any cause, any amounts remaining in any fund, account or reserve created in connection with the maintenance and management of the Leased Property shall inure to the benefit of and become the property of Lessor and to this extent Lessee does hereby transfer, assign and convey any such funds to Lessor.

Section 26. HOLD OVER. Unless Lessor expressly agrees otherwise in writing, Lessee shall pay Lessor one hundred fifty percent (150%) of the amount of Rent then applicable, or the highest amount permitted by law, whichever shall be less, for each month Lessee shall retain possession of the Leased Property or any part thereof after expiration or earlier termination of this Lease, together with all damages sustained by Lessor on account thereof. The foregoing provision shall not serve to extend the Term. Notwithstanding the foregoing, at any time before or after expiration or earlier termination of the Lease, Lessor may serve notice advising Lessee of the amount of Rent and other terms required should Lessee desire to enter a month-to-month tenancy, and if Lessee shall hold over more than one full calendar month after such notice, Lessee shall thereafter be deemed a month-to-month tenant on the terms and provisions of this Lease then in effect as modified by Lessor's notice, and except that Lessee shall not be entitled to any renewal or expansion of rights contained in this Lease or any amendments thereto.

Section 27. FORCE MAJEURE. Lessor shall be excused for the period of any delay in the performance of any obligations hereunder when prevented from so doing by cause or causes beyond Lessor's control which shall include without limitation, civil commotion, war, war-like operations, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, fire and other casualty, inability to obtain any material services or financing or through acts of God.

Section 28. WAIVER OF LIABILITY. Anything contained in this Lease to the contrary notwithstanding, Lessee agrees that Lessee shall look solely to the estate and property of Lessor in the land and buildings comprising the Leased Property for the collection of any judgment (or other judicial process) requiring the payment of money by Lessor in the event of any default or breach by Lessor with respect to any of the terms and provisions of this Lease to be observed and/or performed by Lessor; subject, however, to the prior rights of the holder of any mortgage covering the Leased Property; and no other assets of Lessor shall be subject to levy, execution or other judicial process for the satisfaction of Lessee's claim. This provision shall not be deemed, construed or interpreted to be or constitute an agreement, expressed or

implied, between Lessor and Lessee that Lessor's interest hereunder and in the Leased Property shall be subject to impressment of an equitable lien or otherwise.

Section 29. NOTICES. Each notice, request, and communication required under this Lease shall be in writing. It will be deemed to have been received: (i) on personal delivery; (ii) on the first business day after its deposit for overnight delivery with a recognized overnight delivery service; (iii) if by electronic mail, on receipt of electronic confirmation of its receipt (but only if the electronic mail is followed by delivery by United States mail); or (iv) if mailed, on actual receipt (but only if sent by registered or certified mail, with return-receipt requested, addressed to the other party's address below):

Lessor:

City of Tarrant, Alabama
ATTN: Mayor
1604 Pinson Valley Parkway
Tarrant, AL 35217

with a copy to:

Benjamin S. Goldman
Hand Arendall LLC
2001 Park Place North, Ste. 1200
Birmingham, AL 35213
And via email to: bgoldman@handarendall.com

Lessee:

Montgomery Transport, LLC
ATTN: Rollins Montgomery
2563 Commerce Circle
Tarrant, AL 35217

Purchaser:

MKM Leasing, LLC
ATTN: Rollins Montgomery
2563 Commerce Circle
Tarrant, AL 35217

Section 30. INVALIDITY. If any term or provision of this Lease, or the application thereof to any person or circumstances, shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

Section 31. BINDING EFFECT. The covenants and agreements herein contained shall be binding upon and inure to the benefit of the respective parties hereto, their legal representatives, heirs, executors, administrators, successors and assigns (subject to the restrictions against assignment as set forth above).

Section 32. USE OF GENDER OR NUMBER. Words of any gender used in this Lease shall be held to include any other gender, and words in the singular number shall be held to include the plural, and vice-versa when the context requires.

Section 33. CAPTIONS OR TITLES. The captions or titles used throughout this Lease are for reference and convenience only and shall in no way define, limit or describe the scope or intent of this Lease.

Section 34. GOVERNING LAW. This Lease shall be governed by, and construed in accordance with, the internal laws of the State of Alabama without regard to its principles concerning conflicts of law.

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the date first above written.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

SIGNATURES APPEAR ON THE FOLLOWING THREE (3) PAGES.]

IN WITNESS WHEREOF, the Lessor has caused this Commercial Lease Agreement to be executed in its name, under seal, and the same attested, all by officers thereof duly authorized thereunto; the Lessee has executed this Commercial Lease Agreement under seal; the Purchaser has executed this Commercial Lease Agreement under seal; and the parties have caused this Commercial Lease Agreement to be dated the date and year first above written.

CITY OF TARRANT, ALABAMA

By: Loycil B Tuck

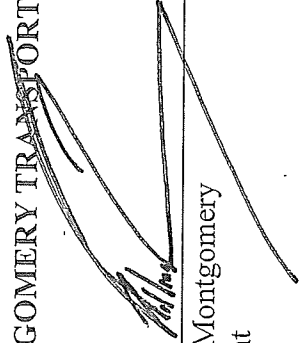
Name: Loycil B. Tuck

Title: Mayor

[SEAL]

ATTEST: Deleani A. Keith
Its Clerk

MONTGOMERY TRANSPORT, LLC

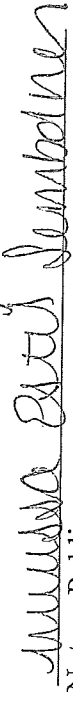


By: _____
Name: Rollins Montgomery
Title: President

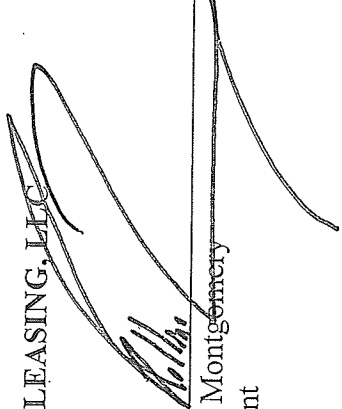
STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Rollins Montgomery, whose name as President of Montgomery Transport, LLC, a limited liability company organized and existing under the laws of the State of Delaware, is signed to the foregoing Commercial Lease Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily for and as the act of said limited liability company on the day the same bears date.

GIVEN under my hand and official seal this 9 day of AUGUST, 2016.


Notary Public
My commission expires: 8/19/2016

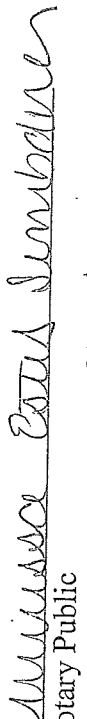
MKM LEASING, LLC


Name: Rollins Montgomery
Title: President

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Rollins Montgomery, whose name as President of MKM Leasing, LLC, a limited liability company organized and existing under the laws of the State of Delaware, is signed to the foregoing Commercial Lease Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily for and as the act of said limited liability company on the day the same bears date.

GIVEN under my hand and official seal this 9 day of August, 2016.


Notary Public

My commission expires: 9/29/2019

EXHIBIT A
Description of the Leased Property

EXHIBIT A

Description of the Leased Property

**DESCRIPTION FOR LOT 1 @
2518 COMMERCE WAY, TARRANT, AL 35217
PARCEL # 23 00 05 2 001 003.019**

Lot 1, according to a Resurvey of Lot 15-B of a Resurvey of Lots 11 and 15-B of Tarrant Industrial Park, as recorded in Map Book 188, page 40, in the Probate Office of Jefferson County, Alabama.
SUBJECT TO:

A twenty foot (20') easement to establish and maintain a vegetative border for the reduction of ground water and maintain a water runoff, to improve surface water runoff, to provide for hydraulic control, and to provide a demonstration area for the City's Enviroplex as depicted in Exhibit B-1 to the Project Development Agreement.

AND SUBJECT TO:

All easements for Tarrant Electric Department's transmission lines and any service lines required for the property herein described, including, but not limited to, as depicted in Exhibit G to the Project Development Agreement.

AND SUBJECT TO:

All other easements existing of record, including, but not limited to, the fifty foot (50') drainage easement.

AND SUBJECT TO:

The Agreement for Occupancy After Closing attached as Exhibit H to the Project Development Agreement.

AND TOGETHER WITH:

[DESCRIPTION CONTINUED ON NEXT PAGE.]

DESCRIPTION FOR LOT 2 @

2528 COMMERCE WAY, TARRANT, AL 35217

PARCEL # 23 00 05 2 001 003.021

Lot 3-AA, according to the Amended Map of the Resurvey of Lots 2, 3, and 15-C of a Resurvey of Lots 15-B of a Resurvey of Lots 11 and 15-B of Tarrant Industrial Park, as recorded in Map Book 203, page 91, in the Probate Office of Jefferson County, Alabama, Birmingham Division.

SUBJECT TO:

A twenty foot (20') easement to establish and maintain a vegetative border for the reduction of ground water and storm water runoff, to improve surface water runoff, to provide for hydraulic control, and to provide a demonstration area for the City's Enviroplex as depicted in Exhibit B-1 to the Project Development Agreement.

AND SUBJECT TO:

All easements for Tarrant Electric Department's transmission lines and any service lines required for the property herein described, including, but not limited to, as depicted in Exhibit G to the Project Development Agreement and the May 26, 1945, Power Line Easement executed on behalf of James B. Clow & Sons, as recorded in Volume 3634, page 492, in the Probate Office of Jefferson County, Alabama.

AND SUBJECT TO:

All other easements existing of record, including, but not limited to, those depicted in The Amended Map of the Resurvey of Lots 2, 3, and 15-C of a Resurvey of Lots 15-B of a Resurvey of Lots 11 and 15-B of Tarrant Industrial Part, as recorded in Map Book 0203, page 0091.

Whereupon, Councilmember Middlebrooks moved that the rules and procedures of the council be suspended and that unanimous consent be given for the immediate consideration of and action on said ordinance 1091, which motion was seconded by Mayor Pro Tem Horton and said motion being put to vote, the following vote was recorded:

AYES: Councilmembers Anderson, Bryant, Horton, Matthews, Middlebrooks and Mayor Tuck

NAYS: None

Whereupon, Mayor Tuck thereupon declared that the motion for unanimous consent for immediate consideration of and action on said ordinance and the ordinance had been unanimously carried.

Whereupon, Councilmember Middlebrooks moved for the adoption of Ordinance Number 1091. Said motion was seconded by Mayor Pro Tem Horton, regularly put and upon roll call the vote thereon was as follows:

AYES: Councilmembers Anderson, Bryant, Horton, Matthews, Middlebrooks and Mayor Tuck

NAYS: None

The Recording Secretary announced the vote, whereupon Mayor Tuck declared that Ordinance Number 1091 duly and legally adopted.

Mayor Tuck stated that the next item on the agenda was a Resolution to regarding the Bid Award for the Project at 2518 and 2528 Commerce Way, Tarrant, Alabama. Attorney Goldman then addressed the Councilmembers regarding the bids. Attorney Goldman said that Keith Strickland of Goodwyn, Mills, and Cawood, had been involved with the bid openings and thoroughly looked at all of the applicants and the qualifications therein. Attorney Goldman told the Mayor and Councilmembers that Bostick Trucking had submitted the lowest bid, which was \$298,000.00. Attorney Goldman stated that Mr. Strickland was impressed with the qualifications that Mr. Bostick provided. Attorney Goldman also discussed all the bids that had been received.

Attorney Goldman discussed the fact that the City only had \$252,000.00 to spend for the Project. Attorney Goldman told the Mayor and City Councilmembers that Montgomery Transport had agreed to pay the additional \$ 45,000.00 to complete the project if it was approved. General discussion followed. Attorney Goldman answered all questions that were asked and asked the Councilmembers if he need to clarify anything regarding the specifics of the bid and proposal, that was made. More discussion followed.

Whereupon, Mayor Pro Tem Horton introduced the following proposed resolution:

RESOLUTION NO. 8255

A RESOLUTION ACCEPTING SAID BIDS RECEIVED FOR THE
COMMERCE WAY SITE PROPERTY IMPROVEMENTS PROJECT

BE IT RESOLVED by the City Council of the City of Tarrant, Alabama while in special session on Monday, August 8, 2016, at 6:00 p.m. as follows:

Section 1. The bids received August 8, 2016, at 10:00 a.m. for the Commerce Way Site Property Improvements Project are hereby accepted.

Section 2. The Mayor is hereby authorized to contract with the lowest most responsible bid received, that being Bostic Trucking & Excavating, Inc., for the total lump sum price of \$298,000.00, as specified in Exhibit A attached hereto.

Section 3. \$252,500.00 of the cost of said project shall be paid from the City of Tarrant ("City") General Fund, and \$45,500.00 of the cost of the said project shall be paid directly by Montgomery Transport, LLC, a Delaware limited liability company that is registered to do business in the State of Alabama ("MT"), and/or by MKM Leasing, LLC, a Delaware limited liability company that is registered to do business in the State of Alabama ("MKM"), as provided by the Project Development Agreement, a copy of which is attached as Exhibit 1 to Resolution No. 8524 of the City.

Section 4. This Resolution shall become effective only upon the delivery to the Mayor of the Project Development Agreement, a copy of which is attached as Exhibit 1 to Resolution No. 8524 of the City, having been fully executed by and on behalf of MT and MKM.

ADOPTED AND APPROVED THIS THE 8th DAY OF August, 2016.

Loxcil B Tuck

LOXCIL B. TUCK, MAYOR

ATTEST:

Lillian A. Keith
Lillian A. Keith, City Clerk

CERTIFICATION OF CITY CLERK

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, Lillian A. Keith, City Clerk of the City of Tarrant, Alabama, do hereby certify that the above and foregoing is a true and correct copy of a Resolution duly adopted by the City Council of the City of Tarrant, Alabama, on the 8th day of August, 2016.

Witness my hand and seal of office this 8th day of August, 2016.

Lillian A. Keith
Lillian A. Keith, City Clerk

EXHIBIT A
TO RESOLUTION NO. 8255

**Bid Proposal Sheet
 COMMERCE WAY SITE PROPERTY IMPROVEMENTS
 CITY OF TARRANT, ALABAMA
 GMC Project No. CBHM160071**

Proposal of \$299,000.00

Bidder agrees to perform all the work described in the specifications and shown on the plans, for the following unit prices:

Item	Qty.	Unit	Description	Unit Price	Total Price
1.1	1	LS	Placement of 12" of clay soil and 6" of crushed aggregate base over an approximate 6 acre graded site as shown in the plans and as described in the associated specifications.	\$15.00 per cy fill	
				\$ 23.00 per Ton 625B	\$ 299,000.00

BID TOTAL \$299,000.00

The above unit prices shall include all labor, materials, hauling, storing, removal, overhead, profit, insurance, etc., to cover the finished work of the several items called for. Bidder understands that the Owner reserves the right to reject any or all bids and to waive irregularities in the bidding.

This bidder agrees that this bid shall be good and may not be withdrawn for a period of 90 calendar days after the scheduled closing time for receiving bids. Upon receipt of written notice of the acceptance of this bid, bidder will execute the formal contract attached within ten (10) days and deliver a Surety Bond or Bond, as required by Paragraph 23 of the General Conditions. The bid security attached in the sum of ten thousand dollars shall become the property of the Owner in the event the contract and bond are not executed within the time set forth, as liquidated damages for the delay and additional expense to the Owner caused there.

Respectfully submitted:
 By: Wanda Bostic

Signature
 Wanda Bostic, Vice-President
 Bostic Trucking and Excavating, Inc.
 Company
 P.O. Box 38 Watson, AL 35181
 (Business Address & Zip Code)

(SEAL - If the bid is by a corporation)

Bostic Trucking & Excavating, Inc.

P.O. Box 38
Watson, AL 35181
Phone: (205) 323-8840 Fax: (205) 323-8839
E-Mail: bostictrucking@aol.net

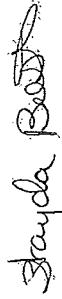
8/8/16

Goodwyn | Mills | Cawood
2701 First Ave South
Suite 100
Birmingham, AL 35253

Re: Tarrant Commerce-Way Project

This letter is to confirm that Bostic Trucking & Excavating, Inc. understands that the Tarrant Commerce Way project is a lump sum contract and all work required in the plans and specification will be performed for the lump sum price of \$298,000.00.

Thank you,



Wanda Bostic
Vice-President

Whereupon, Mayor Pro Tem Horton moved for the adoption of Resolution Number 8255.

Motion for the adoption of Resolution Number 8255 was seconded by Councilmember Middlebrooks, regularly put and upon roll call; the vote was as follows:

AYES: Councilmembers Anderson, Bryant Horton, Matthews, Middlebrooks, and Mayor Tuck

NAYS: None

ABSENT: None

The Recording Secretary announced the vote, whereupon Mayor Tuck declared Resolution Number 8255 duly and legally adopted.

Attorney Goldman and Attorney Hill thanked the Mayor and City Council for their time and efforts, toward the Special Called Meeting.

Whereupon, Councilmember Bryant that the meeting be adjourned. Said motion was Seconded by Councilmember Horton, regularly put and carried, whereupon the meeting was adjourned at 7:16 p.m.

READ AND APPROVED THIS THE 15TH DAY OF AUGUST, 2016.

APPROVED: Loycil B. Tuck
Loycil B. Tuck, Mayor

ATTEST: Lillian A. Keith
Lillian A. Keith, City Clerk