

An Ordinance to Declare Real Property No Longer Needed for Public Use and to Lease and Sell Said Property

WHEREAS, the City of Alexander City, Alabama owns Parcel 27 and Parcel 28 of the "old Russell industrial complex";

Description of Property:

PARCEL 27 "Quick Hits"

Commence at an iron pin known as the Southeast Corner of Section 33, T-23-N, R-21-E, Tallapoosa County, Alabama; thence West 1,246.83' to a point; thence North 1,176.76' to an iron pin and the POINT OF BEGINNING for the herein described parcel of land (said point also located on the North Right-of-Way (50') of Joseph Street); thence leaving said North Right-of-Way N 02°44'20" E 206.93' to an iron pin; thence N 13°31'52" E 51.41' to an iron pin; thence N 02°48'06" E 214.34' to an iron pin; thence N 23°11'05" E 22.21' to an iron pin; thence N 51°31'40" W 27.90' to an iron pin located in a curve at the beginning of a cul-de-sac on the South Right-of-Way (60') of Garage Street; thence Northeasterly along said curve and South Right-of-Way (Chord Bearing N 45°56'30" E, Chord Distance 69.59', Radius 50.00') to an iron pin; thence leaving said South Right-of-Way N 68°13'04" E 189.75' to an iron pin; thence S 56°57'58" E 196.09' to an iron pin; thence S 86°25'16" E 590.98' to an iron pin located on the West Right-of-Way (50') of Joseph Street; thence along said West Right-of-Way the following seven (7) courses: (1) S 02°13'25" E 112.50'; (2) Chord Bearing S 15°42'15" W, Chord Distance 240.28', Radius 390.00'; (3) S 33°39'47" W 35.21'; (4) Chord Bearing S 45°24'48" W, Chord Distance 138.97', Radius 341.19'; (5) S 57°09'50" W 12.66'; (6) Chord Bearing S 74°57'05" W, Chord Distance 146.63', Radius 240.00'; (7) N 87°15'40" W 669.08' to an iron pin and the point of beginning. Containing 11.84 acres, more or less, and lying in and being a part of the East 1/2 of the SE 1/4 of Section 33, T-23-N, R-21-E, Tallapoosa County, Alabama.

Above described parcel subject to a 15' utility easement adjacent to the right-of-way of Joseph Street as shown on survey.

PARCEL 28 "Quick Hits Parking"

Commence at an iron pin known as the Southeast Corner of Section 33, T-23-N, R-21-E, Tallapoosa County, Alabama; thence North 723.76' to a point; thence West 327.63' to an iron pin and the POINT OF BEGINNING for the herein described parcel of land; thence

N 58°38'34" W 231.98' to an iron pin; thence N 54°21'15" W 38.26' to an iron pin; thence

N 62°06'46" W 59.74' to an iron pin; thence N 72°36'24" W 89.84' to an iron pin; thence

N 03°51'07" E 178.58' to an iron pin located on the South Right-of-Way (50') of Joseph Street; thence along said South Right-of-Way the following four (4) courses: (1) S 87°15'40" E 102.58'; (2) Chord Bearing N 74°57'05" E, Chord Distance 177.18', Radius 290.00'; (3) N 57°09'50" E 12.66'; (4) Chord Bearing N 56°53'01" E, Chord Distance 3.83', Radius 391.19' to an iron pin; thence leaving said South Right-of-Way S 70°32'11" E 166.91' to an iron pin; thence S 13°31'03" W 380.98' to an iron pin and the point of beginning. Containing 2.74 acres, more or less, and lying in and being a part of the SE 1/4 of the SE 1/4 of Section 33, T-23-N, R-21-E, Tallapoosa County, Alabama.

Above described parcel subject to a 15' utility easement adjacent to the right-of-way of Joseph Street as shown on survey.

WHEREAS, the property is not used for nor needed for public or municipal purposes and the City has an opportunity to lease and then sell said property to a commercial enterprise which will benefit the City and the citizens of Alexander City by promoting economic development, increase ad valorem taxes, sales taxes and opportunity for employment;

NOW THEREFORE, BE IT ORDAINED as follows:

SECTION 1. The City Council of the City of Alexander City, Alabama does find that Parcels 27 and 28 as described above are no longer needed for public or municipal purposes and that CemWall Systems, Inc. desire to first lease and then purchase the parcels pursuant to the terms attached hereto as Exhibit B, and such lease and sale to CemWall Systems, Inc. shall promote economic development in the City as stated herein.

SECTION 2. Pursuant to *Ala. Code* § 11-47-21 (1975, as amended), the Mayor is hereby directed and authorized to execute the Lease and Purchase Agreement attached hereto as Exhibit B, and any other related documents to effectuate the lease and sale of said parcels to CemWall Systems, Inc.


SECTION 3. This ordinance shall become effective immediately upon its adoption and publication as required by law.

ADOPTED AND APPROVED this 15th day of November 2021.


ATTEST:



Amanda F. Thomas, City Clerk



Audrey "Buffy" Colvin, Council President



Curtis "Woody" Baird, Mayor

CERTIFICATION OF CITY CLERK

The undersigned, as City Clerk of the City of Alexander City, Alabama, hereby certifies that the foregoing is a true, correct and complete copy of **Ordinance No. 2022-05** which was adopted by the City Council on this 15th day of November 2021.

WITNESS MY SIGNATURE, as City Clerk of the City Alexander City, Alabama, under the seal thereof, this 15th day of November 2021.



Amanda F. Thomas
City Clerk of the
City of Alexander City, Alabama

Yeas: Unanimous

Nays: none

Publication Date: 12/18/2021

STATE OF ALABAMA)
COUNTY OF TALLAPOOSA)

LEASE & PURCHASE AGREEMENT

The City of Alexander City (the "City"), an Alabama municipal corporation and CemWall Systems, Inc. ("CemWall"), an Alabama corporation, enter into this Lease & Purchase Agreement (this "Agreement") as of the 16th day of November, 2021.

WITNESSETH
THE LEASE AGREEMENT

Whereas, the City wishes to lease and subsequently sell to CemWall the real estate known as "Quick Hits" at 460 Joseph Street, Alexander City, Tallapoosa County, Alabama, together with the improvements and all rights of ingress and egress to and from the real estate (collectively, the "Property"), as more particularly described on Exhibit A to this Agreement; and

Whereas, CemWall wishes to lease and subsequently purchase the Property from the City upon the terms and conditions set forth in this Agreement. Now, therefore, in consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the parties agree as follows:

1. **Lease.** The City hereby leases to CemWall, all of the City's right, title and interest in and to the Property, on the terms and conditions contained in this Agreement.
2. **Term.** The term of this Agreement (the "Lease Term") shall commence on _____, 2021 and terminate twelve (12) months thereafter.
3. **Base Rent.** CemWall shall pay City the annual rent of One Hundred Sixty One Thousand & 00/100 Dollars (\$161,000.00) during said term, as follows:
 - a. First payment in the amount of Eighty Thousand Five Hundred & 00/100 Dollars (\$80,500.00) upon execution of the Lease and Purchase Agreement.
 - b. Second and final payment in the amount of Eighty Thousand Five Hundred & 00/100 Dollars (\$80,500.00) shall be due and payable six (6) months after the execution of the Lease and Purchase Agreement.
4. **Option to Extend Lease Term.** If not in default under the terms of this Agreement, shall have the right to extend the lease term upon the same terms and conditions as set forth in this Agreement for an additional twelve (12) months term by giving the City written notice no later than 60 days prior to the expiration of the then current Lease Term.
5. **Effective Date.** The "Effective Date" of this Agreement shall mean the date when

both the City and CemWall have executed this Agreement as set forth below.

6. **Representations, Warranties and Covenants of the City.** The City represents, warrants and covenants to CemWall as follows:

(a) **Title and Authority.** The City owns good and marketable title to the Property and has the full power and authority to lease the Property pursuant to the terms of this Agreement.

(b) **Zoning.** The Property is lawfully and properly zoned for the operation of CemWall's manufacture and storage of its product on the Property.

(c) **Proceedings.** The City has no actual or constructive knowledge of (1) any proposed public improvements or condemnations which may result in special assessments or in any reduction in the usefulness of the Property, (2) any plans or requirements for the alteration or correction of any existing conditions of the Property, or (3) any other fact that might adversely affect the condition, suitability or usefulness of the Property for the operation of CemWall's business on the Property.

(d) **Other Laws.** The City has no actual or constructive knowledge of the violation of any other applicable law, ordinance, regulation or rule relating to the Property including violation of any environmental laws, statutes, rules or regulations including Hazardous Materials as defined by Resource Conservation and Recovery Act of 1976, as amended or Hazardous substances as defined by the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended.

7. **Utilities.** CemWall, at CemWall's sole expense, shall be responsible for all public utilities available to the Property, including (without limitation) sewer, water, gas, electricity, cable, and internet. CemWall shall have responsibility for the payment of all utility deposits and the costs of all utility services for the Property, including any deposits required for any utility service. The City, at its cost, shall restore fire protection services to the premises.

8. **Maintenance.** CemWall shall be responsible for all maintenance of the property, structural and otherwise, including the roof, walls, flooring, electrical, HVAC and plumbing.

9. **Taxes and Assessments.** CemWall shall pay all taxes and assessments assessed or levied upon the Property after the Effective Date, including all taxes and assessments on the improvements or buildings located on the Property. The taxes shall be prorated.

10. **CemWall's Right to Maintain Signs.** CemWall may place upon the Property signage which advertises CemWall's business. CemWall shall not place any other signs upon the Property without the prior, written consent of the City. At all times, all of CemWall's signs shall comply with all city, county, state and federal regulations at the CemWall's expense.

11. **Covenants of Quiet Enjoyment.** Following delivery of possession of the Property to CemWall and at all times during the Lease Term, CemWall peaceably and quietly shall enjoy the Property without any disturbance from the City or from any other individual or entity.

12. **State of Repair.** CemWall shall keep the Property in a good state of repair, normal wear and tear excepted, and shall not commit or permit waste during the lease term.

13. **No Liability of City.** The City shall not have any liability to CemWall or to any other person for any damage to any person or property by or attributable to (a) the presence, use, installation or removal of any equipment, fixtures, systems, improvements or structures of any kind on the Property during the Lease Term or (b) CemWall's failure to keep the Property in proper repair.

14. **Insurance.** During the Lease Term, CemWall shall obtain and maintain at CemWall's costs and expense, (a) extended coverage insurance covering all buildings and other improvements on the Property and their contents (but which need not include fixtures, equipment, furniture, and other personal property belonging to CemWall) for full replacement cost, insuring against all risks of direct physical loss and damage, excluding unusual perils like earth movement, flood and war, and (b) comprehensive public liability insurance for death and injury and property loss and damage with a combined limit coverage of not less than \$1 million. CemWall shall list the City as an additional insured on all of the foregoing policies. CemWall shall provide the City with a binder or certificate of insurance which shows that CemWall has obtained the appropriate insurance, that CemWall has paid the premiums and that the carrier cannot cancel or make a material change to the insurance without at least 10 days' written notice from the carrier to the City.

15. **Hold Harmless.** CemWall shall indemnify, defend and hold the City harmless against any and all loss, damage; cost, expense, liability or causes of action arising out of any accident or occurrence causing injury or death to any individual or damage to or loss of any property of any individual or entity, except for any accident or occurrence caused by the gross negligence or willful misconduct of the City or any of the City's agents. If any third party brings an action against the City because of any accident or occurrence described in this Section, CemWall shall provide a defense for the City. If CemWall fails to provide a defense, the City shall have the right to provide its own defense. In that event, CemWall shall reimburse the City for all of the City's reasonable expenses incurred in providing its own defense.

16. **Fire and Other Casualty Losses.** If fire or other casualty damages the Property to the extent that CemWall cannot use the Property for its intended use, CemWall shall continue to be obligated to purchase the property pursuant to the Purchase Agreement as stated herein. If fire or other casualty damages the Property through no fault of CemWall but not to the extent that CemWall cannot use the Property for its intended use, CemWall shall repair the damage. Nothing in this section shall give the City any rights or interest in any insurance proceeds relating to damage to any of CemWall's equipment or other personal property located on the Property whether or not covered by the same insurance policy or policies which also may provide the insurance coverage required by this Agreement.

17. **Eminent Domain.** If, at any time during the Lease Term the local, city, county, state or federal authorities under any legal power of eminent domain condemn and acquire title to any portion of the Property, the Rent shall reduce to correspond to the amount or portion taken under the proceedings. The City and CemWall shall share in any award based on an allocation to CemWall of the original cost of the improvements taken. If the exercise of eminent domain substantially reduces

CemWall's business, CemWall also shall have the right to terminate this Agreement.

18. **Events of Default.** As used in this Agreement, an "Event of Default" shall include only (a) the failure to pay the rent required pursuant to the terms of this Agreement and (b) a material breach of any other obligation of CemWall under this Agreement.

19. **Remedy upon Default.** If an Event of Default occurs, the City shall give CemWall written notice in accordance with the notice provisions contained in this Agreement. CemWall shall have 30 days after the CemWall's receipt of that notice to cure the default. If CemWall fails to cure the default within that 30-day period, the City shall have the right to terminate this Agreement or re-enter and take possession of the Property and remove any and all persons and property on the Property as well as all other remedies at law. CemWall thereafter shall be liable for any remaining rental payments due under this Agreement.

20. **Personal Property.** All furniture, trade fixtures, signs and equipment installed by CemWall on the Property at all times shall remain the personal property of CemWall or any third party lessor of the personal property, regardless of the method by which CemWall has attached the personal property to the Property. The City hereby subordinates its rights, if any, to the furniture, trade fixtures, signs and equipment to the rights of CemWall or any third party lessor or lender. Upon request, the City shall execute additional waivers, consents and other documents to effectuate the purposes of this section. Any third party lessor or lender shall have the right to remove the furniture, trade fixtures, signs or equipment from the Property in the event of a default by CemWall in complying with its agreement relating to the furniture, trade fixtures, signs or equipment. CemWall, at its expense, shall repair any damage caused by the removal of any furniture, trade fixtures, equipment or signs by CemWall or any third Party, lessor or lender.

THE PURCHASE AGREEMENT

1. **Sale of Property.** The City agrees to sell, convey, assign, transfer and deliver to CemWall, and CemWall agrees to purchase, acquire and take from the City, the Property.

2. **Price.** The purchase price (hereinafter referred to as the "Purchase Price") to be paid by CemWall to the City for the Property shall be One Million & 00/100 Dollars (\$1,000,000.00). CemWall shall pay the Purchase Price to the City at the following times and in the following manner:

A. Thirty (30) days before expiration of the Lease Agreement, CemWall shall pay One Hundred Thousand & 00/100 Dollars (\$100,000.00) as earnest money and shall deposit said earnest money with _____ (Escrow/Title Company).

B. The Purchase Price of One Million & 00/100 Dollars (\$1,000,000.00) shall be paid within thirty (30) days of the expiration of the Lease Agreement as follows:

1. One Million & 00/100 Dollars (\$1,000,000.00) to the City less the 70% of the lease amount paid to the City which if lease terminates in one (1) year shall be One Hundred Twelve Thousand Seven Hundred & 00/100 Dollars (\$112,700.00),

or if lease terminates in two (2) years shall be Two Hundred Twenty Five Thousand Four Hundred & 00/100 Dollars (\$225,400.00).

2. CemWall shall pay rent pursuant to the lease agreement for the number of days from the expiration date of the lease to the closing date of the purchase. Said amount being Four Hundred Forty One & 00/100 Dollars (\$441.00) per diem.

3. The Escrow/Title agent at the date of closing shall release the earnest money to the City.

4. All payments shall be made by wire transfer or certified funds.

3. **Closing and Closing Costs.** The consummation of the transactions contemplated by this Agreement shall occur at a closing (herein referred to as the "Closing") to be held at the offices of the Escrow/Title Company, or at such other place as the parties may mutually agree in writing, on or before thirty (30) calendar days from the expiration of the Lease Agreement. CemWall shall pay all closing costs and fees. The City shall provide at its cost a Statutory Warranty Deed. CemWall shall pay all ad valorem taxes due and the ad valorem taxes shall not be prorated.

4. **The City's Obligations at Closing.** At Closing, the City shall execute (where necessary) and deliver to CemWall the following, each of which shall be in form and substance reasonably satisfactory to CemWall and the City:

A. A Special Warranty Deed, in recordable form, conveying all of the Property to CemWall, free and clear of all liens, charges and encumbrances created by and through the City other than:

- (i) the lien for current real estate taxes and assessments not in default;
- (ii) the Permitted Exceptions (as hereinafter defined);
- (iii) all zoning ordinance;
- (iv) all matters which would be disclosed by an accurate survey of the Property; and
- (v) any other matters which have been approved in writing by CemWall;

B. An owner's title affidavit as may be reasonably required by the Title Company to remove from CemWall's Title Policy the standard exceptions for unfiled mechanics' liens, materialmen liens and other liens for services, labor or material furnished to or created by the City.

5. **Title Report and Permitted Exceptions.**

A. CemWall may obtain a commitment for an ALTA owner's policy of title insurance from the Title Company covering the Property (the "Commitment"), accompanied by copies of all recorded documents referred to in the Commitment as conditions or exceptions to the state of title to the Property, at CemWall's sole cost and expense. CemWall shall have until 5:00 p.m. on the 7th business day after the Effective Date (the "Title Objection Date") to deliver written

notice to the City of any objections CemWall may have to the conditions or exceptions to the City's title as reflected on the Commitment. In the event CemWall fails to give notice objecting to the state of title, all items listed on the Commitment shall be deemed "Permitted Exceptions."

B. In the event the City is notified as provided in Section 5(A) of this Agreement of CemWall's objections to the state of title, the City shall have a reasonable time after the receipt of such notice from CemWall, to either (i) notify CemWall in writing that prior to Closing the City will eliminate or modify some such or all objectionable matters to the reasonable satisfaction of CemWall; or (ii) notify CemWall in writing that it will not undertake to eliminate or modify some or all of said objectionable matters, in which event, CemWall may, at CemWall's option, within ten (10) calendar days after receipt of the City's notice, terminate this Agreement, in which event the Earnest Money shall be returned to CemWall, and the parties hereto shall be released from all further obligations hereunder, except as set forth in Section 13 hereof, which shall survive such termination. In the event CemWall fails to give the City written notice to terminate this Agreement, all objectionable matters shall be accepted and shall be deemed Permitted Exceptions and CemWall shall continue through the escrow process and purchase the Property, should all contingencies be later removed pursuant to the terms herein and as would otherwise be in accordance with the terms of this Agreement.

10. **Title Insurance Policy.** CemWall's obligation to close hereunder is conditioned upon CemWall being able to obtain on the Closing Date a title insurance policy (the "Owner's Policy") from the Title Company in the form specified in the approved Commitment. However, if CemWall is unable to obtain said Policy after using all commercially reasonable efforts, CemWall may by written notice to the City terminate this Agreement, in which event the Earnest Money shall be returned to CemWall, and the parties shall be released from all further obligations hereunder, except as set forth in Section 13 hereof, which shall survive such termination. Notwithstanding anything contained in this Agreement to the contrary, in the event the purchase and sale of the Property contemplated in this Agreement are not consummated for any reason, CemWall shall be solely responsible for any and all costs, fees, and expenses charged by Title Company in connection with the issuance of the Commitment.

11. **Survey.** CemWall shall have the right, but not the obligation, at CemWall's sole cost and expense, to cause a new survey (the "Survey") of the Property to be prepared. Any objections to the Survey shall have the same effect and shall give rise to the same options as objections to title raised by CemWall pursuant to Sections 5(A) and 5(B) of this Agreement.

12. **Default.**

A. If the City shall default in any material manner in the performance of any of its obligations under this Agreement, CemWall may, as its sole and exclusive remedy, either (i) bring an action for specific performance of this Agreement, or (ii) terminate this Agreement, by serving notice in writing upon the City in the manner provided herein, in which event the Earnest Money shall immediately be refunded to CemWall by Title Company as liquidated and stipulated damages and not as a penalty, actual damages being difficult or impossible to measure.

B. If CemWall shall default in any material manner in the performance of any

of its obligations under this Agreement, the City may, as its sole and exclusive remedy, terminate this Agreement by serving notice in writing upon CemWall, in which event the Earnest Money shall immediately be distributed to the City by Title Company as liquidated and stipulated damages and not as a penalty, actual damages being difficult or impossible to measure.

13. Disclaimer.

A. CemWall acknowledges and agrees that the City has not made, does not make and specifically negates and disclaims any representations, warranties (other than the special warranty of title as set out in the special warranty deed, as defined in section 4(a) hereof, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to (a) the value, nature, quality or condition of the property, including, without limitation, the water, soil and geology, (b) the income to be derived from the property, (c) the suitability of the property for any and all activities and uses which CemWall or any Tenant may conduct thereon, (d) the compliance of or by the property or its operation with any laws, rules, ordinances or regulations of any applicable governmental authority or body, (e) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the property, (f) the manner or quality of the construction or materials, if any, incorporated into the property, (g) the manner, quality, state of repair or lack of repair of the property, or (h) compliance with any environmental protection, pollution or land use laws, rules, regulations, orders or requirements, including the existence in or on the property of hazardous materials (as defined below). Additionally, no person acting on behalf of the City is authorized to make, and by execution hereof of CemWall, acknowledges that no person has made, any representation, agreement, statement, warranty, guaranty or promise regarding the property or the transaction contemplated herein; and no such representation, warranty, agreement, guaranty, statement or promise, if any, made by any person acting on behalf of the City shall be valid or binding upon the City unless expressly set forth herein. CemWall further acknowledges and agrees that having been given the opportunity to inspect the property, CemWall is relying solely on its own investigation of the property and not on any information provided or to be provided by the City and agrees to accept the property at the closing and waive all objections or claims against the City (including, but not limited to, any right or claim of contribution) arising from or related to the property or to any hazardous materials on the property. The City is not liable or bound in any manner by any verbal or written statement, representation or information pertaining to the property, or the operation thereof, furnished by any real estate broker, contractor, agent, employee, servant or other person. CemWall further acknowledges and agrees that to the maximum extent permitted by law, the sale of the property as provided for herein is made on an "as is" condition and basis with all faults.

B. **Indemnification.** Anything contained herein to the contrary notwithstanding, CemWall shall indemnify and hold the City harmless from and against any and all losses, liabilities, costs, damages and/or expenses including attorney's fees and court costs which the City incurs as a result of any breach of Environmental law, statute or regulations during the lease term or which may occur or be discovered after purchase by CemWall.

14. **Hazardous Materials.** "Hazardous Materials" shall mean any substance which is or contains (i) any "hazardous substance" as now or hereafter defined in §101(14) of the

Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amend (42 U.S.C. §9601 et seq.) (“CERCLA”) or any regulations promulgated under CERCLA; (ii) any “hazardous waste” as now or hereafter defined in the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.) (“RCRA”) or regulations promulgated under RCRA; (iii) any substance regulated by the Toxic Substances Control Act (15 U.S.C. §2601 et seq.); (iv) gasoline, diesel fuel, or other petroleum hydrocarbons; (v) asbestos and asbestos containing materials, in any form, whether friable or non-friable; (vi) polychlorinated biphenyls; (vii) radon gas; and (viii) any additional substances or materials which are now or hereafter classified or considered to be hazardous or toxic under Environmental Requirements (as hereinafter defined) or the common law, or any other applicable laws relating to the Property. Hazardous Materials shall include, without limitation, any substance, the presence of which on the Property, (A) requires reporting, investigation or remediation under Environmental Requirements; (B) causes or threatens to cause a nuisance on the Property or adjacent property or poses or threatens to pose a hazard to the health or safety of persons on the Property or adjacent property; or (C) which, if it emanated or migrated from the Property, could constitute a trespass.

15. **Environmental Requirements.** “Environmental Requirements” shall mean all laws, ordinances, statutes, codes, rules, regulations, agreements, judgments, orders, and decrees, now or hereafter enacted, promulgated, or amended, of the United States, the states, the counties, the cities, or any other political subdivisions in which the Property is located, and any other political subdivision, agency or instrumentality exercising jurisdiction over the owner of the Property, the Property, or the use of the Property, relating to pollution, the protection or regulation of human health, natural resources, or the environment, or the emission, discharge, release or threatened release of pollutants, contaminants, chemicals, or industrial, toxic or hazardous substances or waste or Hazardous Materials into the environment (including, without limitation, ambient air, surface water, ground water or land or soil).

16. **CemWall’s Representations and Warranties.** CemWall represents and warrants to the City that (A) CemWall has the power to enter into this Agreement and to execute and deliver this Agreement and to perform all duties and obligations imposed upon it hereunder, and (B) neither the execution or delivery of this Agreement, nor the consummation of the purchase and sale contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement conflict with or will result in the breach of any of the terms, conditions or provisions of any agreement or instrument to which CemWall, or any partner or related entity or affiliate of CemWall, is a party or by which CemWall, or any partner or related entity or affiliate of CemWall, or any of CemWall’s assets is bound.

17. **The City’s Representations and Warranties.** The City represents and warrants the following to CemWall, all of which representations and warranties will survive the Closing hereunder for a period of six (6) months, to wit:

A. The City has the power to enter into this Agreement and to execute and deliver this Agreement and to perform all duties and obligations imposed upon it hereunder, and neither the execution or delivery of this Agreement, nor the consummation of the purchase and sale contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement conflict with or will result in the breach of any of the terms, conditions or provisions

of any agreement or instrument to which the City, or any partner or related entity or affiliate of the City, is a party or by which the City, or any partner or related entity or affiliate of the City, or any of the City's assets is bound.

B. There are no legal or administrative actions or proceedings pending, or to the City's actual knowledge, threatened against the Property or against the City which would affect the City's interest in the Property.

C. The Agreement is true, accurate and complete in all material respects. The Agreement (including all amendments thereto) provided to CemWall by the City is in full force and effect, and it has not been modified, amended or extended except as set forth in the Lease. Other than the Lease, there are no other written or oral leases or tenancies affecting the Property or persons in possession of any part thereof.

D. To the City's actual knowledge, there are no construction liens, claims of liens or other claims against the Property, and bills for any and all work done or materials supplied to the Property have been paid in full and will be paid in full through the Date of Closing.

18. **Damage, Destruction and Eminent Domain.** Risk of loss to the Property shall remain with CemWall throughout the term of the lease and continue after purchase.

19. **Broker's Commission.** The City and CemWall each represent and warrant that they have dealt with no agents, persons or entities in the locating of the Property or in negotiation of this sale.

20. **Notices.** Any notice or election required or permitted to be given or served by any party hereto upon any other shall be deemed given or served in accordance with the provisions or this Agreement, if said notice or election is delivered personally sent by facsimile with confirmation, sent by recognized overnight delivery service or mailed by United States Mail, registered or certified, return receipt requested, postage prepaid, properly addressed as follows:

If to CemWall:

CemWall
P.O. Box 723 Jemison AL 35085
400 Joseph St., Alexander City, AL 35010
Attn: Rachel Mims
Its: Secretary
Phone: (205) 723-6925 ext. 703
Email: rmims@cemwallsystems.com

With a copy to:

Attn: _____
Its: _____

Phone: _____
Email: _____

If to the City: City of Alexander City, Alabama
P.O. Box 552
Alexander City, AL 35011-0552
Attn: Curtis W. Baird
Its: Mayor
Phone: (256) 329-6730
Email: woody.baird@alexandercityal.gov

With a copy to: Barnes & Radney, P.C.
P.O. Drawer 877
Alexander City, AL 35011-0877
Attn: Larkin Radney
Its: City Attorney
Phone: (256) 328-8438
Email: lradney@barnesandrady.com

If to Escrow/Title: _____

Attn: _____
Its: _____
Phone: _____
Email: _____

Each such mailed notice or communication shall be deemed to have been given if personally delivered on the date delivered; if sent by recognized overnight courier or, if mailed, the day deposited with the United States Postal Service or delivered to the overnight courier. Any party hereto may change its address for the service of notice hereunder by delivering written notice of said change to the other party hereto in the manner above provided.

21. **Effective Date of Agreement.** This Agreement shall become effective and shall be binding upon CemWall and the City after it has been executed by each party. The Effective Date shall be the date when the last party executed this Agreement including all terms agreed upon.

22. **Captions.** The Section headings or captions appearing in this Agreement are for convenience only, are not a part of this Agreement and are not to be construed in interpreting this

Agreement.

23. **Entire Agreement; Modification.** This Agreement constitutes the entire and complete agreement between the parties and supersedes any prior oral or written agreements between the parties with respect to the Property. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants and conditions herein set forth, and that no modification of this Agreement and no waiver of any of its terms and conditions shall be effective unless made in writing and duly executed by the parties hereto.

24. **Binding Effect.** All covenants, agreements, warranties and provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

25. **Controlling Law.** This Agreement has been made and entered into under the laws of the State of Alabama, and said laws shall control the interpretation hereof.

26. **Time is of the Essence.** It is agreed by and between the City and CemWall that time is of the essence in this Agreement.

27. **Further Actions.** CemWall and the City agree to execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of this Agreement or any agreement or document relating hereto or entered into in connection herewith; however, neither party shall be required to take any further action or execute any documents to which such party has a reasonable objection.

28. **Attorneys' Fees.** In the event either party brings an action to enforce or remedy a breach under this Agreement, in addition to any other damages or relief awarded, the prevailing party in such action shall be entitled to an award of reasonable attorney's fees and any court costs incurred in such action. CemWall and the City both acknowledge that each has been advised by counsel as to their respective rights, duties and obligations in this Agreement and have had ample opportunity to negotiate the same. Thus, both CemWall and the City acknowledge that any ambiguity in this Agreement should not necessarily be resolved against the drafter of this Agreement.

29. This Agreement is not assignable to any third party without the express written consent of the City.

30. **Counterparts.** This Agreement may be signed in any number of counterparts, and signature to any one counterpart shall be deemed signature to all counterparts, which when taken together shall constitute one contract. Any signature to this Agreement transmitted by facsimile shall be deemed an original signature hereto.

WITNESS WHEREOF, CemWall and the City have executed this Agreement as of the dates set forth below.

PURCHASER:

CEMWALL SYSTEMS, INC.

BY:  _____

Name: Jerry Hagood _____

Dated: 11-16 _____, 2021

SELLER: 
CITY OF ALEXANDER CITY, ALABAMA

BY: Its Mayor

Name: Curtis W. Baird

Dated: November 16, _____, 2021