



RESOLUTION

AUTHORIZING THE ACQUISITION OF LAND AND BUILDINGS AT 25 CROWN STREET (MAP 25, LOT 1 AND MAP 23, LOT 1) FOR A PARK AND RIDE FACILITY AND A RELATED LEASE OF THAT PROPERTY

CITY OF NASHUA

In the Year Two Thousand and Twelve

RESOLVED by the Board of Aldermen of the City of Nashua that the Mayor is authorized to purchase the property located at 25 Crown Street (Tax Map 25, Lot 1 and Tax Map 23, Lot 1) from Triangle Pacific Corp / Armstrong World Industries on terms and conditions substantially similar to the attached Purchase and Sale Agreement. The purchase price of said land and buildings shall be \$1,425,000, to be paid from the Congestion Mitigation and Air Quality Program grant for park and ride.

FURTHER, BE IT RESOLVED by the Board of Aldermen of the City of Nashua that the Mayor is authorized to enter into a lease agreement with Armstrong World Industries for 25 Crown Street through December 31, 2013 on terms and conditions substantially similar to the Commercial Lease attached as Exhibit A to the Purchase and Sale Agreement.

LEGISLATIVE YEAR 2012

RESOLUTION: R-12-031

PURPOSE: Authorizing the acquisition of land and buildings at 25 Crown Street (Map 25, Lot 1 and Map 23, Lot 1) for a park and ride facility and a related lease of that property

SPONSOR(S): Mayor Donnalee Lozeau
Alderman-at-Large Brian S. McCarthy
Alderman Michael J. Tabacsko

COMMITTEE ASSIGNMENT:

FISCAL NOTE: The purchase price of \$1,425,000 is coming from the Congestion Mitigation and Air Quality Program grant for park and ride. The lease provides for rent equal to the municipal real estate taxes assessed against the premises during the time the tenant is occupying the premises.

ANALYSIS

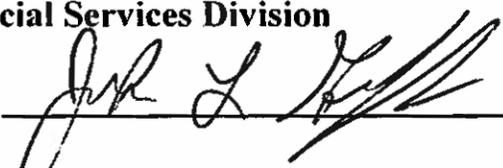
This resolution authorizes the city to acquire 25 Crown Street (made up of two parcels – Map 25, Lot 1 and Map 23, Lot 1) on terms and conditions substantially similar to the attached Purchase and Sale Agreement for the purpose of a park and ride facility. This resolution also authorizes a related lease back of the property from the closing date through December 31, 2013 on terms and conditions substantially similar to the Commercial Lease attached as Exhibit A to the Purchase and Sale Agreement. Funds for the purchase will come from the Congestion Mitigation and Air Quality Program grant for park and ride.

Charter §77 provides that the planning board “shall review and make recommendations to the mayor and board of aldermen on all locations for proposed municipal buildings and facilities, including educational, [and] on the purchase and sale of any land by the city”.

The Purchase and Sale Agreement has a closing date on or before September 15, 2012, and provides for a lease of the property to the seller from the closing date through December 31, 2013. The Agreement allows 60 calendar days from the effective date of the P&S (April 5, 2012) for a title examination and review of a Phase 1 Environmental Site Assessment report. The P&S is contingent upon a vote of approval at the sole discretion of the Board of Aldermen, and the city has to use its best efforts to have said vote within 60 days of the effective date of the P&S (April 5, 2012).

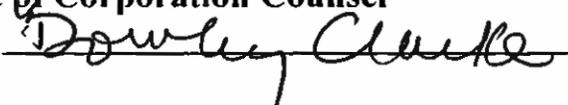
Approved as to account structure, numbers, and amount:

Financial Services Division

By: 

Approved as to form:

Office of Corporation Counsel

By: 

Date: April 6, 2012

PURCHASE AND SALE AGREEMENT

25 CROWN STREET, NASHUA NH

1. **THIS AGREEMENT** made this ____ day of April, 2012 ("EFFECTIVE DATE") between Triangle Pacific Corp / Armstrong World Industries ("SELLER") PO Box 3001, Lancaster, Pennsylvania, 17604 and the City of Nashua, New Hampshire ("BUYER") of 229 Main Street, City of Nashua, County of Hillsborough, State of New Hampshire, 03060.
2. **WITNESSETH:** That SELLER agrees to sell and convey, and BUYER agrees to purchase, for the purchase price and subject to every one of the terms and conditions hereafter set forth, the real property located in the City of Nashua, New Hampshire, known as 25 Crown Street, made up of two parcels of land, inclusive of all the buildings, structures and other improvements thereon, as more particularly described in deeds to SELLER, recorded in the Hillsborough County Registry of Deeds as Book 1136 Page 176 on January 10, 1947 and Book 1744 Page 129 on August 13, 1963 (collectively referred to as the "PROPERTY").
3. **PURCHASE PRICE:** The Purchase Price is One Million Four Hundred Twenty Five Thousand Dollars, \$1,425,000.00 ("PURCHASE PRICE"). The PURCHASE PRICE shall be paid by BUYER at CLOSING (defined below). Payment of the PURCHASE PRICE shall be in Cash, Certified Check, Bank Draft or Wire Transfer.
4. **DEED:** Marketable title shall be conveyed by quitclaim deed ("DEED"), and shall be free and clear of all encumbrances except:
 - A. Provisions of existing building and zoning laws;
 - B. Such taxes for the then current tax year not due and payable on the date of the delivery of the DEED;
 - C. Any liens for municipal betterments assessed after the date of this Agreement;
 - D. Such easements, takings and rights of way, including usual public utilities serving the PROPERTY, all of record in the Hillsborough County Registry of Deeds;
 - E. Encumbrances noted herein; and
 - F. Encumbrances acceptable to BUYER.
5. **TRANSFER OF TITLE:** Title shall be transferred on or before September 15, 2012 at 10:00 a.m. or some other place of mutual consent as agreed to in writing, time being of the essence ("CLOSING").
6. **LEASE TO SELLER:** Effective at CLOSING, BUYER will lease the PROPERTY to SELLER on those terms and conditions set forth in the Lease Agreement attached hereto as Exhibit A (the "LEASE"). The term of the LEASE shall commence immediately following the CLOSING and expire on December 31, 2013, unless terminated earlier pursuant to the terms set forth

therein. Following expiration or termination of the LEASE, full possession and occupancy of the PROPERTY with all keys shall be given to BUYER.

- 7. MAINTENANCE AND CONDITION OF PROPERTY:** The BUYER understands that the building on the PROPERTY is in a partially demolished condition and may, at no fault of the SELLER, continue to deteriorate despite the best efforts of the BUYER to prevent such deterioration. SELLER does not make and has not at any time made, directly or indirectly, any warranties or representations of any kind or character, express or implied, save those expressly made in this Agreement, including, but not limited to, any warranties of habitability, merchantability, fitness for a particular purpose, title (other than as may be set forth in the DEED), physical or environmental condition (including the possible presence on, at, under or emanating from or migrating onto the PROPERTY of hazardous materials, radon gas or lead-based paint. Upon CLOSING, SELLER shall sell and convey to BUYER and BUYER shall accept the PROPERTY "As Is, Where Is, With All Faults." BUYER is satisfied with the extent to which SELLER has agreed herein that BUYER may investigate the PROPERTY and BUYER will rely solely upon the same. Save solely for SELLER'S failure to communicate to BUYER prior to CLOSING actual knowledge of known adverse matters affecting the PROPERTY, BUYER shall, upon CLOSING, assume the risk that adverse matters, including but not limited to, construction defects and adverse physical and environmental conditions, may not have been known to BUYER, and SELLER shall not be under any obligation whatsoever to undertake any improvement, repair, modification, alteration, investigation, remediation, or other work of any kind with respect to the PROPERTY. It is expressly acknowledged and agreed that this Section 7 shall survive the CLOSING and delivery of the DEED and each and every other closing document and shall not merge with the DEED or any other closing document.
- 8. INSURANCE:** Until the delivery of the DEED, SELLER shall maintain fire insurance and extended insurance coverage on the PROPERTY in such amounts as presently insured, but in no event shall such coverage be less than the PURCHASE PRICE.
- 9. DAMAGE OR DESTRUCTION:** If, prior to the CLOSING, the PROPERTY shall have been damaged by fire or casualty, then the SELLER, within thirty (30) days of the loss, shall give the BUYER written notice of its election to take one of the following actions, in SELLER'S sole discretion:

 - A. Restore the PROPERTY to its former condition;
 - B. Pay over or assign to BUYER, on delivery of the DEED, all amounts recovered or recoverable on account of such insurance, less any amounts expended by the SELLER for any partial restoration;
 - C. If a mortgagee on the PROPERTY shall not permit the insurance proceeds or a part thereof to be used to restore the PROPERTY to its former condition or to be so paid over or assigned, give to the BUYER a credit against the PURCHASE PRICE, on delivery of the DEED, equal to said amounts so recovered or recoverable and retained by the mortgagee less any amounts expended by the SELLER for any partial restoration; or

D. Terminate this Agreement without penalty.

10. **TITLE:** BUYER shall have sixty (60) calendar days to examine title from the EFFECTIVE DATE (defined below). Other than the quitclaim covenants provided by law, SELLER makes no warranty as to the condition of title to the PROPERTY. If upon BUYER'S examination of title, it is found that the title is not marketable or contains matters of record not previously disclosed to the BUYER, SELLER shall have a reasonable time, not to exceed thirty (60) days from the date of notification of defect (unless otherwise agreed to in writing), to remedy such defect. If SELLER is unable or unwilling to take such action as may be necessary to clear title so that insurable title will be delivered at CLOSING, SELLER or BUYER may, at SELLER'S and BUYER'S option, as the case may be, terminate this Agreement, and all parties shall be released from any further obligations hereunder. The cost of examination of the title shall be borne by BUYER.
11. **USE OF PURCHASE MONEY TO CLEAR TITLE:** To enable SELLER to make conveyance as herein provided, SELLER may, at the time of delivery of the DEED, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of the DEED or arrangements satisfactory to BUYER have been made for subsequent delivery and recording.
12. **PRORATIONS AND EXPENSES:** All income earned but not received, all expenses incurred but not paid out, all income received but not earned, all expenses paid out but not incurred, all real estate taxes, waste water fees and fuel in storage as of the date of transfer of title, shall be apportioned, as appropriate, between the SELLER and the BUYER as of the date of transfer of title. Except as otherwise specified in this Agreement or the other closing documents, each party hereto shall pay its own legal, accounting, out pocket and other expenses incident to this Agreement and to any action taken by such party in preparation for carrying this Agreement into effect.
13. **FINANCING:** This Agreement is contingent upon BUYER obtaining approval from the State of New Hampshire Department of Transportation Congestion Mitigation Air Quality (CMAQ) Grant Program. In the event that BUYER fails to obtain the foregoing financing by August 15, 2012, time being of the essence, SELLER or BUYER may terminate this Agreement by written notice to the other, and all parties shall be released from any further obligations hereunder. Notwithstanding the foregoing, the parties may mutually agree to extend the financing contingency by written amendment to this Agreement, provided the same is executed prior to the expiration of the financing contingency period set forth above.
14. **ENVIRONMENTAL CONTAMINATION:** BUYER'S obligations under this Agreement are contingent upon its receipt of a satisfactory Phase I Environmental Site Assessment report regarding the environmental conditions directly affecting the PROPERTY. The satisfactory nature of any such report shall be determined in the reasonable judgment of BUYER and in consideration of similarly situated properties. In the event that BUYER does not provide

notice to SELLER of its election to terminate this Agreement pursuant to this paragraph within sixty (60) days from the execution of this Agreement, this contingency shall be deemed waived by BUYER.

- 15. APPROVAL OF BOARD OF ALDERMEN:** The CLOSING is contingent upon a vote of approval at the sole discretion of the City of Nashua Board of Aldermen. BUYER agrees to use its best efforts to seek such approval within sixty (60) days of the EFFECTIVE DATE.
- 16. WAIVER OF JURY TRIAL:** The parties hereby knowingly, voluntarily, and intentionally waive any rights they may have to a trial by jury in respect of any litigation based hereon or arising out of, under or in connection with, this agreement or any of the other documents, or any course of conduct, course of dealing, statements (whether oral or written), or actions of the parties hereto. this provision is a material inducement for each of the parties to enter into this Agreement.
- 17. ENTIRE AGREEMENT; AMENDMENTS:** This Agreement constitutes the entire agreement between the parties relating to the subject thereof, and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Agreement. This Agreement may be amended or modified only by an instrument in writing signed by both SELLER and BUYER.
- 18. SEVERABILITY:** Any provision of this Agreement that shall be prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof. In the event that any such provision of this Agreement is so held invalid, the parties shall promptly renegotiate in good faith new provisions to restore this Agreement as near as possible to its original intent and effect. To the extent permitted by applicable law, the parties hereto hereby waive any provision of law that renders any provision hereof prohibited or unenforceable in any respect.
- 19. HEADINGS:** The headings of the various Sections of this Agreement are for convenience of reference only and shall not modify, define or limit any of the terms or provisions hereof.
- 20. SPECIFIC PERFORMANCE:** The parties hereto agree that irreparable damage would occur in the event any provision of this Agreement was not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy at law or equity.
- 21. DECISION MAKING BY PARTIES:** Except where this Agreement expressly provides for a different standard (e.g., sole discretion), whenever this Agreement provides for a determination, decision, permission, consent or approval of a party, the party shall promptly make such determination, decision, grant or withholding of permission, consent or approval in a commercially reasonable manner and without unreasonable delay. Any denial of consent required to be made in a commercially reasonable manner shall include in reasonable detail the reason for denial or the aspect of the request that was not acceptable.

The parties agree to make all determinations and to take all actions required hereunder in good faith and in a reasonable manner, and to observe reasonable commercial standards of fair dealing.

- 22. EFFECT OF TERMINATION:** If this Agreement is terminated for any reason prior to CLOSING, this Agreement shall be null and void, and no party shall have any rights or obligations under this Agreement, except that: a termination shall not relieve any party from any liability for breach hereof occurring prior to termination, and the non-breaching party shall be entitled to any and all relief under applicable law or in equity on account of such breach.
- 23. MUTUAL REPRESENTATION:** BUYER and SELLER represent and warrant to each other that: (a) all corporate or other actions and proceedings required by law or the provisions of this Agreement to be taken at or prior to the CLOSING, in connection with the execution and delivery of this Agreement and the consummation of the transaction contemplated hereunder, have been duly and validly taken; and (b) the execution and delivery of this Agreement by and between BUYER and SELLER constitutes a legal, valid and binding obligation of BUYER and SELLER, respectively, enforceable in accordance with its terms.
- 24. ACCEPTANCE OF DEED:** The acceptance of a DEED by BUYER shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after the delivery of the DEED.
- 25. COUNTERPARTS:** This Agreement may be executed and delivered in multiple originals or using counterpart signature pages and may be delivered by facsimile transmission. All such multiple originals shall constitute but one and the same document.
- 26. GOVERNING LAW:** This Agreement shall be construed by and in accordance with the laws of the State of New Hampshire, excluding its choice of law rules or rulings.
- 27. EFFECTIVE DATE:** This is a binding contract and the effective date is when signed and dated, whether by electronic transfer or original, and all changes initialed and dated, by SELLER and BUYER ("EFFECTIVE DATE"). Each party is to receive a fully executed duplicate original of this Agreement. This Agreement shall be binding upon the successors and/or other authorized representatives of both parties.

EXHIBIT A

LEASE AGREEMENT (post closing)

COMMERCIAL LEASE

THIS LEASE (this "Lease") is made as of the ____ day of September, 2012 by and between the City of Nashua, New Hampshire, with a mailing address of 229 Main Street, Nashua, NH 03060 ("LANDLORD") and Armstrong World Industries, with a mailing address of P.O. Box 3001, Lancaster, PA 17604 ("TENANT");

1. Premises. LANDLORD does hereby lease, demise and let unto TENANT, and TENANT does hereby take and hire from LANDLORD, for the term and upon and subject to the terms and conditions set forth in this Lease, the real property and improvements thereon located at 25 Crown Street, Nashua, NH ("Premises").

2. Term. The term (the "Term") of this Lease shall begin on the date hercof ("Commencement Date") and expire at 11:59 p.m. on December 31, 2013, provided that TENANT may terminate this lease at any time during the Term upon thirty (30) days written notice to LANDLORD.

3. Rent. TENANT agrees to pay rent equal to the municipal real estate taxes assessed against the Premises during the time for which TENANT occupies the Premises.

4. Utilities. TENANT shall be responsible for the cost of utilities serving the Premises during the Term. TENANT shall provide and pay for the costs of lawn mowing and driveway snow plowing. TENANT shall pay, as they become due, all bills for electricity and other utilities that are furnished to the Premises; TENANT further agrees to furnish cleaning services as is customary in similar buildings.

5. Use of Premises. The TENANT shall have the right to use the Premises for all lawful purposes.

6. Fire Insurance. The TENANT shall keep the Premises insured at coverage amounts acceptable to LANDLORD and not permit any use of the Premises which will make voidable any insurance on the Premises.

7. Maintenance of Premises. The TENANT agrees to use all reasonable efforts to keep the Premises in the same condition as of the Commencement Date, reasonable wear and tear, damage by fire or other casualty only excepted, unless said maintenance or repair is made necessary by the gross negligence of TENANT or the employees, contractors, agents or invitcees of TENANT, in which case such maintenance or repair shall be at the TENANT's expense and TENANT shall pay all costs therefor. The parties acknowledge and agree that the building on the Premises is in a partly demolished condition and may, at no fault of TENANT, continue to deteriorate despite the best efforts of TENANT to prevent such deterioration during the Term. TENANT shall have no obligation to rehabilitate or repair the Premises during the Term, other than as specified herein.

8. Alterations-Additions. The TENANT shall not make structural alterations or additions to the Premises, but may make non-structural alterations provided the LANDLORD consents thereto in writing, which consent will not be unreasonably withheld or delayed. All such allowed alterations shall be at TENANT's expense and shall be in quality at least equal to the present construction. TENANT shall not permit any mechanics' liens, or similar liens, to remain upon the Premises for labor and material furnished to TENANT or claimed to have been furnished to TENANT in connection with work of any character performed or claimed to have been performed at the direction of TENANT and shall cause any such lien to be released of record forthwith without cost to LANDLORD. Any alterations or improvements made by the TENANT shall become the property of the LANDLORD at the termination of occupancy as provided herein.

9. Assignment-Subleasing. The TENANT shall not assign or sublet the whole or any part of the Premises, except to TENANT's affiliates.

10. Subordination. This Lease shall be subject and subordinate to any and all mortgages, deeds of trust and other instruments in the nature of a mortgage, now or at any time hereafter, a lien or liens on the property of which the Premises are a part, provided that the holder of any such mortgage, deed of trust or other instrument in the nature of a mortgage shall have executed and delivered to TENANT a commercially reasonable Subordination, Nondisturbance and Attornment Agreement. The TENANT shall, when requested, promptly execute and deliver such written instruments as shall be necessary to show the subordination of this Lease to said mortgage, deeds of trust or other such instruments in the nature of a mortgage in accordance with this paragraph.

11. Landlord's Access. LANDLORD or its agents may, at reasonable times, enter to view the Premises and make repairs and alterations as LANDLORD should elect to do, provided the LANDLORD gives reasonable notice to TENANT and takes no action to disrupt TENANT's use of the Premises.

12. Fire, Casualty-Eminent Domain. Should a substantial portion of the Premises, or of the property of which they are a part, be substantially damaged by fire or other casualty, or be taken by eminent domain, the LANDLORD may elect to terminate this Lease. When such fire, casualty, or taking renders the Premises substantially unsuitable for their intended use, a just and proportionate abatement of rent shall be made, and the TENANT may elect to terminate this Lease if: (a) the LANDLORD fails to give written notice within thirty (30) days of intention to restore Premises; or (b) the LANDLORD fails to promptly restore the Premises to a condition substantially suitable for their intended use.

The LANDLORD reserves, and the TENANT grants to the LANDLORD, all rights which the TENANT may have for damages or injury to the Premises for any taking by eminent domain, except for damage to the TENANT's fixtures, property or equipment.

13. Default and Bankruptcy. In the event that: (a) the TENANT shall default in the payment of any installment of rent or other sums herein specified and such default shall continue

for fifteen (15) days after written notice thereof; or (b) the TENANT shall default in the observance or performance of any other of the TENANT's covenants, agreements, or obligations hereunder and such default shall not be corrected within thirty (30) day period after written notice thereof, or if not susceptible to correction within such thirty (30) day period, TENANT fails to commence to correct such default within such thirty (30) days and to diligently prosecute to completion such correction within a reasonable time; or (c) the TENANT shall be declared bankrupt or insolvent according to law, or, if any assignment shall be made of TENANT's property for the benefit of creditors, then all rights of the TENANT pursuant to the Lease shall terminate and the LANDLORD shall have all rights available to LANDLORD at law or in equity.

14. **Notice.** Any notice from the LANDLORD to the TENANT relating to the Premises or the occupancy thereof, shall be deemed duly served, if mailed to the TENANT, registered or certified mail, return receipt requested, postage prepaid, addressed to the TENANT at the address noted above. Any notice from the TENANT to the LANDLORD relating to the Premises or to the occupancy thereof, shall be deemed duly served, if mailed to the LANDLORD by registered or certified mail, return receipt requested, postage prepaid, addressed to the LANDLORD at address noted above or at such address as the LANDLORD may from time to time advise in writing.

15. **Entire Agreement.** This instrument contains the entire and only agreement between the parties, and no oral statements or representations or prior written matter not contained in this instrument shall have any force or effect. This Lease shall not be modified in any way except by a writing executed by both parties. It is expressly agreed by the parties hereto, that the terms and provision of this Lease are intended to apply only with respect to the Leasehold estate created with respect to the Premises.

16. **Surrender.** The TENANT shall at the expiration of this Lease remove all the TENANT's goods and effects from the Premises. TENANT shall deliver to the LANDLORD the Premises and all keys, locks thereto, and other fixtures connected therewith and all alterations and additions made to or upon the Premises. In the event of the TENANT's failure to remove any of TENANT's property from the Premises, LANDLORD is hereby authorized without liability to TENANT for loss or damage thereto, and at the sole risk of TENANT, to remove and store any of the property at TENANT's expense, or to retain same under LANDLORD's control or to sell at public or private sale, without notice any or all of the property not so remove and to apply the net proceeds of such sale to the payment of any sum due hereunder, or to destroy such property.

17. **Insurance.** TENANT shall maintain with respect to the Premises commercial general liability insurance in the amount of \$1,000,000.00 combined single limit per occurrence for bodily injury liability, personal injury liability, and property damage liability in responsible companies qualified to do business in New Hampshire and in good standing therein. Said policy(s) shall name LANDLORD as their interest appears as additional insured and TENANT shall provide LANDLORD certificates for such insurance upon LANDLORD'S request.

18. Miscellaneous. Unless repugnant to the context, "LANDLORD" and "TENANT" mean the person or persons, natural or corporate, named above as LANDLORD and TENANT respectively, and their respective successors and assigns.

This Lease shall inure to and be binding upon the respective successors and permitted assigns of the parties.

If any provision of this Lease or its application to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease shall not be affected and each provision of this lease shall be valid and enforceable to the fullest extent permissible by law.

This Lease is a legal document and shall be governed exclusively by the provisions hereof and by the laws of the State of New Hampshire.

Whenever the singular number is used, the same shall include the plural as well as the singular, as the context shall require. The neuter shall include the masculine and feminine, and vice versa, when the context so requires or permits. The caption and headings contained in this Lease are for convenience only and shall not be taken into account in construing the meaning of this Lease or any part thereof.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed and delivered by the proper and duly authorized officer or representative as of the day and year first written above.

LANDLORD:

CITY OF NASHUA, NEW HAMPSHIRE

Witness

By: _____
Name: **Donnalee Lozeau**
Its: **Mayor**

TENANT:

ARMSTRONG WORLD INDUSTRIES

Witness

By: _____
Name:
Its: