

**Vestavia Hills
City Council Agenda
November 15, 2012
Special Meeting
4:30 PM**

1. Call to Order
2. Roll Call

New Business (Requesting Unanimous Consent)

3. Unanimous Consent For Immediate Consideration And Action On Resolution Number 4371
4. Resolution Number 4371 – A Resolution To Require Publication In *The Birmingham News* Providing Notice Of A Public Hearing To Be Held By The City Council Of The City Of Vestavia Hills, Alabama On January 14, 2013 At 5:00 P.M. For The Purposes Of Determining Whether Or Not A Parcel Of Land Situated At 1112 Montgomery Highway In The City Of Vestavia Hills, Alabama Sometimes Referred To As “The Old Library Property” (“The Property”) Owned By The City Of Vestavia Hills Is Needed For Municipal Or Public Purposes; To Determine Whether Or Not To Sell The Property Which Has An Appraised Value Of \$1,500,000.00 To Hes Investments, Llc For A Total Sales Price In The Amount Of \$750,000.00; To Determine Whether Or Not The Closing Of The Sale Of The Property Pursuant To The Terms, Provisions And Conditions Of A Written Real Estate Purchase And Sale Agreement And The First Addendum And Second Addendum Thereto Will Serve As A Valid And Sufficient Public Purpose Notwithstanding Any Incidental Benefit Accruing To Any Private Entity Or Entities; To Thoroughly Discuss The Public Benefits Sought To Be Achieved By The Closing Of The Sale Of Said Property; To Identify The Name Of The Party That Has Offered To Purchase Said Property; To Receive Public Comments And Input Regarding The Sale Of Said Property; To Decide Whether Or Not To Sell Said Property; And To Decide Any Other Issue Relative To This Matter (public hearing)
5. Unanimous Consent For Immediate Consideration And Action On Ordinance Number 2422
6. Ordinance Number 2422 – An Ordinance Authorizing And Directing The Purchasing And Closing Of The Sale Of Real Estate (public hearing)

7. Unanimous Consent For Immediate Consideration And Action On Ordinance Number 2423
8. Ordinance Number 2423 – An Ordinance Authorizing And Directing The Sale Of Real Estate More Particularly Described As Lots 1, 2, 3, 4 And 5 In Thuss Farms Subdivision As Recorded In Map Book 228, Page 48, Jefferson County And The Execution And Delivery Of A Real Estate Sales Contract (public hearing)
9. Executive Session
10. Citizens Comments
11. Motion For Adjournment

RESOLUTION NUMBER 4371

A RESOLUTION TO REQUIRE PUBLICATION IN *THE BIRMINGHAM NEWS* PROVIDING NOTICE OF A PUBLIC HEARING TO BE HELD BY THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA ON JANUARY 14, 2013 AT 5:00 P.M. FOR THE PURPOSES OF DETERMINING WHETHER OR NOT A PARCEL OF LAND SITUATED AT 1112 MONTGOMERY HIGHWAY IN THE CITY OF VESTAVIA HILLS, ALABAMA SOMETIMES REFERRED TO AS “THE OLD LIBRARY PROPERTY” (“THE PROPERTY”) OWNED BY THE CITY OF VESTAVIA HILLS IS NEEDED FOR MUNICIPAL OR PUBLIC PURPOSES; TO DETERMINE WHETHER OR NOT TO SELL THE PROPERTY WHICH HAS AN APPRAISED VALUE OF \$1,500,000.00 TO HES INVESTMENTS, LLC FOR A TOTAL SALES PRICE IN THE AMOUNT OF \$750,000.00; TO DETERMINE WHETHER OR NOT THE CLOSING OF THE SALE OF THE PROPERTY PURSUANT TO THE TERMS, PROVISIONS AND CONDITIONS OF A WRITTEN REAL ESTATE PURCHASE AND SALE AGREEMENT AND THE FIRST ADDENDUM AND SECOND ADDENDUM THERETO WILL SERVE AS A VALID AND SUFFICIENT PUBLIC PURPOSE NOTWITHSTANDING ANY INCIDENTAL BENEFIT ACCRUING TO ANY PRIVATE ENTITY OR ENTITIES; TO THOROUGHLY DISCUSS THE PUBLIC BENEFITS SOUGHT TO BE ACHIEVED BY THE CLOSING OF THE SALE OF SAID PROPERTY; TO IDENTIFY THE NAME OF THE PARTY THAT HAS OFFERED TO PURCHASE SAID PROPERTY; TO RECEIVE PUBLIC COMMENTS AND INPUT REGARDING THE SALE OF SAID PROPERTY; TO DECIDE WHETHER OR NOT TO SELL SAID PROPERTY; AND TO DECIDE ANY OTHER ISSUE RELATIVE TO THIS MATTER.

THIS RESOLUTION NUMBER 4371 is approved and adopted by the City Council of the City of Vestavia Hills, Alabama on this the 15th day of November, 2012.

WITNESSETH THESE RECITALS:

WHEREAS, the City of Vestavia Hills, Alabama is the owner of a parcel of land situated at 1112 Montgomery Highway in the City of Vestavia Hills, Jefferson County, Alabama constituting of approximately 1.66± acres, sometimes referred to as the “old Library property,” which said property is more particularly described in Exhibit A and shall hereinafter be referred to as “the Property;” and

WHEREAS, the Property has an appraised value of \$1,500,000.00 as of June 23, 2009; and

WHEREAS, the City Council hereby acknowledges receipt of an offer of HES Investments, LLC to purchase the property represented by a written Real Estate Purchase and Sale Agreement and the First Addendum and Second Addendum thereto for a total sales price in the amount of \$750,000.00; and

WHEREAS, Title 11-47-20, *Code of Alabama, 1975*, reads as follows:

“The governing body of any city or town in this state may, by ordinance to be entered on its minutes, direct the disposal of any real property not needed for public or municipal purposes and direct the mayor to make title thereto, and a conveyance made by the mayor in accordance with such ordinance invests the grantee with the title of the municipality,” and

WHEREAS, Article IV §94.01 of the *Constitution of Alabama of 1901*, reads in pertinent part as follows:

“(a) The governing body of any county, and the governing body of any municipality located therein, for which a local constitutional amendment has not been adopted authorizing any of the following, shall have full and continuing power to do any of the following:

(3) Lend its credit to or 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 county or the municipality.

(b) In carrying out the purpose of this amendment, neither the county nor any municipality located therein shall be subject to Section 93 or 94 of this Constitution.

(c) Neither the county nor any municipality located therein shall lend its credit to or grant any public funds or thing of value to or in aid of any private entity under the authority of this amendment unless prior thereto both of the following are satisfied:

(1) The action proposed to be taken by the county or municipality is approved at a public meeting of the governing body of the county or municipality, as the case may be, by a resolution containing a determination by the governing body 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.

(2) At least seven days prior to the public meeting, a notice is published in the newspaper having the largest circulation in the county or municipality, as the case may be, 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 county or the municipality proposes to lend its credit or grant public funds or thing of value.

For purposes of the foregoing, any sale, lease, or other disposition of property for a price equal to the fair market value thereof shall not constitute the lending of credit or a grant of public funds or thing of value in aid of a private entity,” and

WHEREAS, Title 11-47-5, *Code of Alabama, 1975*, reads as follows:

“Contracts entered into by a municipality shall be in writing, signed and executed in the name of the city or town by the officers authorized to make the same and by the party contracting. In cases not otherwise directed by law or ordinance, such contracts shall be entered into and executed by the mayor in the name of the city or town and all obligations for the payment of money by the municipality, except for bonds and interest coupons, shall be attested by the clerk. This section shall not be construed to cover purchases for the ordinary needs of the municipality;” and

WHEREAS, the City Council of the City of Vestavia Hills, Alabama finds and determines that the property described in Exhibit A is not needed for municipal or public purposes; and

WHEREAS, the sale and closing of the Property will be considered at a public hearing to be held on Monday, January 14, 2013, at the Vestavia Hills Municipal Center located at 513 Montgomery Highway in the City of Vestavia Hills, Alabama beginning at 5:00 p.m.; and

WHEREAS, a copy of this Resolution shall be published in *The Birmingham News* at least seven (7) days prior to the public meeting on January 14, 2013 as required by Article IV §94.01 of the *Alabama Constitution*; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA AS FOLLOWS:

1. The City Council of the City of Vestavia Hills, Alabama finds and determines that the property more particularly described in Exhibit A is not needed for municipal or public purposes.

2. A public hearing will be held by the Vestavia Hills City Council on Monday, January 14, 2013, at the Vestavia Hills Municipal Center located at 513 Montgomery Highway in the City of Vestavia Hills, Alabama beginning at 5:00 p.m. as required by Article IV, §94.01 of the *Constitution of Alabama 1901*.

3. The issues to be considered by the Vestavia Hills City Council at the public hearing referred to in paragraph 2 above shall be the following:

A. To determine whether or not the parcel of land consisting of approximately 1.66± acres described in Exhibit A is needed for public or municipal purposes; and

B. To determine whether or not the closing of the sale of the Property pursuant to the terms, provisions and conditions of the written Real Estate Purchase and Sale Agreement and the First Addendum and Second Addendum thereto will serve a valid and sufficient public purpose notwithstanding any incidental benefit accruing to any private entity or entities; and

C. To thoroughly discuss the public benefits sought to be achieved by the closing of the sale as aforesaid; and

D. To identify each individual, firm, corporation or other business entity that the City of Vestavia Hills proposes to contract with; and

E. To receive public comments and input regarding the written Real Estate Purchase and Sale Agreement and the First Addendum and Second Addendum thereto; and

F. To decide whether or not the City of Vestavia Hills shall execute and deliver the written Real Estate Purchase and Sale Agreement by and between the City of Vestavia Hills, Alabama, as “Seller,” and HES Investments, LLC, as “Purchaser”; and

G. To consider all matters as required by Article IV, §94.01 of the *Constitution of Alabama 1901*; and

H. To receive public comments and input on any matter relative to the proposed sale of the Property as described herein; and

I. To find and determine that the sale of the property pursuant to the Contract will:

(a) Promote the economic development of the City of Vestavia Hills, Alabama; and

(b) Serve as a valid and sufficient public purpose notwithstanding any incidental benefit accruing to any private entity or entities; and

(c) Benefit the public and promote the public welfare of the City of Vestavia Hills, Alabama; and

- (d) Promote commercial development and the stimulation of the local economy; and
- (e) Increase employment opportunities and create jobs in the City; and
- (f) Increase the City's tax base, which will result in additional tax revenues for the City; and
- (g) Promote the location, relocation, expansion and retention of commercial enterprises in the City.

J. To find and determine that a nationally recognized company ("Company") will locate on the Property that will open and operate a commercial retail sales business that will generate annual municipal sales tax revenue.

K. To approve and adopt an ordinance authorizing and directing the Mayor and City Manager to sign a Contract, First Addendum and Second Addendum thereto.

L. To decide any other issue relative to this matter; and

4. A copy of the Real Estate Purchase and Sale Agreement, the First Addendum and Second Addendum thereto (hereinafter referred to collectively as the "Contract") is attached hereto, marked as Exhibit B and is incorporated into this resolution by reference as though set out fully herein.

5. Anything contained in this resolution to the contrary notwithstanding, the sale of the Property pursuant to the Real Estate Purchase and Sale Agreement and the First Addendum and Second Addendum thereto shall not be closed unless and until the following have been satisfied, performed, completed and done:

(a) The closing of the sale must be approved and validated by a judgment rendered by a Jefferson County Circuit Court Judge after a hearing on the merits; and

(b) A recognized company ("Company") shall have first agreed in writing with the City to open and operate a commercial retail sales business on the Property or another site in the City that will generate annual municipal sales tax revenue in an amount sufficient to satisfy the City, in its sole discretion, that selling the subject property for \$750,000 meets the requirements of Article IV §94.01, *Constitution of Alabama of 1901*. If the City approves the Company, then in such event the approval shall be done by the enactment of a resolution at a public meeting. If the City disapproves the Company, then in such event the City shall not close

the sale of the Property and the Contract shall automatically terminate, be null and void and have no legal force and effect.

6. The City Clerk is hereby directed to take any and all steps necessary to publish notice of the public hearing on January 14, 2013, at 5:00 p.m. in *The Birmingham News* at least seven (7) days prior to the public meeting as aforesaid. The notice shall include all matters as required in Article IV, §94.01 of the *Constitution of Alabama 1901*.

7. If any part, section or subdivision of this resolution shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this resolution, which shall continue in full force and effect notwithstanding such holding.

RESOLVED, APPROVED, ADOPTED, DONE and ORDERED, on this the 15th day of November, 2012.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is entered into on or as of this _____ day of _____, 2012 by and between **The City of Vestavia Hills, Alabama** (the "Seller"), and **HES Investments, LLC**, an Alabama limited liability company or its assigns (the "Purchaser").

Recitals

A. Seller is the owner of that certain parcel of improved real property, being known as the old Vestavia Hills library property comprised of 1.66 acres and an approximate 22,000 square foot, three story building, located at 1112 Montgomery Highway in Vestavia Hills, Alabama, as depicted on the attached Exhibit A and made a part hereof (the "Property").

B. Purchaser desires to purchase the Property, and Seller desires to sell the Property, pursuant to the terms and conditions of this Agreement.

Agreement

NOW, THEREFORE, in consideration of the above Recitals and other good and valuable consideration, including the mutual covenants and promises herein contained, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby agree as follows:

1. Purchase Price; Closing Date. The purchase price for the Property shall be \$750,000.00 (the "Purchase Price"), to be paid as hereinafter provided. The closing of the sale and purchase of the Property (the "Closing") shall occur on the Closing Date, as defined in paragraph 5.

2. Earnest Money; Inspection Period. No later than three (3) business days after the Effective Date (defined in Section 24 hereof), Purchaser shall pay to Seller immediately available funds in the amount of \$10,000.00 (the "Earnest Money"), to be held and disbursed by the Seller in accordance with the terms of this Agreement. Commencing on the Effective Date, Purchaser shall have **120** days (the "Inspection Period") to perform such inspections as Purchaser deems necessary to evaluate the Property, at Purchaser's sole expense. Purchaser shall indemnify and hold Seller harmless from any and all claims, damages and losses, including attorney fees, arising from such inspections. If Purchaser deems any inspection unsatisfactory, for any reason or no reason, Purchaser shall have the right to terminate this Agreement prior to the end of the Inspection Period, by written notice to Seller received prior to the end of the Inspection Period, and receive a full refund of the Earnest Money. If Purchaser does not terminate this Agreement prior to the end of the Inspection Period, all inspections shall be deemed satisfactory, and the parties shall proceed to Closing.

3. Application of Earnest Money. Unless this Agreement is terminated prior to the end of the Inspection Period, the Earnest Money shall become non-refundable and shall be applied to the Purchase Price to be paid by Purchaser at Closing.

4. Possession. Seller shall deliver possession of the Property to Purchaser on the Closing Date.

5. Place and Date of Closing. The Closing shall be on or before the date which is 30 days following the end of the Inspection Period provided the sale has been validated by the Circuit Court of Jefferson County, Alabama. The actual date of Closing is referred to herein as the "Closing Date." Time shall be of the essence with respect to the Closing Date.

6. Conveyance. Seller shall convey to Purchaser good and marketable fee simple title to the Property by general warranty deed.

7. Costs and Fees. Purchaser shall pay all other costs and fees related to closing including any updated survey, appraisal, environmental audits, title, mortgage tax, recording fees, etc. Seller and Purchaser shall pay the fees of their own attorneys for services related to the preparation and negotiation of this Agreement and the sale and purchase of the Property. All taxes will be prorated as of the day of closing.

Seller agrees to provide its most recent survey of the Property to Seller, together with other readily accessible reports, easements and other agreements relating to the Property now in Seller's possession, all within five (5) business days from the Effective Date.

8. Intentionally Deleted

9. Representations and Warranties of Seller. To induce Purchaser to enter into this Agreement, Seller makes the following representations and warranties, all of which are true as of the date hereof (unless otherwise specified) and shall also be true as of the Closing Date:

(a) Seller has full power and authority to enter into this Agreement and to perform all of its obligations hereunder.

(b) The execution and delivery of this Agreement and the performance by Seller of its obligations hereunder have been duly authorized by all requisite action, except for validation of the sale by a court order rendered by a Judge in the Tenth Judicial Circuit of Alabama after conducting a hearing for that purpose and the approval by the City of the Company (as defined in Section 25, Closing Condition Four) submitted by Purchaser.

(c) That unless excepted herein, Seller has not received notification from any lawful authority regarding any assessments, pending public improvements, repairs, replacement, or alterations to the Property that have not been satisfactorily made. Seller warrants that there is no unpaid indebtedness on the Property except as described in this Agreement. Seller warrants it is the fee owner of the Property or is authorized to execute this document for the fee owner.

(d) Seller has no actual knowledge that the Property has in the past been used or is presently used for the handling, storage, manufacturing, refining, transportation or disposal of "toxic material", "hazardous substances" or "hazardous waste". The terms "hazardous wastes", "hazardous substances", and "toxic material" include, without limitation, any flammable explosives, radioactive materials, hazard materials, hazardous wastes, hazardous or toxic substances or related materials defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USC §960, et seq.), the Hazardous Materials Transportation Act, as amended (42 USC §1801 et seq), the Resource Conservation and Recovery Act, as amended (42 USC §9601 et seq.), the regulations

adopted and publications promulgated pursuant to the foregoing and any other federal, state or local environmental law, ordinance, rule or regulation. Furthermore, Seller has not received a summons, citation, directive, letter or other communication, written or oral, from any governmental authority as to any of the above environmental concerns.

(e) Seller shall neither market the Property for sale nor enter into a “back-up” contract with any other party for said Property throughout the term of this Agreement.

At Closing, Seller shall be deemed to have represented and warranted to Purchaser that Seller’s representations and warranties as stated herein are true and correct as of the Closing. Purchaser shall have the right, at its expense, to have a Phase 1 ESA performed on the Property.

THESE WARRANTIES SHALL SURVIVE THE DELIVERY OF THE DEED.

10. Documents for Closing.

(a) Seller, at Seller’s sole cost and expense, shall deliver or cause to be delivered to Purchaser the following documents (the “Closing Documents”):

(i) the Deed;

(ii) a certificate of non-foreign status to insure Seller’s compliance with Foreign Investment in Real Property Tax Act (“FIRPTA”) (Section 1445 of the Internal Revenue Code of 1986, as amended) in the form attached hereto as Exhibit C;

(iii) such additional documents and instruments as the title company may reasonably require to transfer Seller’s interest in the Property pursuant to the terms of this Agreement, each of which shall be in form and substance reasonably satisfactory to Seller.

(b) At the Closing, Purchaser shall deliver, or cause to be delivered, to Seller in accordance with the terms of this Agreement, the Purchase Price less the Earnest Money and prorations.

11. Default; Remedies. If Purchaser fails to perform its obligations under this Agreement within the time specified, Seller shall have the right to retain the Earnest Money as liquidated damages as its sole and exclusive remedy. If Seller fails to perform any of the covenants of this Agreement, then the Earnest Money paid by Purchaser shall be returned to Purchaser and thereupon Seller shall be released from any and all liability under the terms of this Agreement, or, alternatively, Purchaser may seek the remedy of specific performance so long as such action is filed within thirty (30) days of the alleged breach and or pursue any other remedies afforded to it under the law. If either party fails to comply with all of the terms, covenants and conditions of this Agreement, the prevailing party in any lawsuit will be entitled to all expenses, including a reasonable attorney’s fee, incurred as a result of such failure.

12. Condemnation and Destruction. If, on the Closing Date, all or any reasonably substantial portion of the Property is the subject of a pending or contemplated taking by eminent domain which has not been consummated or if the Property has been materially damaged or destroyed, Seller shall notify Purchaser of such fact and Purchaser shall have the option to terminate this Agreement and,

in the event Purchaser shall elect to terminate this Agreement, Seller shall refund to Purchaser the Earnest Money. If this Agreement is terminated and the Earnest Money is returned, as aforesaid, neither party shall have any further rights or obligations hereunder. If, after receipt of Seller's notice, as aforesaid, Purchaser does not exercise its option to terminate this Agreement, the parties hereto shall remain bound hereunder and Seller shall assign and turn over, and Purchaser shall be entitled to receive and keep, all awards for the taking by eminent domain described in said notice or all insurance proceeds payable as a result of such destruction or damage.

13. Final Agreement. This Agreement represents the final agreement of the parties and no agreements or representations, unless incorporated in this Agreement, shall be binding on any of the parties, and no portion hereof shall be amended or modified unless such change shall be in writing and signed by both parties thereto.

14. Notice. Any notice required hereunder shall be in writing and sent by certified mail, return receipt requested. Notice shall be deemed to be given when deposited in the United States mail, postage prepaid. Personal delivery and delivery by recognized overnight delivery service may be substituted for certified mail. Notice shall be sent to the following individuals:

If to Purchaser: Jordy Henson
 HES Investments, LLC
 2644 Old Rocky Ridge Road
 Birmingham, AL 35216

If to Seller: Mayor Alberto C. Zaragoza, Jr.
 City of Vestavia Hills, Alabama
 513 Montgomery Highway
 Vestavia Hills, Alabama 35216

With a copy to: Patrick H. Boone
 705 New South Federal Savings Building
 215 Richard Arrington, Jr. Boulevard North
 Birmingham, Alabama 35203-3720

15. Number and Gender. Whenever the singular number is used herein and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and the word "person" shall include a corporation, firm, partnership, joint venture, trust or estate.

16. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Alabama.

17. Assignment. Purchaser may not transfer, assign or encumber its rights and or obligations under this agreement without the prior written consent of Seller, which approval may be

withheld in Seller's sole and absolute discretion; provided, however, that Purchaser shall have the right to transfer and assign this Agreement to any entity which is controlled by Purchaser.

18. Survival. The representations, warranties and indemnities contained herein shall be deemed to have been made again by the parties as of the Closing Date, and shall survive the expiration or termination of this Agreement, the discharge of all other obligations owed by the parties to each other, and any transfer of title to the Property, and shall not be affected by any investigation by or on behalf of Purchaser, or by any information which Purchaser may have or obtain with respect thereto.

19. Severability. In the event that any condition or covenant herein contained is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or conditions herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

20. Waiver. No breach of any provision hereof can be waived unless in writing. Waiver of any one breach shall not be deemed to be a waiver of any other breach of the same or any other provision hereof.

21. Captions and Interpretations. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or any provision hereof. No provision in this Agreement is to be interpreted for or against either party because that party or such party's legal representative drafted such provision.

22. Broker. Seller and Purchaser shall indemnify each other against any and all claims for broker's fees, costs or commissions which might arise in connection with the purchase and sale of the Property as a result of either's action. The provisions of this Paragraph shall survive closing. Each party hereby represents to the other that it has not utilized the services of any real estate agent or broker in connection with this Agreement.

23. Patriot Act Representations. Seller and Purchaser each represent and warrant to the other that they are not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by the United States Treasury Department as a Specifically Designated National and Blocked Person, or for or on behalf of any person, group, entity, or nation designated in Presidential Executive Order 13224 as a person who commits, threatens to commit, or supports terrorism; and that they are not engaged in this transaction directly or indirectly on behalf of, or facilitating this transaction directly or indirectly in behalf of, any such person, group, entity, or nation.

24. Effective Date: The Effective Date of this Agreement is the date which is the sixth (6th) day following the posting of the ordinance approved and enacted by the City Council authorizing and directing the Mayor to sign the Agreement for and on behalf of the Seller.

25. **CONTINGENCIES AND CONDITIONS FOR CLOSING:** Anything contained in this Agreement to the contrary notwithstanding, this Agreement is subject to and contingent upon the completion and satisfaction of the following on or before the Seller is required to close this sale, hereinafter referred to collectively as "Closing Conditions":

CLOSING CONDITION ONE: Title 11-47-20, *Code of Alabama, 1975*, reads as follows:

“The governing body of any city or town in this state may, by ordinance to be entered on its minutes, direct the disposal of any real property not needed for public or municipal purposes and direct the mayor to make title thereto, and a conveyance made by the mayor in accordance with such ordinance invests the grantee with the title of the municipality.”

In order for the Seller to be required to close this sale pursuant to this Agreement, the City Council shall first make a determination, on or before the Effective Date set forth in Paragraph 24 hereof, that the Property is no longer needed for public or municipal purposes. If the City Council fails or refuses to make a determination that the Property is no longer needed for public or municipal purposes as aforesaid, then in such event the Seller shall not be required to close this sale and this Agreement shall be automatically terminated, be null and void and of no legal force and effect.

CLOSING CONDITION TWO: Amendment No. 772 to the *Constitution of Alabama* (1901) (Section 94.01(a)(3) of the *Recompiled Constitution of Alabama* (hereinafter referred to as “Amendment No. 772”), authorizes the City to lend its credit to or grant public funds and things of value in aid of or to any corporation or other business entity for the purpose of promoting the economic development of the City. Article IV, §94.01 of the *Constitution of Alabama of 1901* Amendment No. 772” reads in pertinent part as follows:

“(a) The governing body of any county, and the governing body of any municipality located therein, for which a local constitutional amendment has not been adopted authorizing any of the following, shall have full and continuing power to do any of the following:

(3) Lend its credit to or 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 county or the municipality.

(b) In carrying out the purpose of this amendment, neither the county nor any municipality located therein shall be subject to Section 93 or 94 of this Constitution.

(c) Neither the county nor any municipality located therein shall lend its credit to or grant any public funds or thing of value to or in aid of any private entity under the authority of this amendment unless prior thereto both of the following are satisfied:

(1) The action proposed to be taken by the county or municipality is approved at a public meeting of the governing body of the county or municipality, as the case may be, by a resolution containing a determination by the governing body 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.

(2) At least seven days prior to the public meeting, a notice is published in the newspaper having the largest circulation in the county or municipality, as the case may be, 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 county or the municipality proposes to lend its credit or grant public funds or thing of value.

For purposes of the foregoing, any sale, lease, or other disposition of property for a price equal to the fair market value thereof shall not constitute the lending of credit or a grant of public funds or thing of value in aid of a private entity.”

In order for the Seller to be required to close this sale pursuant to this Agreement, the City Council shall first publish the notice of a public meeting in strict compliance with the mandated requirements of Amendment No. 772. If the City Council fails or refuses to publish said notice as aforesaid, then in such event the Seller shall not be required to close this sale and this Agreement shall be automatically terminated, be null and void and have no legal force and effect.

CLOSING CONDITION THREE: In order for the Seller to be required to close this sale pursuant to this Agreement, the City Council shall first:

- (a) Hold and conduct the public meeting as required by Amendment No. 772; and
- (b) Find and determine that the sale of the property pursuant to the Agreement will:
 - (1) Promote the economic development of the City of Vestavia Hills, Alabama; and
 - (2) Serve as a valid and sufficient public purpose notwithstanding any incidental benefit accruing to any private entity or entities; and
 - (3) Benefit the public and promote the public welfare of the City of Vestavia Hills, Alabama; and
 - (4) Promote commercial development and the stimulation of the local economy; and
 - (5) Increase employment opportunities and create jobs in the City; and

(6) Increase the City's tax base, which will result in additional tax revenues for the City; and

(7) Promote the location, relocation, expansion and retention of commercial enterprises in the City.

(8) Find and determine that a recognized company ("Company") will locate on the Property that will open and operate a commercial retail sales business that will generate annual municipal sales tax revenue in an amount sufficient to justify the sale of the Property for less than the year 2009 appraised value.

(c) Approve and adopt an ordinance authorizing and directing the Mayor to sign this Agreement.

If the City Council fails or refuses to hold and conduct the public hearing as mandated by Amendment No. 772 or fails and refuses to make any of the findings or determinations as set forth in paragraphs (1) through (8) above, and/or fails or refuses to approve and adopt the ordinance referred to above, then in such event the Seller shall not be required to close this sale and the Agreement shall be automatically terminated, be null and void and have no legal force and effect.

CLOSING CONDITION FOUR: The Purchaser shall, on or before ninety (90) days from the Effective Date, produce to Seller a tenant or company (the "Company" or the "tenant") that will, prior to the end of said ninety (90) day period provide written confirmation to the Seller stating that it, the Company, pending and in accordance with a fully executed commercial lease with Purchaser, and provided this Agreement closes and the Company actually opens for business:

a) Will locate within the corporate boundaries of the City of Vestavia Hills and open and operate a commercial retail sales business on the Property; and

(b) Will purchase from Seller a business license the cost of which shall be based upon a fee and a percentage of gross retail sales; and

(c) Will be engaged in the commercial business of retail sales; and

(d) Expects to generate annual retail sales in an amount necessary to collect and pay over to the City annually municipal sales tax revenue, (which is presently calculated at three percent (3%) of gross retail sales) sufficient to justify, in the sole opinion of Seller, selling the Property at less than the year 2009 appraised value.

In order for the Seller to be required to close this sale pursuant to this Agreement, the City Council shall first accept, agree and approve the Company to locate and operate in the City of Vestavia Hills as completion and satisfaction of this Closing Condition Four. The acceptance by the Seller shall be in writing and approved by the enactment of a resolution at a public hearing, all within

ten (10) business days from Purchaser's submission of a Company to Seller for its approval or disapproval.

Purchaser and Seller agree that the Seller shall have the sole, unfettered and absolute discretion to approve or disapprove the Company offered by Purchaser in an effort to complete and satisfy this Closing Condition Four. If the City Council fails or refuses to accept the Company as completion and satisfaction of this Closing Condition Four, then in such event the Seller shall have no legal obligation to close this sale and this Agreement shall be automatically terminated, be null and void and of no legal force and effect and the Earnest Money shall be immediately returned to Purchaser.

Anything to the contrary in this Closing Condition Four notwithstanding, Purchaser shall have ninety (90) days from the Effective Date to continue to submit prospective tenants to Seller for Seller's approval or disapproval. If after said ninety (90) day period Seller has not approved of a Company, then and only then shall the Seller have the right but not the obligation to terminate the Agreement by immediately refunding the Earnest Money to Purchaser.

CLOSING CONDITION FIVE: Seller shall have no legal obligation to close this sale unless and until the Property is rezoned by the City of Vestavia Hills so as to permit the contemplated use by the Purchaser or Company referred to in Closing Condition Four. If the Property is not rezoned as aforesaid, then in such event the Seller shall have no legal obligation to close the sale of the Property and this Agreement shall be automatically terminated, be null and void and of no force and effect and the Earnest Money shall be immediately returned to Purchaser.

CLOSING CONDITION SIX: In order for the Seller to be required to close this sale pursuant to this Agreement, the Circuit Court of Jefferson County, Alabama shall have first entered a judgment validating and confirming this Agreement and the closing thereof, which judgment shall have become forever conclusive in accordance with and as provided in Section 6-6-755 of the *Code of Alabama, 1975*. If the Circuit Court of Jefferson County, Alabama fails or refuses to render a judgment validating and confirming this Agreement prior to the expiration of the Inspection Period, then in such event the Seller shall not be required to close this sale and the Agreement shall be automatically terminated, be null and void and of no force and effect and the Earnest Money shall immediately be returned to Purchaser.

CLOSING CONDITION SEVEN: If the sale of the Property is not closed on or before the Closing Date, then in such event this Agreement shall automatically be terminated, cancelled, null and void and of no legal force and effect.

The Seller shall have no legal obligation to close this sale unless and until all seven Closing Conditions have been completed and satisfied. Stated another way, if any one of the Closing Conditions is not completed and satisfied, then in such event this Agreement shall be automatically terminated and of no legal force and effect and the Earnest Money shall be immediately refunded to Purchaser.

26. CONDITION OF PROPERTY: The Property is sold in "as is condition with any and all faults." Purchaser expressly acknowledges and agrees that Seller makes no representations or

warranties regarding the condition of the Property, except to the extent expressly and specifically set forth herein.

27. CONSTRUCTION OF TERMS: Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision. Any ambiguities of this Agreement shall be construed fairly and equitably regardless of the participation of either party in drafting this Agreement. The reference in terms to gender and number shall be modified as may be appropriate.

IN WITNESS WHEREOF, Seller and Purchaser have caused this Agreement to be executed as of the date first above written.

SELLER:

WITNESS

CITY OF VESTAVIA HILLS, ALABAMA

By _____
Alberto C. Zaragoza, Jr.
Its Mayor

PURCHASER:

WITNESS

HES INVESTMENTS, LLC

By _____
W. Jordy Henson
Its Managing Member

**STATE OF ALABAMA
JEFFERSON COUNTY**

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Alberto C. Zaragoza, Jr., whose name as Mayor of the City of Vestavia Hills, Alabama, is signed to the foregoing Real Estate Purchase and Sale Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the document, he, as such officer and with full authority, executed the same voluntarily for and as the act of said City of Vestavia Hills, Alabama.

Given under my hand and official seal, this the _____ day of _____, 2012.

My Commission Expires: _____

SEAL

Notary Public

**STATE OF ALABAMA
JEFFERSON COUNTY**

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that W. Jordy Henson, whose name as Managing Member of HES Investments, LLC, is signed to the foregoing Real Estate Purchase and Sale Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of the document, he, as such officer and with full authority, executed the same voluntarily for and as the act of said HES Investments, LLC.

Given under my hand and official seal, this the _____ day of _____, 2012.

My Commission Expires: _____

SEAL

Notary Public

**EXHIBIT A
TO
PURCHASE AND SALE AGREEMENT**

A parcel of land situated in the Northeast Quarter of the Southwest Quarter of Section 30, Township 18 South, Range 2 West, Jefferson County, Alabama, being more particularly described as follows:

From the Southwest corner of said quarter-quarter section run thence in an Easterly direction along the South line of same for a distance of 589.77 feet to the point of beginning of the parcel herein described; thence turn an angle to the left of 103 degrees 33 minutes 57 seconds and run in a Northwesterly direction for a distance of 206.63 feet; thence turn an angle to the right of 101 degrees 35 minutes 18 seconds and run in an Easterly direction for a distance of 359.60 feet to a point on the Westerly right-of-way of U.S. Highway 31, said point being in a curve to the right having a radius of 3173.97 feet and a central angle of 3 degrees 54 minutes 57 seconds and being concave to the West with a chord which forms an interior angle of 98 degrees 29 minutes 45 seconds with the previous call; thence run along the arc of said curve in said right-of-way line in a southerly direction for a distance of 216.93 feet to the South line of said quarter-quarter section, the chord of said curve forming an interior angle of 79 degrees 31 minutes 36 seconds with said South line of said quarter-quarter section; thence run in a Westerly direction along said South line for a distance of 350.34 feet to the point of beginning.

**EXHIBIT B
TO
PURCHASE AND SALE AGREEMENT**

**EXHIBIT C
TO
PURCHASE AND SALE AGREEMENT**

**CERTIFICATION OF
NONFOREIGN STATUS**

This Certification of Nonforeign Status is made by _____
_____ (“Seller”) to the _____ (“Purchaser”), pursuant to
Section 1445 of the Internal Revenue Code (the “Code”).

Section 1445 of the Code provides that a transferee of a United States real property interest must withhold tax if the transferor is a foreign person. To inform the Purchaser that withholding of tax is not required upon the disposition of a United States real property interest by Seller, the undersigned hereby certifies the following on behalf of Seller:

1. Seller is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Internal Tax Regulations). Seller is a domestic corporation organized under the laws of the State of Alabama. Seller is not a partner in any foreign partnership and does not have any interest in any foreign trust or foreign estate (as those terms are defined in the Code and Income Tax Regulations).

2. Seller’s employer identification number is 63-0371391.

3. Seller’s office address is _____.

Seller understands that this Certification of Nonforeign Status may be disclosed to the Internal Revenue Service by Purchaser and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under the penalties of perjury, I declare that I have examined this Certification of Nonforeign Status and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Seller.

[Signature Page Follows]

This Certification is signed by the undersigned on the ____ day of _____, 20____.

By: _____
Name: _____
Title: _____

ORDINANCE NUMBER 2422

**AN ORDINANCE AUTHORIZING AND DIRECTING THE SALE
OF REAL ESTATE AND THE EXECUTION AND DELIVERY OF
A REAL ESTATE SALES CONTRACT.**

THIS ORDINANCE NUMBER 2422 is approved and adopted by the City Council of the City of Vestavia Hills, Alabama on this the 15th day of November, 2012.

WITNESSETH THESE RECITALS:

WHEREAS, Title 11-40-1, *Code of Alabama, 1975*, declares municipalities corporate and gives them the power to contract and be contracted with; and

WHEREAS, Title 11-43-56, *Code of Alabama, 1975*, provides that the City Council shall have the management and control of the finances and all of the property, real and personal, belonging to the City; and

WHEREAS, Title 11-47-20, *Code of Alabama, 1975*, provides that the City Council may, by ordinance to be entered on its minutes, direct the disposal of any real property not needed for public or municipal purposes and direct the mayor to make title thereto, and a conveyance made by the mayor in accordance with such ordinance invests the grantee with the title of the municipality; and

WHEREAS, Title 11-43A-28, *Code of Alabama, 1975*, provides that the City Manager shall be the head of the administrative branch of the government of the City of Vestavia Hills and shall be responsible to the City Council for the proper administration of all municipal affairs; and

WHEREAS, Title 11-43A-48, *Code of Alabama, 1975*, provides that all contracts for the City of Vestavia Hills shall be made and approved by ordinance and signed in the name of the City of Vestavia Hills by the Mayor and countersigned by the City Manager; and

WHEREAS, Title 11-45-8(b), *Code of Alabama, 1975*, provides that if an ordinance is published by posting, then in such event said ordinance shall take effect five days thereafter; and

WHEREAS, the Thomas Holdings, LLC is the owner of real property situated in the City of Vestavia Hills, Jefferson County, Alabama, which said real estate shall

hereinafter be referred to as the “subject property” and is more particularly described as follows:

(To be inserted after survey is completed); and

WHEREAS, the City of Vestavia Hills, Alabama (“City”), desires to purchase the subject property from Thomas Holdings, LLC; and

WHEREAS, a copy of a document entitled “Agreement for Sale and Purchase of Real Estate” by and between the City of Vestavia Hills, Alabama, as “Purchaser”, and Thomas Holdings, LLC, an Alabama limited liability company, as “Seller”, hereinafter referred to as the “Agreement” is attached hereto, marked at Exhibit 1 and is incorporated into this Ordinance Number 2422 by reference as though set out fully herein.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:

1. The Mayor and City Manager are hereby authorized and directed to execute and deliver the Agreement for Sale and Purchase of Real Estate designated as Exhibit 1 for and on behalf of the City of Vestavia Hills, Alabama.

3. The sale shall be made and closed in accordance with the terms, provisions and conditions of the Agreement for Sale and Purchase of Real Estate , a copy of which is marked as Exhibit 1 attached to this Ordinance Number 2422 and incorporated herein by reference as though set out fully herein. A copy of said Agreement for Sale and Purchase of Real Estate will be on file in the office of the City Clerk of the City of Vestavia Hills, Alabama for inspection by members of the general public.

4. Upon approval, adoption and enactment of this Ordinance Number 2422 the City Manager is hereby authorized and directed to take any and all legal action necessary to close the sale of the subject property all in accordance with the terms, provisions and conditions of the Agreement for Sale and Purchase of Real Estate designated as Exhibit 1.

5. This ordinance shall become effective upon its approval, adoption, enactment and publication by posting as set forth in Title 11-45-8(b), *Code of Alabama, 1975*.

6. If any part, section or subdivision of this ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this ordinance which shall continue in full force and effect notwithstanding such holding.

DONE, ORDERED, APPROVED and ADOPTED this the 15th day of November, 2012.

CITY OF VESTAVIA HILLS, ALABAMA

By _____
Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2422 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 15th day of November, 2012 as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills New Merkle House, Vestavia Hills Civic Center and Vestavia Hills Library in the Forest this the _____ day of _____, 2012.

Rebecca Leavings
City Clerk

STATE OF ALABAMA

JEFFERSON COUNTY

AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE

THIS AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE (“the Agreement”), is made and entered into on this the 15th day of November, 2012 by and between Thomas Holdings, LLC (hereinafter referred to as “Seller”), and the City of Vestavia Hills, Alabama, a municipal corporation (hereinafter referred to as “Purchaser”).

WITNESSETH THESE RECITALS:

WHEREAS, Thomas Holdings, LLC owns a tract of land consisting of approximately 1.18± acres commonly referred to as “Property”; and

WHEREAS, Thomas Holdings, LLC as Seller, desires to sell the Property (**the “Property”**), and the City of Vestavia Hills, Alabama, as Purchaser, desires to purchase the Property; and

WHEREAS, the Seller desires to sell the Property, which is hereinafter described, and Purchaser desires to purchase the Property on the terms, provisions and conditions hereinafter set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises, the mutual covenants hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, by the parties hereto, Seller and Purchaser hereby mutually covenant and agree as follows:

1. **PROPERTY:** Seller hereby agrees to sell, and Purchaser hereby agrees to purchase, a certain parcel of real property located in the City of Vestavia Hills, Jefferson County, Alabama, which is estimated to consist of approximately 1.18± acres, which Property is generally depicted on the map designated as Exhibit A, attached hereto and made a part hereof. The Property is more particularly described in Exhibit B, which is attached hereto and made a part hereof.

2. **AMOUNT OF PURCHASE PRICE:** The purchase price (**“the Purchase Price”**) for the Property shall be Three Hundred Sixty-five Thousand and No/100 Dollars (\$365,000.00).

3. **PAYMENT OF PURCHASE PRICE:** The payment of the Purchase Price shall be paid by the Purchaser to the Seller as follows:

A. **EARNEST MONEY (“THE EARNEST MONEY”):** Five Thousand Dollars (\$5,000.00).

B. CASH ON CLOSING THIS SALE: The balance of the Purchase Price in the amount of Three Hundred Sixty Thousand Dollars (\$360,000.00) shall be paid to Seller by Purchaser in cash or immediately available funds at closing.

Contemporaneously herewith, the Purchaser has deposited with Wes Cline Caldwell Banker Commercial Moore Company Realty, as agent for Thomas Holdings, LLC the sum of Five Thousand and No/100 Dollars (\$5,000.00), which amount shall be held by the Wes Cline Caldwell Banker Commercial Moore Company Realty in an interest bearing account (said amount, together with all interest earned thereon, is hereinafter collectively referred to as the "Earnest Money"). The Earnest Money shall be held in trust by Wes Cline Caldwell Banker Commercial Moore Company Realty subject to the terms and provisions set forth in the Agreement. In the event Purchaser timely elects, in its sole discretion, to terminate this Agreement on or before the expiration of the Inspection Period, as defined and provided in paragraph 8 below, then the Earnest Money shall be promptly returned to Purchaser, this Agreement shall be deemed cancelled and terminated and, except for the indemnification obligations of Purchaser provided in paragraph 8 below, neither party shall have any further obligation or liability to the other hereunder. If the contemplated sale is closed, then in such event the said Earnest Money shall be paid to Seller as part of the Purchase Price.

4. CLOSING AND CLOSING DATE: Subject to the terms, provisions and conditions of this Agreement, the closing of the sale and purchase of the Property (**the "Closing"**) shall occur on or before the date that is seven (7) days after the expiration of the Inspection Period, as hereinafter defined (**the "Closing Date"**).

5. CONVEYANCE. Seller agrees to convey the Property to Purchaser by statutory warranty deed (**the "Deed"**) at the Closing.

6. SURVEY. Within thirty (30) days after the Effective Date, Purchaser, at Purchaser's expense, shall cause to be prepared by a surveyor selected by Purchaser (**the "Surveyor"**) a boundary survey of the Property (**the "Survey"**) and shall provide a copy of the Survey to Seller. The legal description as prepared by the Surveyor shall be the legal description of the Property used in the Deed described in paragraph 5 above and the Title Policy described in paragraph 7 hereof.

7. TITLE INSURANCE: Seller shall, within thirty (30) days after the Effective Date, secure a title commitment showing that Seller has fee simple title to the Property (**the "Title Commitment"**) naming Purchaser as the proposed insured on a Chicago Title Insurance Company Standard Form Owners Policy issued by Land Title Company of Alabama, Inc. as agent for Chicago Title Insurance Company (**the "Title Agent"**) for the Property described in paragraph 1 hereof in the amount of the Purchase Price (**the "Title Policy"**).

8. **INSPECTIONS:** Purchaser, or Purchaser's representatives, shall have the right to enter the Property for the purpose of inspecting same, and/or making boundary line and topographical surveys of the same, and/or making soil tests thereon, and/or in general observing and investigating the condition of the Property. Purchaser agrees to indemnify Seller from and against any liability that results from Purchaser performing any of its inspections as provided herein, and such indemnity shall survive any termination of this Agreement.

9. **INSPECTION PERIOD:** Purchaser shall have a period of one hundred fifty (150) days from the Effective Date ("Inspection Period") to determine, either personally or through or with a representative of Purchaser's choosing, any and all conditions of the Property (including without limitation the condition of all improvements thereon) material to Purchaser's decision to purchase the Property. The determination shall include, without limitation, Purchaser satisfying itself as to title matters, soil testing, survey matters, structural matters, zoning matters, subdivision regulations, engineering and site planning, environmental matters, specifically including, but not limited to Phase I ESA, existing contracts and financial matters affecting the Property, all soil, landscaping and other physical conditions of the Property, availability and sufficient quantities of all utilities, and all additional matters that Purchaser believes relevant, in its sole and absolute discretion, in determining whether or not to purchase the Property. Purchaser, at Purchaser's sole discretion, for any reason or no reason, shall have the right and option to cancel this Contract by giving written notice of termination to Seller no later than the last day of the Inspection Period, in which the right and option to cancel this Contract by giving written notice of termination to Seller no later than the last day of the Inspection Period, in which event this Contract shall be of no further force or effect except for any indemnity or other obligations that expressly survive, and the Earnest Money shall be refunded to Purchaser. If Purchaser cancels and terminates this Agreement prior to the expiration of the Inspection Period, then in such event the earnest money shall be refunded by the Seller to Purchaser in full.

10. **ENVIRONMENTAL CONCERNS:** Seller has no actual knowledge that the Property has in the past been used or is presently used for the handling, storage, manufacturing, refining, transportation or disposal of "toxic material", "hazardous substances" or "hazardous waste". The terms "hazardous waste", "hazardous substances" and "toxic material" include, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USC §960, et seq.), the Hazardous Materials Transportation Act, as amended (42 USC §1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 USC §9601, et seq.), the regulations adopted and publications promulgated pursuant to the foregoing and any other federal, state or local environmental law, ordinance, rule or regulation. Furthermore, Seller has not received a summons, citation, directive, letter or other communication, written or oral, from any governmental authority as to any of the above environmental concerns.

11. **CONDITION OF PROPERTY:** Purchaser acknowledges and agrees that:

A. Seller has not made and does not make any covenant, representation of warranty, either express or implied, regarding the physical condition of the Property or any portion thereof, the suitability of the Property for any particular purpose or use whatsoever, utility availability for the Property, whether the Property is subject to surface or subsurface contamination by toxic or hazardous waste or with respect to any other matters affecting the Property or Purchaser's contemplated use thereof;

B. Purchaser has been given the absolute and unfettered right during the Inspection Period to conduct such Inspections of the Property as Purchaser, in its sole discretion, may determine necessary in order to satisfy itself of all conditions and other aspects of the Property; and

C. Purchaser has available to it such resources, expertise, consultants and advisors so that it can make a sound and reasoned judgment as to the condition of the Property as well as to all economic conditions, suitability requirements and all other matters affecting the use, development and ownership of the Property. Purchaser acknowledges and agrees that the Property is to be sold and conveyed to, and accepted by, Purchaser in its present condition, "AS IS, WHERE IS AND WITH ALL FAULTS," and Purchaser hereby assumes the risk that adverse physical characteristics and existing conditions may have not been revealed by the Inspections.

12. **EXISTING DOCUMENTS, SURVEY AND TITLE INSURANCE:** Within ten (10) days following the Effective Date of this Agreement, the Seller agrees to provide Purchaser, at Seller's expense, and no later than 5:00 p.m. (Birmingham, Alabama time) on said date copies of all existing surveys, existing title insurance policies, existing environmental reports, and other documentation in any way relating to the Property that are in the possession of the Seller or the Seller's agents.

13. **CLOSING COSTS:** The Closing shall be held at the City of Vestavia Hills Municipal Center. The closing attorney shall be Patrick H. Boone.

A. **CLOSING COSTS FOR SELLER:** The Seller shall pay the following closing costs:

- (1) Title Insurance premium.
- (2) Ad valorem taxes on a prorated basis.

B. **CLOSING COSTS FOR PURCHASER:** The Purchaser shall pay the following closing costs:

- (1) The fee for recording the deed.
- (2) Cost of Survey of the Property.
- (3) Ad valorem taxes on a prorated basis.

For purposes of this Agreement, all ad valorem taxes except municipal taxes are presumed to be paid in arrears for purposes of proration; municipal taxes, if any, are presumed to be paid in advance.

14. **POSSESSION:** Possession of the Property shall be given on the Closing Date.

15. **BROKER:**

A. **SELLER:** The Seller is represented in this contemplated transaction by Coldwell Banker Commercial Moore Company Realty and the agent is Wes Cline for Seller shall be responsible for paying the real estate broker/agent commission to said Coldwell Banker Commercial Moore Company Realty in the amount of 6.95 percent (6.95%) of the Purchase Price.

B. **PURCHASER:** Purchaser is not represented in this contemplated transaction by a real estate broker and/or agent and has not caused any brokerage commissions or real estate fees to be owing by either Seller or Purchaser in connection with the closing of this contemplated transaction.

16. **NOTICES:** All notices and demands to be given or made hereunder shall be in writing and shall be given by (i) personal or hand delivery, (ii) nationally recognized express overnight delivery service (with charges therefor prepaid), or (iii) certified or registered mail, return receipt requested (with postage therefor prepaid). Notices shall be deemed received upon (a) receipt, if hand or personally delivered, (b) the next business day after the notice has been deposited with a nationally recognized express overnight delivery service, or (c) the third business day after the notice has been deposited with the United States Postal Service. Notices shall be provided to the parties at the following addresses:

If to Seller: Mary Lou Roberts
Thomas Holdings, LLC
3125 Napoleon Court
Birmingham, Alabama 35243

If to Purchaser: City Manager Randy Robertson
City of Vestavia Hills, Alabama
513 Montgomery Highway
Vestavia Hills, Alabama 35216

Either party hereto may change the address to which it is to receive notice or the representative to whom notice is to be given by written notice to the other party in the manner set forth above.

At any time before the expiration of the Inspection Period, Purchaser may notify Seller in writing (by any of the methods described above) that Purchaser does not intend to consummate the purchase and sale of the Property, whereupon this Agreement shall terminate, and neither party shall have any further obligation to the other hereunder except as may be specifically provided otherwise herein. If this Agreement is terminated by the Purchaser as aforesaid, then in such event the Earnest Money shall be refunded by Seller to Purchaser in full.

17. ZONING AND ZONING CLASSIFICATION:

A. CONTRACT ZONING: Contract zoning is prohibited in Alabama. In *Haas v. City of Mobile*, 265 So.2d 564 (Ala.1972), the Supreme Court adopted the definition of contract zoning from an article entitled "Zoning by Contract with Property Owner" by Ralph W. Crolley and C. McKim Norton, 133 New York Law Journal 4 (1955), as follows:

"The principle involved may be simply stated. A municipality has no power to make any agreement or deal which will in any way control or embarrass its legislative powers and duties. Neither the police power of the state itself nor that delegated by it to a municipality is subject to limitation by private contract; nor is the exercise of such power to be alienated, surrendered or limited by any agreement or choice. Zoning of property by a municipality being legislative in character cannot be bargained or sold. The rezoning of a parcel of property by a municipality based in any way upon an offer or agreement by an owner of property is inconsistent with, and disruptive of, a comprehensive zoning plan."

B. INSTITUTIONAL ZONING CLASSIFICATION: The closing of the sale of the Property as contemplated by this Agreement is subject to and contingent upon the rezoning of the Property to an Institutional District zoning classification so as to permit the Property to be used by the Purchaser for public purposes, specifically including but not limited to a municipal shop and/or garage.

C. PURCHASER'S INTENDED USE OF PROPERTY: The Purchaser intends to use the Property for a municipal shop and/or public garage and other public purposes.

D. PRESENT ZONING CLASSIFICATION: The Property is presently zoned B-2, Agric. & Inst-1 pursuant to the *City of Vestavia Hills Zoning Code*, which does not permit the Property to be used for a municipal shop and/or garage or other public purposes.

E. REZONING APPLICATION: The Purchaser shall, within ten (10) days after the Effective Date of this Agreement, apply for an Institutional zoning classification, which will allow the Property to be used for a municipal shop and/or public garage and other public purposes.

F. APPLICATION FOR INSTITUTIONAL DISTRICT ZONING CLASSIFICATION: Seller covenants and agrees, if requested by Purchaser, to join with Purchaser in the execution of an Institutional Zoning Application and Development Plan for the Property subjecting the same to an Institutional zoning classification so long as such zoning will allow the Property to be used for Purchaser's intended uses.

G. AUTOMATIC CANCELLATION AND TERMINATION: If the City has not zoned or rezoned the Property so as to permit said Property to be used for Inst. 1 w/conditional use and other public purposes within ninety (90) days of the execution of the Agreement, then in such this Agreement shall automatically be cancelled and terminated and the Earnest Money heretofore paid by Purchaser shall be refunded in full.

H. NO CONTRACT ZONING: Nothing contained herein shall be construed as contract zoning by and between the Thomas Holdings, LLC, as Seller, and the City of Vestavia Hills, Alabama, as Purchaser.

I. RESURVEY AND FINAL PLAT MAP: This sale is subject to and contingent upon the Vestavia Hills Planning and Zoning Commission approving a resurvey and final plat map of the property prior to the expiration of the inspection period. The cost of said resurvey shall be paid by Purchaser. If the Vestavia Hills Planning and Zoning Commission fails or refuses to approve a resurvey and final plat map by said deadline, then in such event this Agreement shall automatically terminate and the earnest money shall be refunded in its entirety to Purchaser.

18. DEFAULT AND REMEDIES:

A. In the event that Seller shall fail to consummate the transaction as contemplated herein for any reason other than Purchaser's default, then Purchaser may, as its sole and exclusive remedy, either (i) enforce this Agreement and the purchase and sale transaction contemplated herein by specific performance or (ii) terminate this Agreement, whereupon the Earnest Money paid to Seller shall be promptly returned to Purchaser, this Agreement shall be deemed cancelled and terminated and, except for the indemnification obligations of Purchaser set forth in paragraph 8 above, neither party shall have any further obligation or liability to the other hereunder. Purchaser hereby expressly waives any right to seek or obtain any monetary judgment or damages against Seller in the event of any default hereunder by Seller and acknowledges and agrees that no other damages, rights or remedies shall be collectible, enforceable or available to Purchaser.

B. If, at any time after the expiration of the Inspection Period, Purchaser shall fail to perform its obligation to close the transaction contemplated herein for any reason other than Seller's default, then the Earnest Money shall be delivered to Seller as liquidated damages in which event this Agreement shall automatically be deemed terminated and cancelled and, except for the indemnification obligations of Purchaser set forth in paragraph 8 above, neither party shall have any further obligation or liability to the other hereunder. Because of the difficulty, inconvenience and uncertainty of ascertaining actual damages, no other damages, rights or remedies shall in any case be collectible, enforceable or available to Seller and Seller

agrees to accept and retain the Earnest Money as its total damages and relief hereunder in the event Purchaser fails to close the purchase and sale transaction contemplated herein.

19. **GOVERNING LAW:** This Agreement and the rights and obligations of the parties hereto shall be governed by and construed in accordance with the laws of the State of Alabama.

20. **BINDING AGREEMENT:** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

21. **SURVIVAL:** All representations and warranties of this Agreement shall survive the Closing, as shall any covenants for performance after Closing.

22. **TIME OF THE ESSENCE:** Time is of the essence of this Agreement.

23. **NO WAIVER:** Failure of either party to exercise any rights under this Agreement shall not constitute a waiver of any right, nor excuse the other party's full performance. No express waiver of any matter shall affect any other matter under this Agreement. Express waivers are only effective if in writing.

24. **CONSTRUCTION OF TERMS:** Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision. Any ambiguities of this Agreement shall be construed fairly and equitably regardless of the participation of either party in drafting this Agreement. The reference in terms to gender and number shall be modified as may be appropriate.

25. **SEVERABILITY:** In case of any of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, the remaining provisions shall remain in effect and the Agreement be performed in a fair and equitable manner as to any uncertainties arising from the unenforceable provisions.

26. **DATES:** If any date provided in this Agreement falls on a Saturday, Sunday or holiday, the date shall be the next business day.

27. **COUNTERPARTS:** This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

28. **ENTIRE AGREEMENT:** This document constitutes the entire agreement between the parties, incorporating all prior agreements, and may only be amended in writing executed by both parties.

29. **EFFECTIVE DATE:** The effective date of this Agreement is the sixth (6th) day following the posting (in accordance with Title 11-45-8(b), *Code of Alabama, 1975*) of the ordinance authorizing and directing the execution and delivery of this Agreement and the closing of the sale all in accordance with the terms, provisions and conditions thereof.

IN WITNESS WHEREOF, Seller and Purchaser have caused this Agreement to be executed as of the date first above written.

WITNESS

SELLER:

THOMAS HOLDINGS, LLC

By _____

Its _____

WITNESS

PURCHASER:

CITY OF VESTAVIA HILLS, ALABAMA

By _____

Alberto C. Zaragoza, Jr.
Its Mayor

WITNESS

By _____

Randy E. Robertson
Its City Manager

**STATE OF ALABAMA
JEFFERSON COUNTY**

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that _____, whose name as _____ of Thomas Holdings, LLC is signed to the foregoing Agreement for Sale and Purchase of Real Estate, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Agreement, he, as such officer and with full authority, executed the same voluntarily for and as the act of said Thomas Holdings, LLC.

Given under my hand and official seal, this the _____ day of _____, 2012.

Notary Public

SEAL
My Commission Expires:

**STATE OF ALABAMA
JEFFERSON COUNTY**

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Alberto C. Zaragoza, Jr., whose name as Mayor of the City of Vestavia Hills, Alabama, is signed to the foregoing Agreement for Sale and Purchase of Real Estate, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Agreement, he, as such officer and with full authority, executed the same voluntarily for and as the act of said City of Vestavia Hills, Alabama.

Given under my hand and official seal, this the 15th day of November, 2012.

Notary Public

SEAL
My Commission Expires:

**STATE OF ALABAMA
JEFFERSON COUNTY**

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Randy E. Robertson, whose name as City Manager of the City of Vestavia Hills, Alabama, is signed to the foregoing Agreement for Sale and Purchase of Real Estate, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Agreement, he, as such officer and with full authority, executed the same voluntarily for and as the act of said City of Vestavia Hills, Alabama.

Given under my hand and official seal, this the 15th day of November, 2012.

Notary Public

SEAL

My Commission Expires:

EXHIBIT A
MAP OF PROPERTY

EXHIBIT B
LEGAL DESCRIPTION OF PROPERTY

PATRICK H. BOONE
ATTORNEY AND COUNSELOR AT LAW
NEW SOUTH FEDERAL SAVINGS BUILDING, SUITE 705
215 RICHARD ARRINGTON, JR. BOULEVARD NORTH
BIRMINGHAM, ALABAMA 35203-3720

TELEPHONE (205) 324-2018
FACSIMILE (205) 324-2295

November 14, 2012

By Hand Delivery

City Manager Randy Robertson
Vestavia Hills Municipal Center
P. O. Box 660854
Vestavia Hills, Alabama 35266-0854

In Re: Purchase of Property in Cahaba Heights for Municipal Shop and Public Garage

Dear Mr. Robertson:

The Vestavia Hills City Council has scheduled a specially called meeting on Thursday, November 15, 2012, at 4:30 p.m. It is my understanding that one of the items of business to be considered at that meeting will be the possible purchase of land in Cahaba Heights to be used as a new municipal shop and/or public garage and/or other public purposes.

In connection with this matter, I am enclosing the following documents:

1. Ordinance authorizing and directing the purchase and closing of the property.
2. Agreement for Sale and Purchase of Real Estate to be designated as Exhibit 1 and attached to the ordinance.
3. E-mail that Wesley Cline sent to me on November 12, 2012.

I recommend that you furnish copies of the above documents to all members of the City Council so that they will be prepared to consider this matter at the meeting on November 15, 2012.

If the City Council approves the ordinance, then in such event I recommend that the following actions be taken:

- A. That Mayor Alberto C. Zaragoza, Jr. sign the Agreement.
- B. That you sign the Agreement.
- C. That the proper representative of Thomas Holdings, LLC sign the Agreement.

November 14, 2012

page 2

D. That City Clerk Rebecca Leavings post the ordinance as required by Alabama law at Title 11-45-8(b), *Code of Alabama, 1975*.

E. That the earnest money in the amount of \$5,000.00 be paid to Wesley Cline as agent for the Seller.

F. That the City engage a surveyor to survey the property.

G. That the City have a Phase I Environmental Study done regarding the property.

H. That the City Engineer confirm the availability of utilities at the property.

I. That within ten (10) days after signing the Agreement, Thomas Holdings, LLC shall deliver any existing surveys, title insurance policies, environmental reports or other documentation related to the property that is in its possession.

J. That the City and Thomas Holdings, LLC file the appropriate application for rezoning to an Institutional zoning classification.

K. That Thomas Holdings, LLC and the City execute and deliver the proper application to the Vestavia Hills Planning and Zoning Commission for the resurvey and final plat map of the property.

The City has an inspection period of one hundred fifty (150) days from the effective date in order to decide whether or not it wishes to close the sale in accordance with the terms and provisions of the Agreement.

Please call me if you have any questions regarding any of the matters set forth in this letter.

Sincerely,



Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp
Enclosures

From: Wesley Cline (wcline@cbcmcr.com)
To: patrickboone@bellsouth.net;
Date: Mon, November 12, 2012 3:33:54 PM
Cc: jbaggett@cbcmcr.com;
Subject: Sunview Land Legal Description

Pat,

I've examined the legal description and realized that the description is describing a larger piece of property than is offered for sale. I've attached a few items in a pdf file that I hope clarifies the matter for you. Unfortunately a legal description for the subject property doesn't exist yet. I believe this point is known by the City's staff because we discussed re-platting the property in our meeting as one of the due diligence items to be accomplished.

I hope you are able to work from the information to draft the ordinance. In the mean time i'm calling Land Title to order a binder and see if they can assist as well. Please call if this is not sufficient.

Thanks,

Wes

--

Wesley R Cline, CCIM

Coldwell Banker Commercial Moore Company Realty

T: 205-876-2717, F: 205-871-1920, C: 205-515-7610

wcline@cbcmcr.com /// www.cbcmcr.com

OPUDF: Bt just hat t p u f t brn pgsqpf sz
 dvst oua cf joh n bst f e cz Dprax f m
 Cbol f s Dpn n f s jbnN ppsf Dpn qboz
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 idoe u bo jt cf joh t prw/ Tff u f budli f e
 ejhson pgu f psqpf sz ef t dsqf e jo u jt
 rhhbnref t dsqjpo x ju u budpsjpo cf joh t prw
 pvnjof e jo f e/

Michael H. Vinson
 Ala. Reg. No. 12310

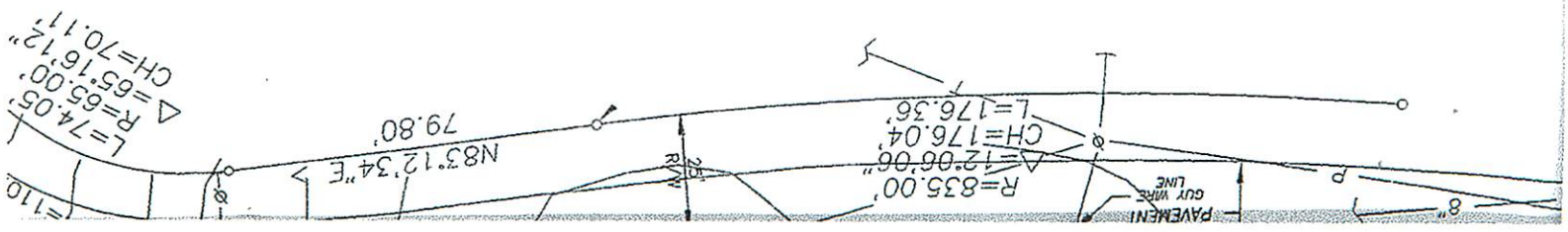
SIGNED: According to my survey December 10, 2001.

Date: February 17, 1982, Jefferson County, Alabama.
 I further certify that said parcel or tract does not lie in a special flood hazard area, (Zone C),
 according to the Flood Insurance Rate Map, Community - Panel Number 010217 0503 B; Effective

Also, Lots 11, 12, and 13 in Block 2, according to the survey of Glass's Second Addition to New Merkle, as
 recorded in Map Book 28, Page 51, in the office of the Judge of Probate, Jefferson County, Alabama.
 11.24 feet to the Point of Beginning, less and except that part of Jefferson County Sanitary Sewer Easement.
 distance of 41.16 feet; thence turn an angle to the left of 62°52'28" and run Northwest a distance of
 Western a distance of 10.01 feet; thence turn an angle to the right of 91°21'02" and run Northernly a
 Drive, and run Northernly a distance of 116.20 feet; thence turn an angle to the left of 92°21'02" and run
 Southeast a distance of 23.56 feet; thence turn an angle to the left of 121°06'50", leaving the right-of-way of Sunview
 Southeast a distance of 83.54 feet; thence turn an angle to the right of 3°02'46" and run Southeastly
 and run Southeastly a distance of 29.18 feet; thence turn an angle to the left of 13°20'27" and run
 an arc distance of 49.50 feet and a radius of 331.15 feet; thence turn an angle to the left of 4°16'57.5"
 a curved right-of-way, to the left, having a chord distance of 49.46 feet, a delta angle of 8°33'55",
 of 71.55 feet; thence turn an angle to the left of 4°16'57.5" and run Southeastly along the chord of
 a distance of 5.00 feet; thence turn an angle to the right of 90°00' and run Southeastly a distance of
 Southeastly a distance of 29.47 feet; thence turn an angle to the left of 90°00' and run
 125.31 feet and a radius of 110.00 feet; thence turn an angle to the right of 32°38'06" and run
 to the right, having a chord distance of 118.64 feet, a delta angle of 65°16'12", an arc distance of
 turn an angle to the right of 32°38'06" and run Southeastly along the chord of a curved right-of-way,
 feet; thence turn an angle to the right of 0°05'49" and run Easterly a distance of 18.19 feet; thence
 of 72.88 feet; thence turn an angle to the left of 8°29'57" and run Easterly a distance of 108.39
 a distance of 13.15 feet; thence turn an angle to the left of 4°33'51" and run Easterly a distance
 way of Sunview Drive as follows: thence turn an angle to the left of 85°30'12" and run Easterly
 of 149.83 feet to the Northernly right-of-way of Sunview Drive; thence along the Northernly right-of-
 distance of 378.58 feet; thence turn an angle to the left of 91°42'05" and run Southernly a distance
 a distance of 118.95 feet; thence turn an angle to the left of 65°14'55" and run Westernly a
 Northernly a distance of 45.00 feet; thence turn an angle to the right of 65°56'44" and run Northernly
 Northernly a distance of 73.56 feet; thence turn an angle to the left of 88°30" and run Westernly
 Northwest a distance of 35.25 feet; thence turn an angle to the right of 62°28'34" and run
 62.40 feet to the Point of Beginning; thence turn an angle to the right of 117°07'32" and run
 Township 18 South, Range 2 West, Jefferson County, Alabama; thence run Southernly a distance of
 Commence at the Southwest corner of the NE 1/4 of the SW 1/4 of the SE 1/4 of Section 15,
 Section 15,

I, Michael H. Vinson, a Registered Engineer and Land Surveyor do hereby certify that all parts of this
 survey and drawing have been completed in accordance with the requirements of the minimum
 Technical Standards for the practice of Land Surveying in the State of Alabama and that this is a true
 and correct plot or map of a parcel or tract and three lots being a portion of the property belonging
 to Janet Thomas and situated in the SW 1/4 of the SE 1/4 of Section 15, Township 18 South, Range
 2 West, Jefferson County, Alabama and being more particularly described as follows:

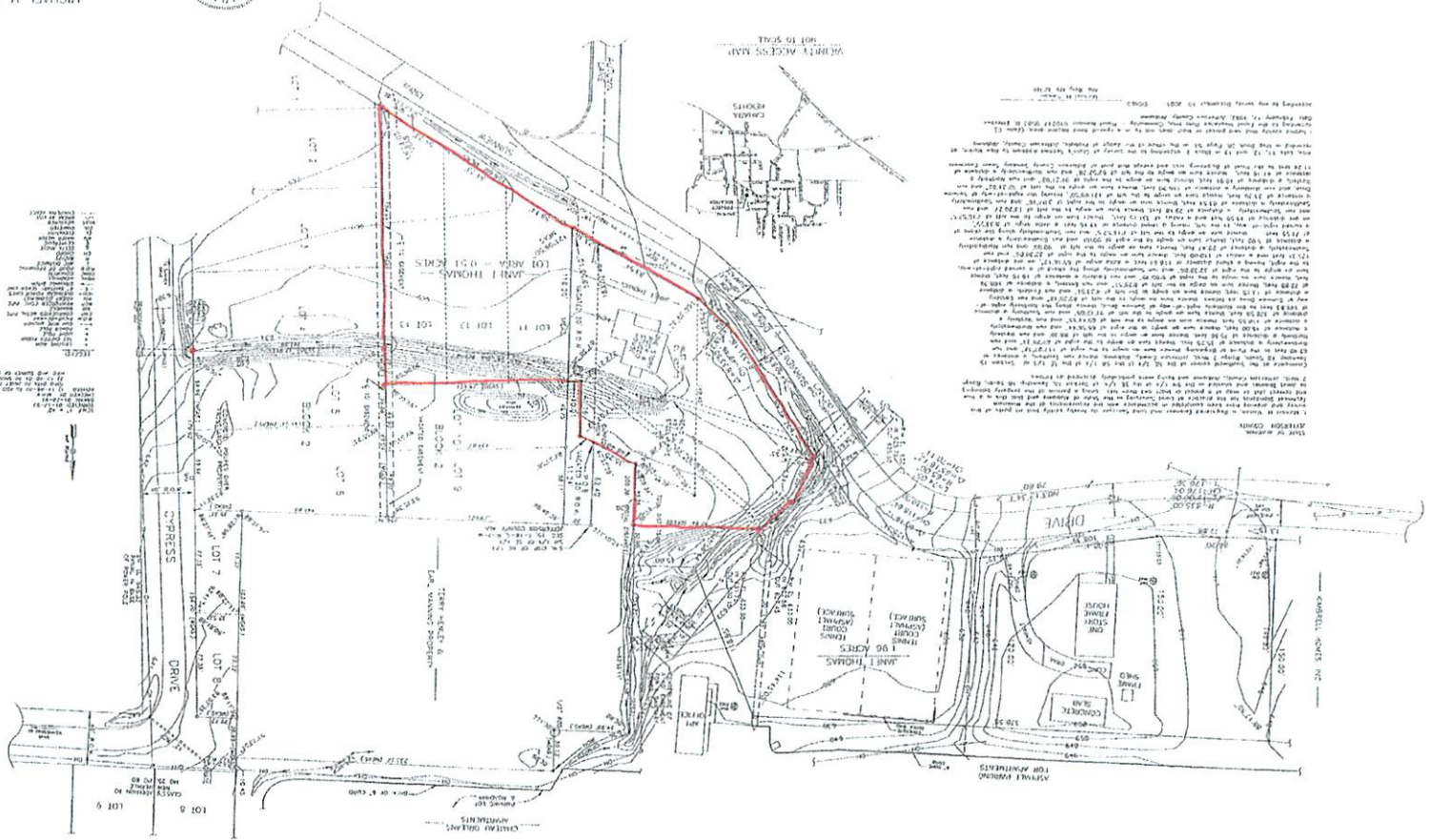
STATE OF ALABAMA
 JEFFERSON COUNTY



MICHAEL H VINSON
 CIVIL ENGINEER & LAND SURVEYOR
 1011 BRADLEY LANE
 ROUND ROCK, ALABAMA 35210
 PHONE: (205) 958-6297



BOUNDARY & TOPOGRAPHIC SURVEYS OF JANET THOMAS
 SECTION 12, TOWNSHIP 18 SOUTH, RANGE 7 WEST
 CALHOUN HEIGHTS, JEFFERSON COUNTY, ALABAMA
 AS REQUESTED BY JIM THOMAS



NOT TO SCALE

ADDITIONAL NOTES:
 1. ALL DISTANCES ARE IN FEET AND DECIMALS THEREOF.
 2. ALL BEARINGS ARE TRUE BEARINGS.
 3. ALL CORNERS ARE TO BE MARKED WITH IRON PIPES OR CONCRETE MONUMENTS.
 4. ALL DISTANCES ARE TO BE MEASURED ALONG THE CENTERLINE OF THE ROAD OR DRIVE.
 5. ALL DISTANCES ARE TO BE MEASURED ALONG THE CENTERLINE OF THE ROAD OR DRIVE.
 6. ALL DISTANCES ARE TO BE MEASURED ALONG THE CENTERLINE OF THE ROAD OR DRIVE.
 7. ALL DISTANCES ARE TO BE MEASURED ALONG THE CENTERLINE OF THE ROAD OR DRIVE.
 8. ALL DISTANCES ARE TO BE MEASURED ALONG THE CENTERLINE OF THE ROAD OR DRIVE.
 9. ALL DISTANCES ARE TO BE MEASURED ALONG THE CENTERLINE OF THE ROAD OR DRIVE.
 10. ALL DISTANCES ARE TO BE MEASURED ALONG THE CENTERLINE OF THE ROAD OR DRIVE.

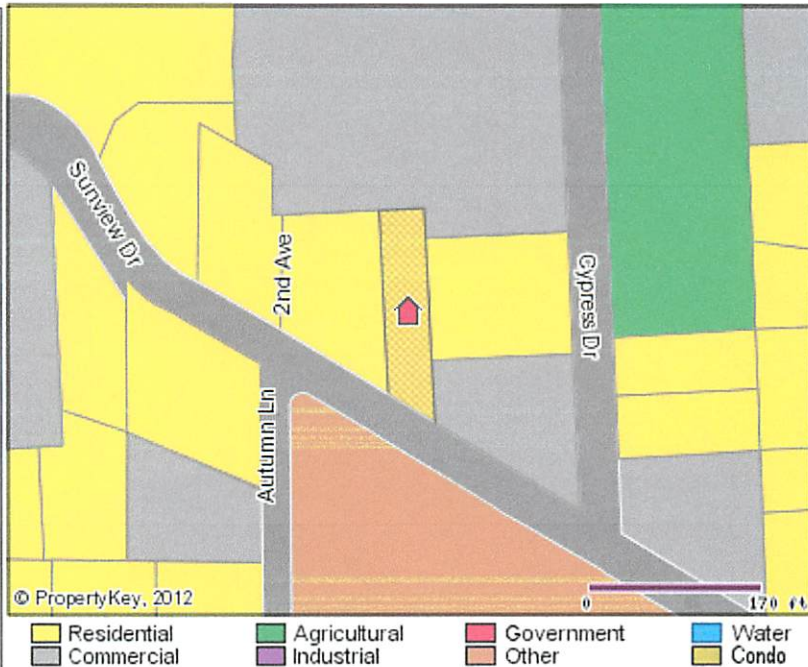
STATE OF ALABAMA
 JEFFERSON COUNTY

2. This plat shows the boundary and topographic surveys of Janet Thomas, as requested by Jim Thomas, for the property situated in the SW 1/4 of the SE 1/4 of Section 12, Township 18 South, Range 7 West, Calhoun Heights, Jefferson County, Alabama. The property is bounded on the north by the centerline of the road or drive, on the south by the centerline of the road or drive, on the east by the centerline of the road or drive, and on the west by the centerline of the road or drive. The property is divided into lots of various sizes, and the boundaries of the lots are shown by solid lines. The topographic features of the property are shown by dashed lines. The plat also shows the location of the property relative to the surrounding roads and drives.



PROPERTY INFORMATION

PID # 28-15-4-009-020.000
Property Type: Residential
Property Address:
 3136 SUNVIEW DR
 VESTAVIA, AL 35243
Current Owner:
 THOMAS HOLDINGS LLC 
Tax Mailing Address:
 3125 NAPOLEON CT
 VESTAVIA, AL 35243-5440
Land Areas:
 1. VACANT & UNUSED LAND / 910
Lot Size: 0.2 acres / 8,642 sf
Tax District: VESTAVIA HILLS
Subdivision:
 GLASS 2ND-N MERK 28-15-4
Twn: 28 / **Rng:** / **Sec:** 15
Block: 009 / **Lot:** 020.000
Legal Description:
 LOT 13 BLK 2 GLASS'S 2ND ADD TO NEW MERKLE
Plat Book: 28 / **Plat Page:** 51
Census Tract: / **Block:**
Lat: 33.461572 **Lon:** -86.73289



TAX VALUATION INFORMATION

	<u>2007 Final</u>	<u>2008 Final</u>	<u>2009 Final</u>	<u>2010 Final</u>	<u>2011 Final</u>
Building Value:	\$0	\$0	\$0	\$0	\$0
Extra Feature Value:	\$0	\$0	\$0	\$0	\$0
Land Value:	\$28,100	\$28,100	\$28,100	\$28,100	\$28,100
Total Assessed Value:	\$28,100	\$28,100	\$28,100	\$28,100	\$28,100
Percent Change:	- n/a -	0%	0%	0%	0%
Total Exemptions:	\$0	\$0	\$0	\$0	\$0
Taxable Value:	\$5,620	\$5,620	\$5,620	\$5,620	\$5,620
Tax Amount:	\$520.41	\$520.41	\$520.41	\$520.41	\$520.41

[Link To County Tax Collector](#) 

SALES INFORMATION

There are no sales for this property in our database.

BUILDING/IMPROVEMENT INFORMATION

No buildings on this property.

FLOOD ZONE DETAILS

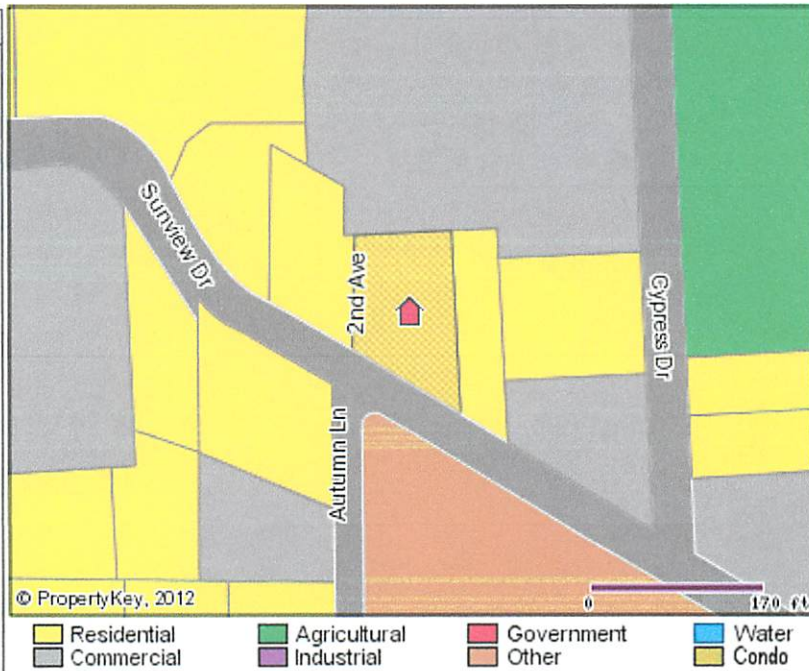
Zone X: Area that is determined to be outside the 1% and 0.2% chance floodplains.



PROPERTY INFORMATION

PID # 28-15-4-009-019.000
Property Type: Residential
Property Address:
 3134 SUNVIEW DR
 VESTAVIA, AL 35243-5432
Current Owner:
 THOMAS HOLDINGS LLC 
Tax Mailing Address:
 3125 NAPOLEON CT
 VESTAVIA, AL 35243-5440

Land Areas:
 1. VACANT & UNUSED LAND / 910
Lot Size: 0.34 acres / 14,934 sf
Tax District: VESTAVIA HILLS
Subdivision:
 GLASS 2ND-N MERK 28-15-4
Twn: 28 / **Rng:** / **Sec:** 15
Block: 009 / **Lot:** 019.000
Legal Description:
 LOTS 11 & 12 BLK 2 GLASS 2ND ADD TO NEW
 MERKLE 28/51 ALSO E 1/2 OF VACATED R/W
 WHICH LIES W OF SD LOT 11
Plat Book: 28 / **Plat Page:** 51
Census Tract: / **Block:**
Lat: 33.461625 **Lon:** -86.733121



TAX VALUATION INFORMATION

	<u>2007 Final</u>	<u>2008 Final</u>	<u>2009 Final</u>	<u>2010 Final</u>	<u>2011 Final</u>
Building Value:	\$0	\$0	\$0	\$0	\$0
Extra Feature Value:	\$0	\$0	\$0	\$0	\$0
Land Value:	\$42,200	\$42,200	\$42,200	\$42,200	\$42,200
Total Assessed Value:	\$42,200	\$42,200	\$42,200	\$42,200	\$42,200
Percent Change:	- n/a -	0%	0%	0%	0%
Total Exemptions:	\$0	\$0	\$0	\$0	\$0
Taxable Value:	\$8,440	\$8,440	\$8,440	\$8,440	\$8,440
Tax Amount:	\$781.54	\$781.54	\$781.54	\$781.54	\$781.54

[Link To County Tax Collector](#) 

SALES INFORMATION

Deed Type	Sale Date	Price	Document #	Grantor
LAND ONLY	09/2000	\$45,000	Bk 200011/Pg 4943	Not Available

BUILDING/IMPROVEMENT INFORMATION

No buildings on this property.

FLOOD ZONE DETAILS

Zone X: Area that is determined to be outside the 1% and 0.2% chance floodplains.



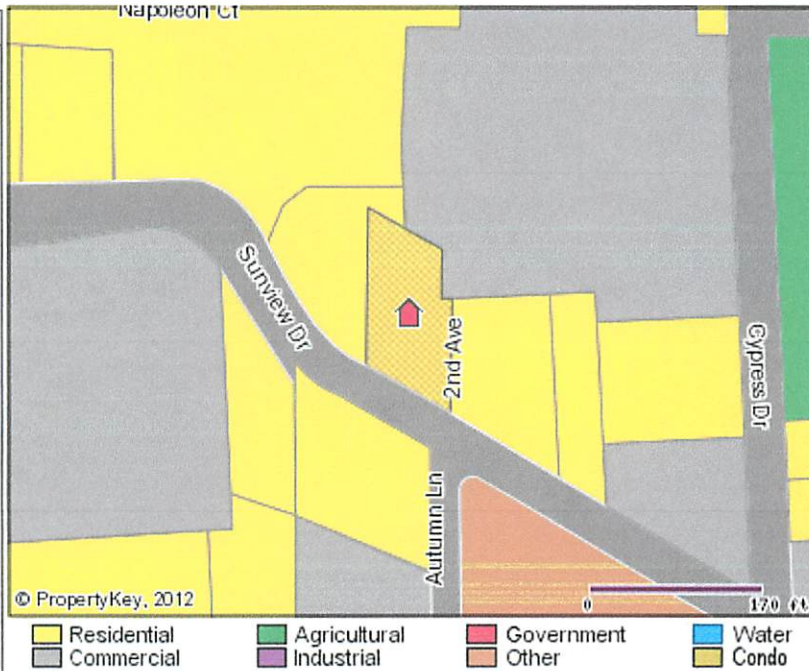
PROPERTY INFORMATION

PID # 28-15-4-009-018.000
Property Type: Residential
Property Address:
 3128 SUNVIEW DR
 VESTAVIA, AL 35243-5432
Current Owner:
 THOMAS HOLDINGS LLC 
Tax Mailing Address:
 3125 NAPOLEON CT
 VESTAVIA, AL 35243-5440

Land Areas:
 1. VACANT & UNUSED LAND / 910
Lot Size: 0.27 acres / 11,572 sf
Tax District: VESTAVIA HILLS
Subdivision:

Twn: 28 / **Rng:** / **Sec:** 15
Block: 009 / **Lot:** 018.000
Legal Description:
 POB NW INTER SUNSET DR & CYPRESS DR TH
 NW 345 FT TO POB TH CONT NW 95 FT TH N
 150 FT TH SE 84.8 FT TH S 50 FT TH E

Plat Book: / **Plat Page:**
Census Tract: / **Block:**
Lat: 33.461793 **Lon:** -86.73344



TAX VALUATION INFORMATION

	<u>2007 Final</u>	<u>2008 Final</u>	<u>2009 Final</u>	<u>2010 Final</u>	<u>2011 Final</u>
Building Value:	\$0	\$0	\$0	\$0	\$0
Extra Feature Value:	\$0	\$0	\$0	\$0	\$0
Land Value:	\$37,600	\$37,600	\$37,600	\$37,600	\$37,600
Total Assessed Value:	\$37,600	\$37,600	\$37,600	\$37,600	\$37,600
Percent Change:	- n/a -	0%	0%	0%	0%
Total Exemptions:	\$0	\$0	\$0	\$0	\$0
Taxable Value:	\$7,520	\$7,520	\$7,520	\$7,520	\$7,520
Tax Amount:	\$696.35	\$696.35	\$696.35	\$696.35	\$696.35

[Link To County Tax Collector](#) 

SALES INFORMATION

Deed Type	Sale Date	Price	Document #	Grantor
LAND & BUILDING	04/1998	\$75,000	Bk 9805/Pg 2249	Not Available

BUILDING/ IMPROVEMENT INFORMATION

No buildings on this property.

FLOOD ZONE DETAILS

Zone X: Area that is determined to be outside the 1% and 0.2% chance floodplains.



PROPERTY INFORMATION

PID # 28-15-4-009-017.001
Property Type: Residential
Property Address:
 SUNVIEW DR
 BIRMINGHAM, AL 35243
Current Owner:
 THOMAS HOLDINGS LLC

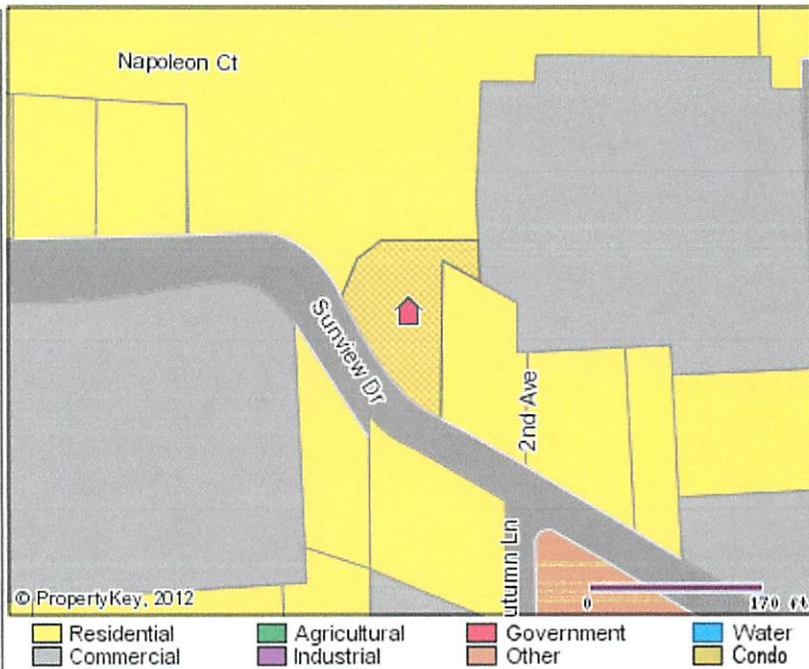
Tax Mailing Address:
 3125 NAPOLEON CT
 VESTAVIA, AL 35243-5440

Land Areas:
 1. VACANT & UNUSED LAND / 910
Lot Size: 0.34 acres / 14,628 sf
Tax District: VESTAVIA HILLS
Subdivision:

Twn: 28 / **Rng:** / **Sec:** 15
Block: 009 / **Lot:** 017.001

Legal Description:
 COM SW COR OF NE 1/4 SW 1/4 OF SE 1/4 SEC
 15 TP 18 R 2W TH S 62.4 FT TH NW 35.3 FT TO
 POB TH N 45.6 FT TH W 92.8 FT TH

Plat Book: / **Plat Page:**
Census Tract: / **Block:**
Lat: 33.461943 **Lon:** -86.733684



TAX VALUATION INFORMATION

	<u>2007 Final</u>	<u>2008 Final</u>	<u>2009 Final</u>	<u>2010 Final</u>	<u>2011 Final</u>
Building Value:	\$0	\$0	\$0	\$0	\$0
Extra Feature Value:	\$0	\$0	\$0	\$0	\$0
Land Value:	\$47,500	\$47,500	\$47,500	\$47,500	\$47,500
Total Assessed Value:	\$47,500	\$47,500	\$47,500	\$47,500	\$47,500
Percent Change:	- n/a -	0%	0%	0%	0%
Total Exemptions:	\$0	\$0	\$0	\$0	\$0
Taxable Value:	\$9,500	\$9,500	\$9,500	\$9,500	\$9,500
Tax Amount:	\$879.70	\$879.70	\$879.70	\$879.70	\$879.70

[Link To County Tax Collector](#)

SALES INFORMATION

There are no sales for this property in our database.

BUILDING/ IMPROVEMENT INFORMATION

No buildings on this property.

FLOOD ZONE DETAILS

Zone X: Area that is determined to be outside the 1% and 0.2% chance floodplains.

ORDINANCE NUMBER 2423

AN ORDINANCE AUTHORIZING AND DIRECTING THE SALE OF REAL ESTATE, MORE PARTICULARLY DESCRIBED AS LOTS 1, 2, 3, 4 AND 5 IN THUSS FARMS SUBDIVISION AS RECORDED IN MAP BOOK 228, PAGE 48, JEFFERSON COUNTY, AND THE EXECUTION AND DELIVERY OF A REAL ESTATE SALES CONTRACT.

THIS ORDINANCE NUMBER 2423 is approved and adopted by the City Council of the City of Vestavia Hills, Alabama on this the 15th day of November, 2012.

WITNESSETH THESE RECITALS:

WHEREAS, Title 11-40-1, *Code of Alabama, 1975*, declares municipalities corporate and gives them the power to contract and be contracted with; and

WHEREAS, Title 11-43-56, *Code of Alabama, 1975*, provides that the City Council shall have the management and control of the finances and all of the property, real and personal, belonging to the City; and

WHEREAS, Title 11-47-20, *Code of Alabama, 1975*, provides that the City Council may, by ordinance to be entered on its minutes, direct the disposal of any real property not needed for public or municipal purposes and direct the mayor to make title thereto, and a conveyance made by the mayor in accordance with such ordinance invests the grantee with the title of the municipality; and

WHEREAS, Title 11-43A-28, *Code of Alabama, 1975*, provides that the City Manager shall be the head of the administrative branch of the government of the City of Vestavia Hills and shall be responsible to the City Council for the proper administration of all municipal affairs; and

WHEREAS, Title 11-43A-48, *Code of Alabama, 1975*, provides that all contracts for the City of Vestavia Hills shall be made and approved by ordinance and signed in the name of the City of Vestavia Hills by the Mayor and countersigned by the City Manager; and

WHEREAS, Title 11-45-8(b), *Code of Alabama, 1975*, provides that if an ordinance is published by posting, then in such event said ordinance shall take effect five days thereafter; and

WHEREAS, the City of Vestavia Hills, Alabama (“City”) is the owner of real property situated in the City of Vestavia Hills, Jefferson County, Alabama, which said real estate shall hereinafter be referred to as the “subject property” and is more particularly described as follows:

Lots 1, 2, 3, 4 and 5 in Thuss Farms Subdivision as recorded on Map Book 228, Page 48, Jefferson County, Alabama; and

WHEREAS, NSH Corp., an Alabama corporation, has offered to purchase the subject property from the City; and

WHEREAS, the City finds and determines that it is willing to accept the offer by NSH Corp.; provided, however, that said NSH Corp. will impose protective covenants, conditions and restrictions on the subject property that will provide, among other things, that the use of said subject property shall be solely for single-family residential purposes and not for the purpose of business or trade; and

WHEREAS, the City Council of the City of Vestavia Hills, Alabama finds and determines that the subject property is not needed for municipal or public purposes; and

WHEREAS, a copy of a document entitled “Real Estate Sales Contract” by and between the City of Vestavia Hills, Alabama, as “Seller,” and NSH Corp., an Alabama corporation, as “Purchaser,” hereinafter referred to as the “Real Estate Sales Contract,” is attached hereto, marked as Exhibit 1 and is incorporated into this Ordinance Number 2423 by reference as though set out fully herein.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:

1. The subject property is found and determined to not be needed for public or municipal purposes by the City of Vestavia Hills and is hereby declared as surplus property all in accordance with the requirements of Title 11-47-20, *Code of Alabama, 1975*.

2. The Mayor and City Manager are hereby authorized and directed to execute and deliver the Real Estate Sales Contract designated as Exhibit 1 for and on behalf of the City of Vestavia Hills, Alabama.

3. The sale shall be made and closed in accordance with the terms, provisions and conditions of the Real Estate Sales Contract, a copy of which is marked as Exhibit 1 attached to this Ordinance Number 2423 and incorporated herein by reference as though set out fully herein. A copy of said Real Estate Sales Contract will be on file in the office of the City Clerk of the City of Vestavia Hills, Alabama for inspection by members of the general public.

4. Upon approval, adoption and enactment of this Ordinance Number 2423 the City Manager is hereby authorized and directed to take any and all legal action necessary to close the sale of the subject property all in accordance with the terms, provisions and conditions of the Real Estate Sales Contract designated as Exhibit 1.

5. This ordinance shall become effective upon its approval, adoption, enactment and publication by posting as set forth in Title 11-45-8(b), *Code of Alabama, 1975*.

6. If any part, section or subdivision of this ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this ordinance which shall continue in full force and effect notwithstanding such holding.

DONE, ORDERED, APPROVED and ADOPTED this the 15th day of November, 2012.

CITY OF VESTAVIA HILLS, ALABAMA

By _____
Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2423 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 15th day of November, 2012 as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills New Merkle House, Vestavia Hills Civic Center and Vestavia Hills Library in the Forest this the _____ day of _____, 2012.

Rebecca Leavings
City Clerk

PATRICK H. BOONE
ATTORNEY AND COUNSELOR AT LAW
NEW SOUTH FEDERAL SAVINGS BUILDING, SUITE 705
215 RICHARD ARRINGTON, JR. BOULEVARD NORTH
BIRMINGHAM, ALABAMA 35203-3720

TELEPHONE (205) 324-2018
FACSIMILE (205) 324-2295

November 13, 2012

By Hand Delivery

City Manager Randy Robertson
Vestavia Hills Municipal Center
P. O. Box 660854
Vestavia Hills, Alabama 35266-0854

In Re: Sale of Five (5) Single-Family Residential Lots at Patchwork Farm Property

Dear Mr. Robertson:

The Vestavia Hills City Council will hold a special called meeting on Thursday, November 15, 2012, at 4:30 p.m. It is my understanding that one of the items of business to be considered at that time will be the possible sale of five (5) single-family residential lots to NSH Corp.

In connection with the above matter, I am enclosing the following documents:

1. Ordinance authorizing and directing the sale of the five lots.
2. Proposed Real Estate Sales Contract prepared by NSH Corp. I have taken the liberty to make the following amendments to the suggested contract:

A. The addition of paragraph 24, which shall read in words and figures as follows:

“24. Purchaser shall, concurrently with the closing of the sale, file Protective Covenants, Conditions and Restrictions in the office of the Judge of Probate of Jefferson County, Alabama limiting the use of said real property described in Section 1 above exclusively and solely for the purpose of single-family residential dwellings and not for the purpose of business or trade.”

B. At the suggestion of Mayor Alberto C. Zaragoza, Jr., I have deleted section (5) of paragraph 2, which heretofore read as follows:

“Future commercial buildings or structures will be set back from the above buffer a minimum 25 feet.”

November 13, 2012
page 2

I recommend that copies of the Ordinance and Real Estate Sales Contract be distributed to all members of the City Council in order that they be prepared to consider this matter at Thursday's meeting.

Please call me if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick H. Boone", with a long horizontal flourish extending to the right.

Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp
Enclosures

REAL ESTATE SALES CONTRACT

This Contract made on the _____ day of _____, 2012, by and between a The City of Vestavia Hills, Alabama ("Seller") and NSH CORP., an Alabama corporation ("Purchaser").

WITNESSETH:

1. **Legal Description.** Seller hereby agrees to sell and the Purchaser hereby agrees to purchase the following described unimproved real estate and appurtenances thereto, situated in Shelby County, Alabama, on the terms and conditions set forth herein:

Lots 1-5 in Thuss Farms Subdivision as recorded on Map Book 228, Page 48, Jefferson County, Alabama

2. **Base Purchase Price**

The "Purchaser agrees to pay to the Seller at the Closing the sum of \$80,000.00 per Lot, \$400,000 for all five lots, (the "Purchase Price"), less credits and adjustments for taxes and closing costs as set forth herein. Purchaser will have a 30 day inspection period from the date the last contract herein referred to is executed by the Seller and will have up to 30 days after expiration of the inspection period to close. The Earnest Money paid by Purchaser upon the execution of this Contract (\$5,000.00) shall be credited against the Purchase Price paid at the final Subsequent Closing.

Purchaser and seller acknowledge the following additional considerations:

- (1) Homes will have a minimum 2000 sf heated and cooled space with 1250 sf heated and cooled space on the main level on multiple level homes.
- (2) Closing is contingent on Purchaser obtaining a building permit on a lot and a commitment that all five lots can be permitted for residential construction;
- (3) Each lot will be approved for a conventional septic tank system;
- (4) There will be a 35 foot buffer along the rear of the lots and on the side of lot 1. Purchaser will use that buffer for landscape screening. A landscaping plan will be approved and implemented by Purchaser.
- (5)

3. **Condition Precedent.** None

4. **Zoning.** Property is subject to PUD PR-1 zoning.

5. **Agent.** John Hartman, Attorney At Law, shall hold the Earnest Money in trust pending the Closing of this sale.

6. **Closing.** Closing will take place at the office of John Hartman, Attorney At Law.

7. **Prorations.** Taxes shall be prorated between the Seller and the Purchaser as of the date of the closing and delivery of the deed.

8. **Attorney Fees.** Purchaser and Seller shall pay their respective attorney fees incurred for closing the sale of the Property.

9. **Title Insurance.** Seller agrees to furnish Purchaser a standard form owner's title insurance policy at Seller's expense,

issued by Land Title Company of Alabama in the amount of the purchase price, insuring Purchaser against loss on account of any defect or encumbrance in the title, subject to exceptions herein, including paragraph 9 below; otherwise, the earnest money shall be refunded. In the event both Owner's and Mortgagee's title policies are obtained at the time of closing, the total expense of procuring the two policies will be divided equally between Seller and Purchaser, even if the Mortgagee is the Seller.

10. **Title Exceptions and Reservations.** MINERALS AND MINING RIGHTS ARE EXCEPTED FROM THE SALE OF THE PROPERTY TOGETHER WITH ALL PRIVILEGES AND IMMUNITIES RELATING THERETO. In addition, the conveyance shall be subject to the following: zoning ordinances pertaining to said Property; Declaration of Protective Covenants, if any; easements; rights-of-ways; setback lines; restrictions; ad valorem taxes for the current tax year; all matters of public record; and anything which would be disclosed by an accurate survey or inspection of the Property.
11. The Seller agrees to convey said Property to the Purchaser by special warranty deed free of all encumbrances, except as set forth in those matters of title set forth in Schedule B-II of the Title Commitment which have been approved by Purchaser during the Inspection Period. Seller agrees that any encumbrances not herein excepted will be cleared at time of Closing; however, if Seller does not clear such encumbrances then Purchaser may elect to rescind this Contract.
12. **Protective Covenants.** The Property is not subject to Declaration of Protective Covenants.
13. **Builder's Purpose.** Purchaser represents that the Purchaser is acquiring the Property for the purpose of engaging in the business of constructing residential buildings on said Property.
14. **Default and Remedies.**
 - (a) In the event that Seller shall fail to consummate the transaction as contemplated herein for any reason other than Purchaser's default, then Purchaser may, in its sole discretion, either (i) enforce this Agreement and the purchase and sale transaction contemplated herein by specific performance or (ii) terminate this Agreement, whereupon the Earnest Money shall be refunded to Purchaser, this Agreement shall be deemed canceled and terminated and neither party shall have any further obligation or liability to the other hereunder. Purchaser hereby expressly waives any right to seek or obtain any monetary judgment or damages against Seller in the event of any default hereunder by Seller and acknowledges and agrees that no other damages, rights or remedies shall be collectible, enforceable or available to Purchaser.
 - (b) If, at any time after the expiration of the Inspection Period, Purchaser shall fail to perform its obligation to close the transaction contemplated herein for any reason other than Seller's default or the failure of any of the Closing Conditions to occur, then Seller shall retain the Earnest Money in which event this Agreement shall automatically be deemed terminated and canceled and neither party shall have any further obligation or liability to the other hereunder. Because of the difficulty, inconvenience and uncertainty of ascertaining actual damages, no other damages, rights or remedies shall in any case be collectible, enforceable or available to Seller and Seller agrees to accept and retain the Earnest Money as its total damages and relief hereunder in the event Purchaser fails to close the purchase and sale transaction contemplated herein.
15. **No Waiver.** No waiver by either party of any breach by the other of any provision of this Contract shall be deemed or construed to be a waiver of any subsequent or continuing breach of the same or any other provision of this Contract nor shall any forbearance by either party from the exercise of a remedy for such breach be deemed or construed to be a waiver by such party of any of its rights or remedies with respect to such breach.
16. **Entire Agreement.** This Contract between Seller and Purchaser states the entire agreement between the parties and merges therein all statements, representations, and covenants heretofore made concerning the Property and any other agreements not incorporated herein are void and of no force and effect.

- 17. **Assignment.** This Contract may be assigned by Purchaser.
- 18. **Captions.** The captions in this Contract are used for convenience only, and they in no way define, limit, or prescribe the scope or intent of this Contract or any provisions thereof.
- 19. **Severability.** This Contract is intended to be performed in accordance with, and only to the extent permitted by all applicable laws, ordinances, rules and regulations. If any provision of this Contract or the application thereof to any person, entity, or circumstance, shall, for any reason and to any extent, be held to be invalid or unenforceable, the remainder of this Contract and the application of such provision to the other person or circumstance shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.
- 20. **Choice of Law.** This Contract shall be governed and performed in accordance with the law of the State of Alabama.
- 21. **Survival of Closing.** All terms and provisions of this Contract shall survive the Closing of the sale of the Property.
- 22. **Notices.** All notices that may at any time be required to be given hereunder shall be deemed to have been properly given if sent by registered or certified mail, postage prepaid, addressed if sent to Seller, as follows:

 City of Vestavia Hills Alabama, Vestavia Hills, AL 35216

 or if sent to Purchaser, as follows:

 NSH CORP., 3545 Market Street, Birmingham, Alabama 35226
 Attention: Mr. Jonathan M. Belcher, President
- 23. **Real Estate Commissions.** Seller and Purchaser represent that neither party is obligated to pay real estate commissions in connection with this sale.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed on the day and year first above written.

24. Purchaser shall, concurrently with the closing of the sale, file Protective Covenants, Conditions and Restrictions in the office of the Judge of Probate of Jefferson County, Alabama limiting the use of said real property described in Section 1 above exclusively and solely for the purpose of single-family residential dwellings and not for the purpose of business or trade.

PURCHASER:
 NSH CORP.
 By: _____
 Its: _____
 Date: _____

SELLER:
 City of Vestavia Hills
 By: _____
 Its: _____
 Date: _____

Receipt is hereby acknowledged of the Earnest Money _____ Cash _____ Check as hereinabove set forth.

AGENT: By: _____ Date: _____

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Purchaser and seller acknowledge the following additional considerations:

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8. **Attorney Fees.** Purchaser and Seller shall pay their respective attorney fees incurred for closing the sale of the Property.

9. **Title Insurance.** Seller agrees to furnish Purchaser a standard form owner's title insurance policy at Seller's expense,

issued by Land Title Company of Alabama in the amount of the purchase price, insuring Purchaser against loss on account of any defect or encumbrance in the title, subject to exceptions herein, including paragraph 9 below; otherwise, the earnest money shall be refunded. In the event both Owner's and Mortgagee's title policies are obtained at the time of closing, the total expense of procuring the two policies will be divided equally between Seller and Purchaser, even if the Mortgagee is the Seller.

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 - (b) If, at any time after the expiration of the Inspection Period, Purchaser shall fail to perform its obligation to close the transaction contemplated herein for any reason other than Seller's default or the failure of any of the Closing Conditions to occur, then Seller shall retain the Earnest Money in which event this Agreement shall automatically be deemed terminated and canceled and neither party shall have any further obligation or liability to the other hereunder. Because of the difficulty, inconvenience and uncertainty of ascertaining actual damages, no other damages, rights or remedies shall in any case be collectible, enforceable or available to Seller and Seller agrees to accept and retain the Earnest Money as its total damages and relief hereunder in the event Purchaser fails to close the purchase and sale transaction contemplated herein.
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PURCHASER:
 NSH CORP.

By: _____

Its: _____

Date: _____

SELLER:
 City of Vestavia Hills

By: _____

Its: _____

Date: _____

Receipt is hereby acknowledged of the Earnest Money _____ Cash _____ Check as hereinabove set forth.

AGENT: By: _____

Date: _____