

**Vestavia Hills
City Council Agenda
Special Meeting
January 31, 2013
4:30 PM**

1. Call to Order
2. Roll Call
3. Invocation – George Pierce
4. Pledge of Allegiance

New Business

5. Unanimous Consent For Immediate Consideration And Action On All Items Listed On The Agenda
6. Ordinance Number 2430 – An Ordinance To Approve Rescission, Cancellation And Termination Of Contract With Thomas Holdings, LLC For The Purchase Of The Property On Sunview Drive (*Public Hearing*)
7. Ordinance Number 2431 – An Ordinance Authorizing The Rescission, Cancellation And Termination Of An Agreement Between Owner And Architect (*Public Hearing*)
8. Ordinance Number 2432 – An Ordinance Authorizing The Negotiation Of A Contract For Architectural Services (*Public Hearing*)
9. Ordinance Number 2433 - An Ordinance Amending Ordinance Number 2394 – Amending A Purchase And Sale Agreement For 7.5 Acres To Capital Growth MedVest, LLC (*Public Hearing*)
10. Citizens Comments
11. Executive Session
12. Ordinance Number 2425 – An Ordinance Authorizing The Execution And Delivery Of A Letter Of Intent For The Sale Of Municipal Property (*Public Hearing*)
13. Motion For Adjournment

ORDINANCE NUMBER 2430

AN ORDINANCE TO RESCIND, CANCEL AND TERMINATE AN AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE AND TO RESCIND ORDINANCE NUMBER 2422.

THIS ORDINANCE NUMBER 2430 is approved and adopted by the City Council of the City of Vestavia Hills, Alabama on this the 31st day of January, 2013.

WITNESSETH THESE RECITALS:

WHEREAS, on November 15, 2012, the City Council approved and adopted Ordinance Number 2422 authorizing and directing the Mayor and City Manager to execute and deliver an Agreement for Sale and Purchase of Real Estate (the “Contract”) by and between Thomas Holdings, LLC, as “Seller,” and the City of Vestavia Hills, Alabama, as “Purchaser,” whereby the City agreed to purchase approximately 1.18± acres situated on Sunview Drive in Cahaba Heights for and in consideration of \$365,000.00 upon the condition that the property be used for the construction and operation of a municipal garage and shop; and

WHEREAS, a copy of said Contract is attached hereto, marked as Exhibit A and incorporated into this Ordinance Number 2430 by reference as though set out fully herein; and

WHEREAS, the Contract reads in pertinent parts as follows:

“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.

16. NOTICES: 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.”; and

WHEREAS, the City Council of the City of Vestavia Hills, Alabama (“City Council”) approved and adopted Resolution Number 4380 on December 20, 2012 to employ architect, Barry Davis, to design the new municipal garage/shop on the property and to authorize and direct the Mayor and City Manager to execute and deliver an Agreement between the City, as “Owner,” and Barry Davis, as “Architect,” (the “Architect Agreement”); and

WHEREAS, Article 12, section 12.3 of the Architect's Agreement provides “the Architect's fixed fee includes an allowance of \$5,500.00 for geotechnical exploration and reporting”; and

WHEREAS, Architect Barry Davis caused a Geotechnical Engineering Report to be prepared by Terracon Consultants, Inc. for LBYD, Inc., which said report reads in pertinent part as follows:

“A geotechnical exploration has been performed for the proposed new municipal maintenance facility to be constructed on Sunview Drive near its intersection with Autumn Lane in Vestavia, Alabama. A total of ten (10) borings were performed to depths ranging from about 5 to 13 feet below the existing surface grades. Based on the information obtained from our subsurface exploration, the following geotechnical considerations were identified:

Our borings within the planned maintenance building area encountered predominantly previously-placed undocumented fill containing wood, organics, etc. overlying clayey silt (ML) alluvium to depths of about 6 to 8 feet below the existing site grades. It is our opinion that the existing fill and underlying alluvium are not suitable in their current state for support of the building foundations or floor slab...

Borings performed within the planned parking and drives typically encountered existing fill soils overlying medium stiff or better native soils. The existing fill soils are not expected to be suitable for pavement subgrade, and should be undercut. Dependent upon many conditions including weather and construction traffic, stabilization of the exposed subgrade (after undercutting of the existing fill) may be required.”; and

WHEREAS, Architect Barry Davis has estimated that it will cost the City approximately Two Hundred Fifty Thousand Dollars (\$250,000.00) for site work to remediate the property in order for the improvements to be constructed on said property; and

WHEREAS, the City Council finds and determines that it is not in the public interest to close the sale as described in the Contract attached hereto and marked as Exhibit A; and

WHEREAS, the City of Vestavia Hills, Alabama has, by the enactment of this Ordinance Number 2430, exercised its rights under the Contract to cancel, rescind and terminate the Contract and to receive a full refund of the earnest money in the amount of Five Thousand Dollars (\$5,000.00).

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

1. The City Council hereby exercises its rights under the Contract, specifically including, but not limited to, Sections 8, 9 and 16 thereof to cancel, terminate and rescind the Contract. The City Manager is hereby authorized and directed to furnish written notice of the cancellation, termination and rescission of the Contract via certified mail-return receipt requested with postage prepaid to the following named parties:

Mary Lou Roberts
Thomas Holdings, LLC
3125 Napoleon Court
Birmingham, Alabama 35243

Wesley R. Cline, CCIM
Coldwell Banker Commercial Moore Company Realty
3500 Blue Lake Drive
Birmingham, Alabama 35243

Wesley R. Cline
4624 Old Looney Mill Road
Birmingham, Alabama 35243.

The City Manager is further authorized to request a full refund of the earnest money in the amount of Five Thousand Dollars (\$5,000.00).

2. The Mayor and the City Manager are hereby authorized and directed to execute and deliver the Agreement for Rescission, Cancellation and Termination of the Contract and to present the same to Thomas Holdings, LLC for execution and delivery thereof.

3. Ordinance Number 2422 is hereby rescinded in its entirety. The Contract attached to said Ordinance Number 2422 is also rescinded, cancelled and terminated in its entirety so that said Contract shall be null and void, and have no force and effect.

4. 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.

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*.

DONE, ORDERED, APPROVED and ADOPTED this the 31st day of January, 2013.

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 #2430 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 31st day of January, 2013 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 _____, 2013.

Rebecca Leavings
City Clerk

STATE OF ALABAMA

DRAFT # 001

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 day of , 201 ("the Effective Date") by and between Thomas Family Holmes, 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 Family Holmes, LLC owns a tract of land consisting of approximately 1.187- acres commonly referred to as "Property"; and

WHEREAS, Thomas Family Holmes, 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 1.187- 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 fifty seven and 00/100 Dollars (\$ ~~357,000.00~~ 365,000)

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 + 00/100 Dollars (\$ 5,000.00).

amount of Three hundred fifty thousand & 00/100 Dollars ^{SIXTY MM}
(~~\$350,000.00~~) shall be paid to Seller by Purchaser in cash or immediately available funds at closing. \$360,000 MM

Contemporaneously herewith, the Purchaser has deposited with Wes Clines Coldwell Banker Comm, as agent for The Thomas Family, the sum of ~~Five~~ Ten Thousand and No/100 Dollars (~~\$10,000.00~~ \$5,000), which amount shall be held by the TBD 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 TBD, 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 Wesley R. Cline, Caldwell Banker Commercial and the agent is Wes Cline. Seller shall be responsible for paying the real estate broker/agent commission to said same and NA in the amount of _____ percent (6.95 %) of the Purchase Price.

MM 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:

Margie Lea Roberts
THOMAS HOLOWES LLC
3125 NAPOLEON COURT
BIRMINGHAM, AL 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 B2, Residential 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/ cond. USE and other public purposes within ~~ninety (90) days following~~ ^{120 90} the date of Closing, then in such this Agreement shall automatically be cancelled and terminated and the Earnest Money heretofore paid by Purchaser shall be refunded in full. *of days execution of Agmt*

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

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.

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 Mary J. Rabb

Its MANAGER

NOTE: SUBJECT TO FINAL
APPROVAL OF THE VESTAVIA HILLS
CITY COUNCIL.

PURCHASER:

WITNESS

Adele Russell

CITY OF VESTAVIA HILLS, ALABAMA

By [Signature]
Alberto C. Zaragoza, Jr.
Its Mayor

TANDY E. ROBERTSON
CITY MGR

STATE OF ALABAMA
JEFFERSON COUNTY

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby
certify that Mary L. Roberts, whose name as Manager 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 14th day of November,

2017

[Signature]
Notary Public

SEAL

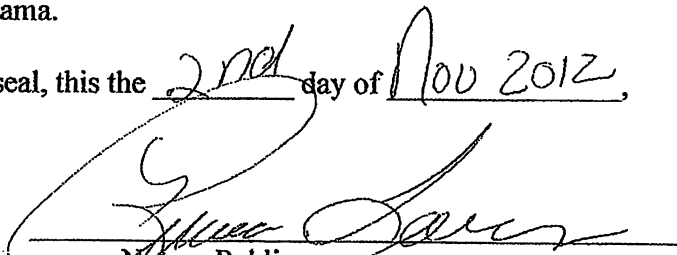
My Commission Expires:
9/25/2013

**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.~~ ^{Kandy E. Robertson} 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 2nd day of Nov 2012,
2012



Notary Public

SEAL
My Commission Expires:
7/06/15

EXHIBIT B
(Legal Description To Be Attached)

STATE OF ALABAMA

JEFFERSON COUNTY

**AGREEMENT FOR RESCISSION,
CANCELLATION AND TERMINATION OF CONTRACT**

WITNESSETH THIS AGREEMENT FOR RESCISSION, CANCELLATION AND TERMINATION OF CONTRACT, made and entered into on this the ____ day of February, 2013, by and between the City of Vestavia Hills, Alabama, a municipal corporation, (hereinafter referred to “the City”) and Thomas Holdings, LLC (hereinafter referred to as “Thomas Holdings, LLC.”

WITNESSETH THESE RECITALS:

WHEREAS, on November 15, 2012, the City and Thomas Holdings, LLC executed and delivered a Contract, a copy of which is attached hereto and marked as Exhibit A; and

WHEREAS, the City, pursuant to its rights set forth in the Contract, specifically including, but not limited to, Sections 8, 9 and 16 thereof, has given notice of rescission, cancellation and termination of the said Contract, to Thomas Holdings, LLC; and

WHEREAS, Thomas Holdings, LLC acknowledges receipt of the notice given by the City of rescission, cancellation and termination of the Contract; and

WHEREAS, the City and Thomas Holdings, LLC now wish to document the rescission, cancellation and termination of the Contract so that the same shall be null and void and neither party shall be obligated to the other; and

WHEREAS, the City and Thomas Holdings, LLC wish to reduce their agreement for rescission, cancellation and termination of the Contract to writing.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That in consideration of the mutual promises and covenants contained herein, the City and Thomas Holdings, LLC mutually expressly and mutually agree as follows:

1. The Contract marked as Exhibit A is hereby rescinded, cancelled, terminated, null and void.
2. Thomas Holdings, LLC is not obligated to sell the property described in the Contract to the City.
3. The City is not obligated to purchase the property described in the Contract from Thomas Holdings, LLC.

4. Neither party is obligated to the other for anything arising out of the terms, provisions and the conditions of the Contract.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on this the _____ day of February, 2013.

CITY OF VESTAVIA HILLS, ALABAMA
a Municipal Corporation

By _____
Alberto C. Zaragoza, Jr.
Its Mayor

By _____
Randy Robertson
Its City Manager

ATTESTED

By _____

THOMAS HOLDINGS, LLC

By _____
Its _____

ATTESTED

By _____

**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, a municipal corporation is signed to the foregoing Agreement for Rescission, Cancellation and Termination of Contract, 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 the City of Vestavia Hills, Alabama.

Given under my hand and official seal, this the ____ day of February, 2013.

Notary Public

My Commission Expires:

SEAL

**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 Robertson, whose name as City Manager of the City of Vestavia Hills, Alabama, a municipal corporation is signed to the foregoing Agreement for Rescission, Cancellation and Termination of Contract, 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 the City of Vestavia Hills, Alabama.

Given under my hand and official seal, this the ____ day of February, 2013.

Notary Public

My Commission Expires:

SEAL

**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 Rescission, Cancellation and Termination of Contract, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Agreement, (s)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 February, 2013.

Notary Public

February 1, 2013

By Regular Mail and
Certified Mail-Return Receipt Requested

Ms. Mary Lou Roberts
Thomas Holdings, LLC
3125 Napoleon Court
Birmingham, Alabama 35243

In Re: Agreement for Sale and Purchase of Real Estate by and between Thomas Holdings, LLC, as
“Seller,” and the City of Vestavia Hills, as “Purchaser”

Dear Ms. Roberts:

On November 15, 2012, the City Council of the City of Vestavia Hills, Alabama approved and adopted Ordinance Number 2422 authorizing and directing the Mayor and me as City Manager to execute and deliver an Agreement for Sale and Purchase of Real Estate (the “Contract”) by and between Thomas Holdings, LLC, as “Seller,” and the City of Vestavia Hills, Alabama, as “Purchaser,” whereby the City agreed to purchase approximately 1.18± acres situated on Sunview Drive in the Cahaba Heights community for and in consideration of \$365,000.00 upon the condition that the property be used for the construction and operation of a municipal garage and shop.

Among other things, the Contract provides as follows:

Section 9: The City shall have an Inspection Period of 150 days to decide if it actually wants to close the sale of the property. It further provides that the City may in its sole discretion, for any reason or no reason, cancel the Contract during the Inspection Period by giving written notice of termination to the Seller before the last day of the Inspection Period.

Section 16: Any notices shall be given to you at the above address as the representative for the Seller, Thomas Holdings, LLC.

Section 16: If the Agreement is terminated by the City, then in such event the earnest money in the amount of Five Thousand Dollars (\$5,000.00) shall refunded by Thomas Holdings, LLC to the City in full.

On January 31, 2013, the City Council met at a special called meeting. At that meeting, it approved and adopted Ordinance Number _____ to rescind, cancel and terminate the Contract with Thomas Holdings, LLC.

Please accept this written notice that the City of Vestavia Hills, Alabama has elected to rescind, cancel and terminate the Contract and respectfully requests a full refund of the earnest money in the amount of \$5,000.00. The City will not purchase the property.

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

1. A copy of Ordinance Number _____ enacted by the City Council on January 31, 2013.
2. Agreement for Rescission, Cancellation and Termination of Contract, which has been signed by Mayor Zaragoza and me.

It is respectfully requested that Thomas Holdings, LLC sign the enclosed Agreement for Rescission, Cancellation and Termination of Contract and return it to me, along with the earnest money in the amount of \$5,000.00. Thank you.

Sincerely,

Randy Robertson
City Manager

PHB:gp
Enclosures

cc: Mr. Wesley R. Cline, CCIM
(by regular mail, certified mail-return receipt requested and e-mail)
Coldwell Banker Commercial Moore Company Realty
3500 Blue Lake Drive
Birmingham, Alabama 35243

Mr. Wesley R. Cline
(by regular mail, certified mail-return receipt requested and e-mail)
4624 Old Looney Mill Road
Birmingham, Alabama 35243.

City Clerk Rebecca Leavings
Vestavia Hills Municipal Center
P. O. Box 660854
Vestavia Hills, Alabama 35266-0854

Patrick H. Boone, Esq.
705 New South Federal Savings Building
215 Richard Arrington, Jr. Boulevard North
Birmingham, Alabama 35203-3720

STATE OF ALABAMA

DRAFT # 001

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 ___ day of ___, 201__ ("the Effective Date") by and between Thomas Family Holmes, 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 Family Holmes, LLC owns a tract of land consisting of approximately 1.187- acres commonly referred to as "Property"; and

WHEREAS, Thomas Family Holmes, 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 1.187- 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 fifty seven and 00/100 Dollars (\$ 357,000.00 365,000)

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 + 00/100 Dollars (\$ 5,000.00).

EXHIBIT A

amount of Three hundred fifty thousand ^{Sixty MM} Dollars ~~(\$350,000.00)~~ shall be paid to Seller by Purchaser in cash or immediately available funds at closing. \$360,000 ^{MM}

Contemporaneously herewith, the Purchaser has deposited with Wes Olene Coldwell Banker Conn, as agent for The Thomas Family, the sum of ~~Five~~ Five Thousand and No/100 Dollars (~~\$10,000.00~~ ^{\$5,000}), which amount shall be held by the TBD 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 TBD, 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 Wesley R. Cline, Caldwell Banker Commercial and the agent is Wes Cline. Seller shall be responsible for paying the real estate broker/agent commission to said same and NA in the amount of _____ percent (6.95%) of the Purchase Price.

MM 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 HOLMES LLC
3125 NAPOLEON COURT
BIRMINGHAM, AL 35243

If to Purchaser:

City Manager Randy Robertson
City of Vestavia Hills, Alabama
513 Montgomery Highway
Vestavia Hills, Alabama 35216

Fill In

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 BE2 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/ cond. Use and other public purposes within ~~ninety (90) days following~~ the date of Closing, 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 ~~The Thomas Family HOLDING LLC~~ The Thomas Family HOLDING LLC as Seller, and the City of Vestavia Hills, Alabama, as Purchaser.

120-90
days
of
execution
of
Agmt
MUL

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.

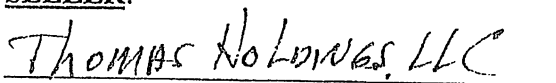
28. **ENTIRE AGREEMENT:** This document constitutes the entire agreement between the parties, incorporating all prior agreements, and may only be amended in writing executed by both parties.

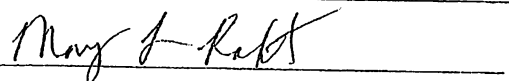
IN WITNESS WHEREOF, Seller and Purchaser have caused this Agreement to be executed as of the date first above written.

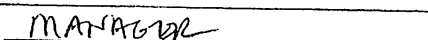
WITNESS



SELLER:



By 

Its 

NOTE: SUBJECT TO FINAL
APPROVAL OF THE VESTAVIA HILLS
CITY COUNCIL.

PURCHASER:

CITY OF VESTAVIA HILLS, ALABAMA

By [Signature]
Alberto C. Zaragoza, Jr.
Its Mayor

RANDY E. ROBERTSON
CITY MGR

WITNESS

[Signature]

STATE OF ALABAMA
JEFFERSON COUNTY

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby
certify that Mary L. Roberts, whose name as Manager 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 14th day of November,

2017

[Signature]
Notary Public

SEAL

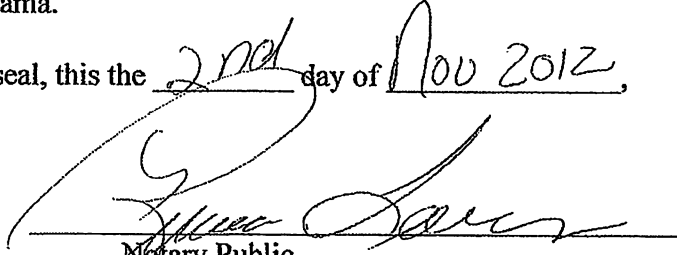
My Commission Expires:
01/25/2013

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.~~ ^{Randy E. Robertson}, 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.

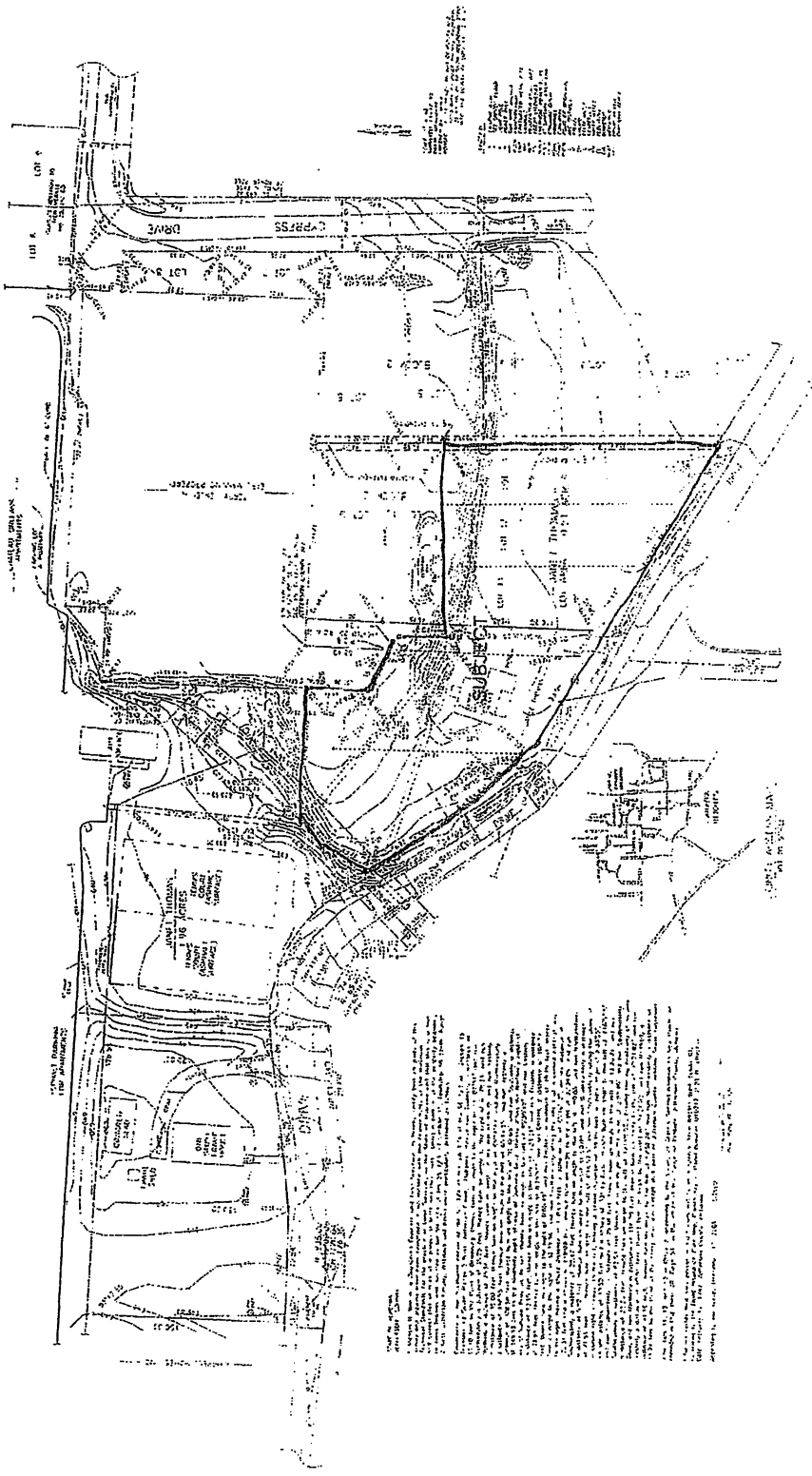
Given under my hand and official seal, this the 2nd day of Nov 2012,
2012



Notary Public

SEAL
My Commission Expires:
07/06/15

EXHIBIT "A"



OFFICE OF THE REGISTER OF DEEDS
 1011 UNIVERSITY BLVD.
 MONROE, LOUISIANA 70502
 PHONE (504) 386-1111



BOUNDARIES & ENCUMBRANCES SURVEYED BY JOHN I. HUGHES
 PROPERTY BELONGING TO THE S.W. 1/4 OF THE S.W. 1/4
 SECTION 10, TOWNSHIP 18 SOUTH, RANGE 7 WEST
 CALHOUN COUNTY, ALABAMA
 ALONG WITH B. J. HUGHES

THIS SURVEY WAS MADE BY JOHN I. HUGHES, REGISTERED SURVEYOR, IN THE YEAR 1987, FOR THE PURPOSE OF SURVEYING THE BOUNDARIES AND ENCUMBRANCES OF THE PROPERTY DESCRIBED ABOVE. THE SURVEY WAS MADE IN ACCORDANCE WITH THE ALABAMA SURVEYING ACT, AND THE RESULTS ARE HEREBY CERTIFIED TO BE TRUE AND CORRECT.

JOHN I. HUGHES
 REGISTERED SURVEYOR
 1011 UNIVERSITY BLVD.
 MONROE, LOUISIANA 70502
 PHONE (504) 386-1111

EXHIBIT B
(Legal Description To Be Attached)

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

2/13/13

January 29, 2013

By Hand Delivery

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

In Re: Ordinance to Approve Rescission, Cancellation and Termination of Contract with
Thomas Holdings, LLC for the Purchase of the Property on Sunview Drive

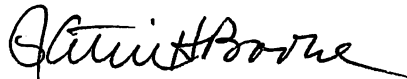
Dear Mr. Robertson:

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

1. Ordinance to Rescind, Cancel and Terminate an Agreement for Sale and Purchase of Real Estate and Rescind Ordinance Number 2422. I recommend that City Clerk Becky Leavings give this an ordinance number and fill in the blanks as they appear in the ordinance. Gail has sent this document to her in word format.
2. Agreement for Rescission, Cancellation and Termination of Contract. If the City Council approves the Ordinance described above, then in such event this Agreement should be sent to Thomas Holdings, LLC for its signature.
3. Recommended letter to be sent to Mary Lou Roberts.

It is my understanding that the City Council will consider the issue of rescission, cancellation and termination of this Contract at its special meeting scheduled for Thursday, January 31, 2013, at 4:30 p.m. Please call me if you have any questions regarding this matter.

Sincerely,



Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp

Enclosures

cc: City Clerk Rebecca Leavings (w/encls.)

ORDINANCE NUMBER 2431

AN ORDINANCE AUTHORIZING THE RESCISSION, CANCELLATION AND TERMINATION OF AN AGREEMENT BETWEEN OWNER AND ARCHITECT.

THIS ORDINANCE NUMBER 2431 is approved and adopted by the City Council of the City of Vestavia Hills, Alabama on this the 31st day of January, 2013.

WITNESSETH THESE RECITALS:

WHEREAS, On November 15, 2012, the City Council of the City of Vestavia Hills, Alabama (“City Council”) approved and adopted Ordinance Number 2422 authorizing and directing the Mayor and City Manager to execute and deliver an Agreement for Sale and Purchase of Real Estate, which is attached to Ordinance Number 2422 and designated as Exhibit 1 (the “Real Estate Contract”); and

WHEREAS, the Real Estate Contract is by and between Thomas Holdings, LLC, as “Seller,” and the City of Vestavia Hills, Alabama, as “Purchaser,” and provides that the City shall purchase approximately 1.18± acres in the Cahaba Heights community of the City of Vestavia Hills, Alabama known as 3112 Sunview Drive (the “property”) for and in consideration of \$365,000.00 and that if the sale is closed, then in such event the property will be used for the construction and operation of a new municipal garage and shop; and

WHEREAS, the Real Estate Contract provides, among other things, that the City will have an Inspection Period of one hundred fifty (150) days following the signing of the Real Estate Contract to exercise its due diligence in determining whether or not the City actually wants to purchase and close the sale; and

WHEREAS, on December 10, 2012, the City Council approved and adopted Resolution Number 4376, which selected Barry Davis Architects, P.C. to be the architect for the planned construction of a new municipal garage and shop on the property; and

WHEREAS, on December 20, 2012, the City Council approved the execution and delivery of an Architect Contract by and between the City, as “Owner,” and Barry Davis Architects, P.C., as “Architect”; and

WHEREAS, the Addendum to the Architect's Contract provides in pertinent parts as follows:

“1. Notwithstanding anything contained in the Contract to the contrary, the Owner and Architect agree to add the following terms, provisions and conditions to the contract:

(b) The completion of the work by the Architect described in the Architect Contract, dated December 20, 2012, is subject to and contingent upon the City of Vestavia Hills, Alabama closing the sale of the property by Thomas Holdings, LLC and acquiring fee simple title to the property.

(c) If the City does not close the sale and acquire title to the property as aforesaid, then in such event the following things shall occur:

(i) The City shall provide written notice to Architect that it will not close the sale and acquire fee simple title to the property; and

(ii) The Architect Contract shall automatically terminate on the date of said written notice and have no further force and effect, and become null and void; and

(iii) The Architect shall be compensated only for those services and work completed prior to the termination described in section (ii) above; and

(iv) The City shall not be liable to the Architect for any compensation for work that would have occurred subsequent to the date of termination.”; and

WHEREAS, on January 31, 2013, immediately prior to the consideration of this Ordinance Number 2431 the City Council enacted an ordinance to rescind, cancel and terminate the Real Estate Contract by and between and Thomas Holdings, LLC, as “Seller,” and the City of Vestavia Hills, Alabama, as “Purchaser”; and

WHEREAS, the City Manager will provide written notice to Thomas Holdings, LLC on February 1, 2013 that the City has rescinded, cancelled and terminated the Real Estate Contract; and

WHEREAS, the City will not close the sale and purchase the property commonly referred to as 3112 Sunview Drive; and

WHEREAS, the enactment of this ordinance rescinds, cancels and terminates the Architect Contract by and between the City of Vestavia Hills, Alabama, as “Owner,” and Barry Davis Architects, P.C., as “Architect”.

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

1. The Architect Contract by and between the City of Vestavia Hills, Alabama, as “Owner,” and Barry Davis Architects, P.C., as “Architect,” is hereby rescinded, cancelled and terminated all in accordance with the terms and provisions of the Addendum to said Architect Contract set forth in the premises above.

2. The City Manager shall give written notice of the rescinding, cancellation and termination to Barry Davis Architects, P.C. as required by the Architect Contract.

3. 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.

4. 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*.

DONE, ORDERED, APPROVED and ADOPTED this the 31st day of January, 2013.

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 #2431 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 31st day of January, 2013 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 _____, 2013.

Rebecca Leavings
City Clerk

February 1, 2013

By Regular Mail and
Certified Mail-Return Receipt Requested

Mr. Barry Davis
Barry Davis Architects, P.C.
100 Chase Park South, Suite 112
Birmingham, Alabama 35244

In Re: Agreement Between Owner and Architect, Dated December 20, 2012

Dear Mr. Davis:

The City Council of the City of Vestavia Hills, Alabama has decided that it will not close the sale or purchase the property on Sunview Drive in Cahaba Heights. The purpose of this letter is to provide you with written notice that the City has elected to rescind, cancel and terminate the Agreement Between Owner and Architect, dated December 20, 2012. Enclosed is a copy of Ordinance Number _____, which was enacted by the City Council on January 31, 2013.

Sincerely,

Randy Robertson
City Manager

PHB:gp
Enclosure

cc: City Clerk Rebecca Leavings
Vestavia Hills Municipal Center
P. O. Box 660854
Vestavia Hills, Alabama 35266-0854

Patrick H. Boone, Esq.
705 New South Federal Savings Building
215 Richard Arrington, Jr. Boulevard North
Birmingham, Alabama 35203-3720

ORDINANCE NUMBER 2432

AN ORDINANCE AUTHORIZING THE NEGOTIATION OF A CONTRACT FOR ARCHITECTURAL SERVICES.

THIS ORDINANCE NUMBER 2432 is approved and adopted by the City Council of the City of Vestavia Hills, Alabama (“City”) on this the 31st day of January, 2013.

WITNESSETH THESE RECITALS:

WHEREAS, the City of Vestavia Hills, Alabama (“City”) is the owner of the real estate and improvements known as Wald Park (“Property”); and

WHEREAS, the City is considering the construction of a new municipal garage and shop facility; and

WHEREAS, the City wishes to study and consider the possibility and feasibility of the construction and operation of a municipal garage and shop on the Property; and

WHEREAS, the City wishes to consider the employment Barry Davis Architects, P.C. to prepare a survey, perform geotechnical tests and design a preliminary schematic drawing for the Property.

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

1. The City Manager is hereby authorized and directed to negotiate with Barry Davis Architects, P.C. to do a survey, conduct geotechnical tests and prepare a schematic design for the purpose of determining the feasibility of constructing a new municipal garage and shop on the Property.

2. The terms, provisions and conditions of an agreement between the City, as “Owner,” and Barry Davis Architects, P.C., as “Architect,” once the negotiations are completed, must be approved by the City Council by the enactment of an ordinance following a public hearing at a specially scheduled or regular meeting of the City Council.

3. 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.

4. 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*.

DONE, ORDERED, APPROVED and ADOPTED this the 31st day of January, 2013.

CITY OF VESTAVIA HILLS, ALABAMA

By _____
Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

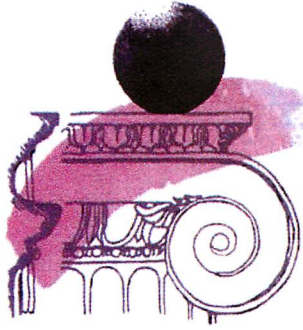
Rebecca Leavings
City Clerk

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 #2432 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 31st day of January, 2013 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 _____, 2013.

Rebecca Leavings
City Clerk



BARRY DAVIS, ARCHITECTS, P.C.

January 30, 2013

Mr. Christopher Brady, PE, City Engineer
City of Vestavia Hills
513 Montgomery Highway
Vestavia Hills, Alabama 35216

Re: Wald Park Maintenance Facility
Proposal for Architectural Services

Dear Christopher:

I understand that, due to unsuitable soil at the Cahaba Heights (Sunview) site, we are to terminate our work there and begin design at the Wald Park site. We are to plan for the demolition of the existing structures there, and design buildings, parking, and related site work on the entire site south of the existing Lodge.

We should proceed with a design similar to that proposed in our letter of November 2, 2012, except:

- 1) The office section of the building should be larger;
- 2) This building should include dormitory space to accommodate ten emergency workers; and
- 3) The shop section of the building should be expanded to include as many storage bays as the site will accommodate.

We propose to provide the Schematic Design for this concept for the fixed fee of \$18,950. This includes \$4,000 for the topographic survey and \$6,500 for the geotechnical report as we proposed earlier. The remainder is for architectural, civil, structural, mechanical, and electrical.

This would take the design to the same level of completion as we provided for the Cahaba Heights site. The terms would be the same as we agreed upon in the Contract we signed for the Cahaba Heights design. If acceptable to you, we could proceed with the issuance of a purchase order to avoid the delay required for the execution of another B101. When the Schematic Design is acceptable, we can proceed with Design Development and execute a new Contract when it is convenient, crediting this fee to that new Contract.

We are prepared to begin immediately.

Please call or e-mail if you have any questions or concerns. Again, thank you for the opportunity to serve as Vestavia Hills' architect.

Sincerely,

A handwritten signature in black ink that reads "Barry Davis". The signature is written in a cursive, flowing style. The first name "Barry" is written in a larger, more prominent script, and "Davis" follows in a similar but slightly smaller script. The signature is positioned above the typed name and title.

Barry Davis, AIA, NCARB, LEED® AP
President

ORDINANCE NUMBER 2433

AN ORDINANCE AUTHORIZING AND DIRECTING THE EXTENSION OF THE CLOSING DATE IN THE PURCHASE AND SALE AGREEMENT, DATED JUNE 15, 2012, BY AND BETWEEN THE CITY OF VESTAVIA HILLS, ALABAMA, AS “SELLER,” AND CAPITAL GROWTH MEDVEST, LLC, AS “PURCHASER.”

THIS ORDINANCE NUMBER 2433 is approved and adopted by the City Council of the City of Vestavia Hills, Alabama on this the 31st day of January, 2013.

WITNESSETH THESE RECITALS:

WHEREAS, the City of Vestavia Hills, Alabama, a municipal corporation, as “Seller” (“City”), and Capital Growth Medvest, LLC, an Alabama limited liability company, as “Purchaser (“CGM”), entered into a Purchase and Sale Agreement, dated June 15, 2012, (“Contract”) wherein the City agreed to sell and CGM agreed to purchase seven (7) acres of land at Patchwork Farm (“Property”) for Two Hundred Thousand Dollars (\$200,000.00) per acre with a closing date scheduled for November 1, 2012; and

WHEREAS, the Contract in sections 9(a) and 9(b) on page 6 provides in words and figures as follows:

“(a) Subject to the terms and provisions of Paragraph 9(b) below, the consummation of the sale by Seller and the purchase by Purchaser of the Property (the “Closing”) shall take place at the offices of Seller, 513 Montgomery Highway, Vestavia Hills, Alabama 35216, or at such other place as may be mutually agreed upon by the parties, at 10:00 a.m. Central Standard/Daylight Savings Time on November 1, 2012 (the “Closing Date”).

(b) Notwithstanding anything provided to the contrary in Paragraph 9(a) above, Purchaser shall have the unilateral right to extend the Closing Date (a “Closing Extension”) (in intervals of 30 days per extension), but in no event beyond February 24, 2013, provided that for each Closing Extension (*i.e.* each 30-day extension), Purchaser, shall, at least five (5) days prior to the then applicable Closing Date, provide written notice to Seller electing to exercise a Closing Extension for 30 additional days and shall pay with the delivery of such Closing Extension notice directly to Seller, in each instance the sum of Five Thousand and No/100 Dollars (\$5,000.00) (individually, a “Closing Extension Fee” and collectively, the “Closing Extension Fees”). The Closing Extension Fees paid by Purchaser to Seller are not subject to refund and shall not be

applied as a credit to the Purchase Price. If any Closing Extension is timely and properly exercised by Purchaser, then the then applicable Closing Date shall be automatically extended for thirty (30) additional days without further notice or action by the parties and without further amendment to this Agreement.”; and

WHEREAS, the Contract reads in section 15(d) on page 9 as follows:

“(d) Modification. Neither this Agreement nor any provision hereof may be waived, modified or amended, except by a written instrument signed by both Seller and Purchaser.”; and

WHEREAS, CGM has exercised its rights under section 9(b) of the Contract set forth above by extending the Closing Date as follows:

<u>Period</u>	<u>Closing Extension Fees Paid</u>
November 2012	\$5,000.00
December 2012	\$5,000.00
January 2013	\$5,000.00; and

WHEREAS, CGM provided written notice to the City on January 25, 2013 that it will further extend the Closing Date of the Contract to February 24, 2013 and will pay the additional closing extension fee in the amount of Five Thousand Dollars (\$5,000.00); and

WHEREAS, on January 25, 2013, CGM made a written request that the Closing Date be further extended as follows:

<u>Period</u>	<u>Closing Extension Fees</u>
March 2013	\$ 5,000.00
April 2013	\$ 5,000.00
May 2013	\$ 5,000.00
June 2013	\$10,000.00
July 2013	\$15,000.00
August 2013	<u>\$20,000.00</u>
Total Fees	\$80,000.00; 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, the Alabama Open Meetings Act set forth at Title 36-25A-1, et seq., *Code of Alabama, 1975*, provides that the deliberative process of conducting City business shall be open to the public at regularly scheduled or specially called meetings after providing the required notice; and

WHEREAS, the Alabama Open Meetings Law also provides at Title 36-25A-7(a)(6), *Code of Alabama, 1975*, specifically as follows:

“§36-25A-7. Executive sessions.

(a) Executive sessions are not required by this chapter, but may be held by a governmental body only for the following purposes:

(6) To discuss the consideration the governmental body is willing to offer or accept when considering the purchase, sale, exchange, lease, or market value of real property. Provided, however, that the material terms of any contract to purchase, exchange, or lease real property shall be disclosed in the public portion of a meeting prior to the execution of the contract.”; and

WHEREAS, if CGM pays the Closing Extension Fee in the amount of Five Thousand Dollars (\$5,000.00) for February 2013, then in such event the City will agree to further extend the Closing Date to the dates set forth below provided the stated Closing Extension Fees are paid:

<u>Period</u>	<u>Closing Extension Fee</u>
March 2013	\$7,500.00
April 2013	\$7,500.00
May 2013	\$7,500.00; and

WHEREAS, if the Contract Closing Date is further extended by Purchaser upon payment of “Closing Extension Fees”, then in such event the said Closing Extension Fees paid by Purchaser to Seller are not subject to refund and shall not be applied as a credit to the Purchase Price.

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

1. By the enactment of this Ordinance Number 2433 on this the 31st day of January, 2013, the City hereby agrees to extend the Closing Date for the following periods upon payment of the Closing Extension Fees:

<u>Period</u>	<u>Closing Extension Fee</u>
March 2013	\$7,500.00
April 2013	\$7,500.00
May 2013	\$7,500.00.

The Closing Extension Fees paid by the Purchaser to the Seller are not subject to refund and shall not be applied as a credit to the Purchase Price.

2. The City Attorney has prepared a document entitled “First Addendum to Purchase and Sale Agreement” (“First Addendum”) setting forth the agreement by the City to amend the Contract, dated June 15, 2012. A copy of said First Addendum is attached hereto, marked as Exhibit A and is incorporated into this ordinance by reference as set out fully herein. The First Addendum reads in pertinent part as follows:

“NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That the Seller and Purchaser hereby mutually and expressly amend the Contract as set forth below:

1. Anything contained in the Contract to the contrary notwithstanding, the Seller and Purchaser agree to add the following terms, provisions and conditions to the Contract:

9(b)(i) If Purchaser exercises its right under section 9(b) of the Contract to extend the Closing Date to February 24, 2013 and pays the Closing Extension Fee in the amount of Five Thousand Dollars (\$5,000.00) for that extension, then in such event the Purchaser shall have the unilateral right to extend the Closing Date (a “Closing Extension”) (in intervals of 30 days per extension), but in no event beyond May 24, 2013, provided that for each Closing Extension (*i.e.* each 30-day extension), Purchaser, shall, at least five (5) days prior to the then applicable Closing Date, provide written notice to Seller electing to exercise a Closing Extension for 30 additional days and shall pay with the delivery of such Closing Extension notice directly to Seller, in each instance the sum of Seven Thousand Five Hundred and No/100 Dollars (\$7,500.00) (individually, a “Closing Extension Fee” and collectively, the “Closing Extension Fees”). The Closing Extension Fees paid by Purchaser to Seller are not subject to refund and shall not be applied as a credit to the Purchase Price. If any Closing Extension is timely and properly exercised by Purchaser, then the then applicable Closing Date shall be automatically extended for thirty (30) additional days without further notice or action by the parties and without further amendment to this Agreement.”

3. The City Council hereby approves the First Addendum.

4. The Mayor and City Manager are hereby authorized and directed to execute and deliver the First Addendum for and on behalf of the City of Vestavia Hills, Alabama.

5. 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.

6. 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*.

DONE, ORDERED, APPROVED and ADOPTED this the 31st day of January, 2013.

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 #2433 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 31st day of January, 2013 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 _____, 2013.

Rebecca Leavings
City Clerk

STATE OF ALABAMA

JEFFERSON COUNTY

**FIRST ADDENDUM TO
PURCHASE AND SALE AGREEMENT, DATED JUNE 15, 2012**

WITNESSETH THIS FIRST ADDENDUM TO PURCHASE AND SALE AGREEMENT, made and entered into on this the 31st day of January, 2013, by and between the City of Vestavia Hills, Alabama, a municipal corporation, as “Seller,” (“City”) and Capital Growth Medvest, LLC, an Alabama limited liability company, as “Purchaser” (“CGM”).

WITNESSETH THESE RECITALS:

WHEREAS, the City of Vestavia Hills, Alabama, a municipal corporation, as “Seller” (“City”), and Capital Growth Medvest, LLC, an Alabama limited liability company, as “Purchaser (“CGM”), entered into a Purchase and Sale Agreement, dated June 15, 2012, (“Contract”) wherein the City agreed to sell and CGM agreed to purchase seven (7) acres of land at Patchwork Farm (“Property”) for Two Hundred Thousand Dollars (\$200,000.00) per acre with a closing date scheduled for November 1, 2012; and

WHEREAS, the Purchaser has requested that the Contract be amended to provide further extensions for the Closing Date upon payment of Closing Extension Fees; and

WHEREAS, the City Council of the City of Vestavia Hills, Alabama enacted Ordinance Number 2433 on January 31, 2013 agreeing to extend the Closing Date for certain periods upon the payment of Closing Extension Fees as set forth herein below; and

WHEREAS, the Purchaser and Seller wish to reduce their agreement to writing and amend the Contract by the execution and delivery of this First Addendum to Purchase and Sale Agreement.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That the Seller and Purchaser hereby mutually and expressly amend the Contract as set forth below:

1. Anything contained in the Contract to the contrary notwithstanding, the Seller and Purchaser agree to add the following terms, provisions and conditions to the Contract:

“9(b)(i) If Purchaser exercises its right under section 9(b) of the Contract to extend the Closing Date to February 24, 2013 and pays the Closing Extension Fee in the amount of Five Thousand Dollars (\$5,000.00) for that extension, then in such event the Purchaser shall have the unilateral right to extend the Closing Date (a “Closing Extension”) (in intervals of 30 days per extension), but in no event beyond May 24, 2013, provided that for each Closing

Extension (*i.e.* each 30-day extension), Purchaser, shall, at least five (5) days prior to the then applicable Closing Date, provide written notice to Seller electing to exercise a Closing Extension for 30 additional days and shall pay with the delivery of such Closing Extension notice directly to Seller, in each instance the sum of Seven Thousand Five Hundred and No/100 Dollars (\$7,500.00) (individually, a “Closing Extension Fee” and collectively, the “Closing Extension Fees”). The Closing Extension Fees paid by Purchaser to Seller are not subject to refund and shall not be applied as a credit to the Purchase Price. If any Closing Extension is timely and properly exercised by Purchaser, then the then applicable Closing Date shall be automatically extended for thirty (30) additional days without further notice or action by the parties and without further amendment to this Agreement.”

2. That the City and CGM further agree that all other aspects, terms, provisions and conditions of the original Purchase and Sale Agreement, dated June 15, 2012 as amended, are hereby ratified, approved and confirmed by the parties so that the same shall remain in full force and effect.

3. Authority for the Execution and Delivery of this First Addendum to Purchase and Sale Agreement: The City Council of the City of Vestavia Hills, Alabama enacted Ordinance Number 2433 on January 31, 2013, which authorized the approval, execution and delivery of this First Addendum to Purchase and Sale Agreement.

IN WITNESS WHEREOF, the City of Vestavia Hills, Alabama, a municipal corporation, and Capital Growth Medvest, LLC, an Alabama limited liability company, have caused this First Addendum to Purchase and Sale Agreement, Dated June 15, 2012, to be executed by its duly authorized officers and their seals to be hereunder affixed; all being done in duplicate originals with one (1) original being delivered to each party on this the 31st day of January, 2013.

SELLER:
CITY OF VESTAVIA HILLS, ALABAMA
A Municipal Corporation

By _____
Alberto C. Zaragoza, Jr.
Its Mayor

By _____
Randy Robertson
Its City Manager

ATTESTED

By _____

PURCHASER:
CAPITAL GROWTH MEDVEST, LLC

By _____
Its _____

ATTESTED:

By _____

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, a municipal corporation, is signed to the foregoing First Addendum to Purchase and Sale Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, 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 31st day of January, 2013.

Notary Public

My Commission Expires:

SEAL

**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 Robertson, whose name as City Manager of the City of Vestavia Hills, Alabama, a municipal corporation, is signed to the foregoing First Addendum to Purchase and Sale Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, 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 31st day of January, 2013.

Notary Public

My Commission Expires:

SEAL

**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 Capital Growth Medvest, LLC, an Alabama limited liability company, is signed to the foregoing First Addendum to Purchase and Sale Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of the contract, (s)he, as such officer and with full authority, executed the same voluntarily for and as the act of said Capital Growth Medvest, LLC

Given under my hand and official seal, this the 31st day of January, 2013.

Notary Public

My Commission Expires:

SEAL

ORDINANCE NUMBER 2425

AN ORDINANCE AUTHORIZING AND DIRECTING THE EXECUTION AND DELIVERY OF A LETTER OF INTENT BY AND BETWEEN THE CITY OF VESTAVIA HILLS, ALABAMA AND CHICK-FIL-A, INC.

THIS ORDINANCE NUMBER 2425 is approved and adopted by the City Council of the City of Vestavia Hills, Alabama on this the 31st day of January, 2013.

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, the Alabama Open Meetings Act set forth at Title 36-25A-1, et seq., *Code of Alabama, 1975*, provides that the deliberative process of conducting City business shall be open to the public at regularly scheduled or specially called meetings after providing the required notice; and

WHEREAS, the Alabama Open Meetings Law also provides at Title 36-25A-7(a)(6), *Code of Alabama, 1975*, specifically as follows:

“§36-25A-7. Executive sessions.

(a) Executive sessions are not required by this chapter, but may be held by a governmental body only for the following purposes:

(6) To discuss the consideration the governmental body is willing to offer or accept when considering the purchase, sale, exchange, lease, or market value of real property. Provided, however, that the material terms of any contract to purchase, exchange, or lease real property shall be disclosed in the public portion of a meeting prior to the execution of the contract.”; and

WHEREAS, the City of Vestavia Hills, Alabama is the owner of a parcel of land situated at 513 Montgomery Highway in the City of Vestavia Hills, Jefferson County, Alabama constituting of approximately 1.32± acres, sometimes referred to as the “Vestavia Hills Municipal Center,” which said property is more particularly described in Exhibit A and shall hereinafter be referred to as “the Property;” and

WHEREAS, the City acquired the Property on August 18, 1954 by virtue of that certain Deed filed in the office of the Judge of Probate of Jefferson County, Alabama on September 17, 1954 and recorded at Deed 5266, Page 431; and

WHEREAS, the City Council hereby acknowledges receipt of a letter of intent from Chick-fil-A, Inc. (hereinafter referred to as “CFA, Inc.”) expressing an interest in entering into a purchase agreement regarding the Property; and

WHEREAS, a copy of the letter of intent (hereinafter referred to as “LOI”) is attached hereto, marked as Exhibit B and incorporated into this Ordinance Number 2425 by reference as though set out fully herein; and

WHEREAS, the LOI provides in pertinent part as follows:

“This letter does not constitute an offer by either party and is intended only to determine whether there is a basis acceptable to CFA and Seller for proceeding toward a legally binding and definitive Agreement for the purchase and sale of the Property. Except for the paragraphs under the headings “Right of Entry” and “Exclusivity” above, this letter is not a binding commitment or agreement by either CFA or Seller, and there shall be no binding agreement between the parties until the Agreement, which must be in form and content satisfactory to each party and its counsel, has

been fully executed and delivered by each of CFA and Seller. This letter does not obligate either party to proceed to the completion of an agreement.”; and

WHEREAS, the City Council of the City of Vestavia Hills, Alabama (“City Council”) has found and determined that it will be in the public interest to vacate the Property and build a new Vestavia Hills Municipal Center at another location within the corporate boundaries of the City; and

WHEREAS, the City Council finds and determines that the Property more particularly described in Exhibit A will not be needed for municipal or public purposes once the new Vestavia Hills Municipal Center is built.

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

1. The City Council, in accordance with Title 11-47-20, *Code of Alabama, 1975*, finds and determines that the Property described in Exhibit A will not be needed for municipal or public purposes and will be surplus property once a new Vestavia Hills Municipal Center is constructed.
2. A copy of the letter of intent is attached hereto, marked as Exhibit B and is incorporated into this Ordinance Number 2425 by reference as though set out fully herein.
3. The Mayor and the City Manager are hereby authorized and directed to execute and deliver the letter of intent for and on behalf of the City of Vestavia Hills, Alabama.
4. The City Manager is hereby authorized and directed to negotiate the Purchase and Sale Agreement for the Property by and between the City, as “Seller,” and CFA, as “Purchaser,” within the next one hundred twenty (120) days.
5. Any Purchase and Sale Agreement for the sale of the Property must be approved by the City Council during a public meeting at a future date by enactment of an additional ordinance following a public hearing on the matter all in accordance with the legal authorities cited in the premises above.

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.

7. 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*.

DONE, ORDERED, APPROVED and ADOPTED this the 31st day of January, 2013.

CITY OF VESTAVIA HILLS, ALABAMA

By _____
Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk



State of Alabama

JEFFERSON County

KNOW ALL MEN BY THESE PRESENTS,

That in consideration of ONE HUNDRED AND NO/100 ----- (\$100.00) -- DOLLARS and other good and valuable consideration and the execution of a purchase money mortgage in the amount of SIXTY-FIVE HUNDRED & NO/100 (\$6,500.00) DOLLARS to the undersigned grantors Virginia S. Byrd, Gladys B. Goodson and Nell A. Byrd

in hand paid by TOWN OF VESTAVIA HILLS

the receipt whereof is acknowledged we the said Virginia S. Byrd and husband Chas. R. Byrd; Gladys B. Goodson and husband Paul H. Goodson and Nell A. Byrd, a widow

do grant, bargain, sell and convey unto the said TOWN OF VESTAVIA HILLS

the following described real estate, situated in JEFFERSON

County, Alabama, to-wit: Parcel #1: A parcel of land fronting 150 feet on Easterly side of Montgomery Highway, U.S. Highway 31, and adjacent to the Southerly boundary lines of Lots 10, 11 & 12, of the Survey known as 4th Addition to Beacon Hills, map of which is recorded in map book 38 at page 3, in the Office of the Judge of Probate of Jefferson County, Alabama, said parcel of land being more particularly described as follows: Commence at the Southwest corner of Lot 12 of said Survey in the 4th Addition to Beacon Hills, thence run South along the Easterly right-of-way line of the Montgomery Highway, U.S. Highway 31, for a distance of 150 feet, thence an angle to the left of 90° in a straight line a distance of 267.18 feet to a point on the Westerly line of Lot 15, Beacon Hills 3rd Addition, recorded in map book 34, page 56, in the Office of the Judge of Probate of Jefferson County, Alabama, thence in a Northerly direction along said Westerly line of Lot 15, Beacon Hills 3rd Addition, a distance of 16.6 feet to a point; thence 28° 07' to the right in a Northeasterly direction along the Northwesterly line of Lots 15 & 16, Beacon Hills 3rd Addition a distance of 141.9 feet to the southeasterly corner of Lot 10, 4th Addition to Beacon Hills, thence in a Northwesterly direction along the Southwesterly line of Lots 10, 11, 12 of said 4th Addition to Beacon Hills, a distance of 262.95 feet to the point of beginning.

Parcel #2: Lot 4 according to the Survey known as 4th Addition to Beacon Hills, map of which is recorded in map book 38 at page 3 in the Office of the Judge of Probate of Jefferson County, Alabama. This conveyance is made on Parcel #2, subject to building and use restrictions as heretofore stated and as contained in instrument recorded in Volume 4991 at Page 252, in the Office of the Judge of Probate of Jefferson County, Alabama. Likewise to easement for public utilities across the South 5 feet of the property herein described and right-of-way Agreement in favor of Alabama Power Company as contained in Instrument recorded in Volume 4220 at Page 171, in the Office of the Judge of Probate of Jefferson County, Alabama.

This conveyance is also made subject to easement for public utilities on Parcel #1, 5 feet in width along the Northerly property line and 5 feet in width along the Easterly property line of the property heretofore described.

Mineral and mining rights not owned by the grantors herein are excepted from this conveyance in both parcels #1 and #2 heretofore described.

TO HAVE AND TO HOLD, To the said TOWN OF VESTAVIA HILLS, its successors

and assigns forever.

And we do, for ourselves and for our heirs, executors and administrators, covenant with the said TOWN OF VESTAVIA HILLS, its successors

and assigns, that we are lawfully seized in fee simple of said premises; that they are free from all encumbrances; except as above stated and State, County and City taxes for the year 1954;

that we have a good right to sell and convey the same as aforesaid; that we will, and our heirs, executors and administrators shall warrant and defend the same to the said TOWN OF VESTAVIA HILLS, its successors.

and assigns forever against the lawful claims of all persons.

In Witness Whereof, we have hereunto set
this 18th day of AUGUST 1954.

our hand and seal,

Gladys B. Goodson
Gladys B. Goodson
Paul H. Goodson
Paul H. Goodson

Virginia S. Byrd (Seal.)
Virginia S. Byrd
Chas. R. Byrd (Seal.)
Chas. R. Byrd
Nell A. Byrd (Seal.)
Nell A. Byrd (Seal.)

Reference to
Cynthia Dumas Co.

VIRGINIA S. BYRD & CHAS. R. BYRD;
GLADYS B. GOODSON & PAUL H. GOODSON
& NEIL A. BYRD

TO

TOWN OF VESSELVILLE HEIGHTS

8-18

WARRANTY DEED

STATE OF ALABAMA

County

Office of the Judge of Probate

I hereby certify that the within deed was

filed in this office for record on the

day of SEP 18 1954

at DECATUR and was duly re-

corded in Volume _____ of Deeds

at page _____ and examined.

Judge of Probate

THIS INSTRUMENT

WAS FILED FOR RECORD IN THE OFFICE OF THE JUDGE OF PROBATE

DEED 5266 PAGE 432

State of ALABAMA }
JEFFERSON COUNTY }

I, Cynthia Dumas, a Notary Public in and for said County, in said State, hereby certify that Virginia S. Byrd and husband Chas. R. Byrd, Gladys B. Goodson and husband Paul H. Goodson and Neil A. Byrd, a widow whose names are signed to the foregoing conveyance, and who are known to me; acknowledged before me on this day, that being informed of the contents of the conveyance they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 18th day of August 1954.

Cynthia Dumas
Notary Public

STATE OF ALABAMA
JEFFERSON COUNTY

I, Cynthia Dumas, a Notary Public in and for said County, in said State, hereby certify that on the 18th day of August 1954, came before me the within named Virginia S. Byrd and Gladys B. Goodson, known to me to be the wives of the within named Chas. R. Byrd and Paul H. Goodson respectively, was being examined, separate and apart from their husbands, touching their signatures to the within conveyance, acknowledged that they signed the same of their own free will and accord without fear, constraints or threats on the part of their husbands.

In Witness Whereof, I hereunto set my hand and official seal, this the 18th day of August 1954.

Cynthia Dumas
NOTARY PUBLIC

STATE OF ALA. JEFFERSON CO.
IDENTIFY THIS INSTRUMENT
WAS FILED BY
DEED 5266 PAGE 431
SEP 17 4 34 PM '54

RECORDED & MTD. TAX
& \$ DEED TAX HAS BEEN
PD. ON THIS INSTRUMENT.

Tom L. Garner
JUDGE OF PROBATE

STATE OF ALABAMA
JEFFERSON COUNTY
I hereby certify that no mortgage tax or deed tax has
been collected on this instrument.

Tom L. Garner
Judge of Probate

NO TAX COLLECTED

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

2425

January 29, 2013

By Hand Delivery

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

In Re: Ordinance Number 2425 Authorizing the Execution and Delivery of a Letter of Intent

Dear Mr. Robertson:

The City Council has scheduled a special meeting on Thursday, January 31, 2013, beginning at 4:30 p.m. It is my understanding that the City Council will consider Ordinance Number 2425 authorizing the execution and delivery of a letter of intent by and between the City, as "Seller," and Chick-fil-A, Inc., as "Purchaser," for the property at 513 Montgomery Highway.

Enclosed is a revised draft of Ordinance Number 2425. I recommend that you request Greg Hess redraft the letter of intent and date it January 31, 2013 with a change on the final page to reflect that CFA and the City will have 120 days to negotiate a fully executed purchase agreement. A copy of the revised letter should be attached to Ordinance Number 2425 as Exhibit B.

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

Sincerely,



Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp
Enclosure

cc: City Clerk Rebecca Leavings
(via hand delivery/ordinance by word format)