

**Vestavia Hills
City Council Agenda
August 25, 2014
5:00 PM**

1. Call to Order
2. Roll Call
3. Invocation – T. Douglas Ferguson, Senior Pastor, Mountaintop Community Church
4. Pledge Of Allegiance
5. Announcements, Candidate and Guest Recognition
6. Proclamation – Gynecological Cancer Awareness Month – August 2014
7. City Manager’s Report
8. Councilors’ Reports
9. Financial Reports – George Sawaya; Deputy Treasurer
10. Approval of Minutes – August 11, 2014 (Regular Meeting)

Old Business

11. Ordinance Number 2526 –Conditional Use Approval – 4871 Sicard Hollow Road; To Extend An Existing 120’ Stealth Monopole (Flagpole) To A Maximum Height Of 140’; City Of Vestavia Hills, Owners; New Cingular Wireless PCS, LLC D/B/A AT&T Mobility, Andy Rotenstreich, Representing (*public hearing*)
12. Resolution Number 4625 – A Resolution Authorizing A Special Economic Development Agreement By The City Of Vestavia Hills And Northport Holding LLC (*public hearing*)
13. Resolution Number 4626 – A Resolution Accepting A Bid For Construction Of A Pedestrian Bridge And Certain Other Improvements At McCallum Park (*public hearing*)
14. Resolution Number 4627 – A Resolution Authorizing A General Fund Budget, A Special Fund Budget And A Capital Fund Budget For Fiscal Year 2014-2015 (*public hearing*)
15. Resolution Number 4628 – A Resolution Electing To Provide A One-Time Bonus To City Retirees Pursuant To Alabama Act No. 2014-429 (*public hearing*)

New Business

16. Resolution Number 4629 – A Resolution Determining That Certain Personal Property Is Not Needed For Public Or Municipal Purposes And Directing The Sale/Disposal Of Said Surplus Property

17. Resolution Number 4630 – A Resolution Accepting A Bid For Police Uniform Polo Shirts
18. Resolution Number 4631 – A Resolution Authorizing The City Manager To Execute And Deliver An Agreement With Rivertree Systems, Inc., For Auditing Services
19. Resolution Number 4632 – A Resolution Authorizing The City Manager To Accept A Proposal From SunTrust Bank Regarding Leasing Of Vehicles And Heavy Equipment
20. Resolution Number 4633 – A Resolution Authorizing The City Manager To Perform Actions As Necessary In Order To Secure A Performance Bond Required By ALDOT
21. Resolution Number 4634 – A Resolution Approving A 2 Percent Increase In Salary And Wages For Employees
22. Resolution Number 4635 – A Resolution Authorizing The Mayor And City Manager To Execute And Deliver An Agreement For Insurance Brokerage Services

New Business (Requesting Unanimous Consent)

23. Ordinance Number 2528 - An Ordinance Finding And Determining That Certain Real Property Owned By The Vestavia Hills Board Of Education And Under Contract To Purchase By The City Of Vestavia Hills Alabama Is No Longer Needed For Public Purposes; To Decide Whether Or Not The Exchange Of Property With Northport Holding LLC Pursuant To A Project Development And Exchange Agreement Between The City Of Vestavia Hills And Northport Will Promote The Economic Development Of The City; And To Authorize And Direct The Mayor And City Manager To Execute And Deliver The Agreement (*public hearing*)
24. Ordinance Number 2529 - An Ordinance Determining That Certain Real Property Is No Longer Needed For Public Purposes And Authorizing The Mayor And City Manager To Execute And Deliver A Purchase Agreement With Cameron General Contractors, Inc., a Nebraska Corporation (*public hearing*)
25. Ordinance Number 2530 - An Ordinance Determining That Certain Real Property Is No Longer Needed For Public Purposes And Authorizing The Mayor And City Manager To Execute And Deliver A Purchase Agreement With Daniel Corporation (*public hearing*)

First Reading (No Action Taken At This Meeting)

26. Resolution Number 4636 – A Resolution Authorizing The City Manager To Execute And Deliver An Agreement With Building And Earth Services For Construction Materials Testing And To Authorize Additional Expenditures For Construction Of A Parking Lot Adjacent To The Vestavia Hills Library In The Forest (*public hearing*)

27. Citizens Comments
28. Motion For Adjournment

CITY OF VESTAVIA HILLS

CITY COUNCIL

MINUTES

AUGUST 11, 2014

The City Council of Vestavia Hills met in regular session on this date at 5:00 PM. The Mayor called the meeting to order and the City Clerk called the roll with the following:

MEMBERS PRESENT:

Mayor Alberto C. Zaragoza, Jr.
Steve Ammons, Mayor Pro-Tem
George Pierce
John Henley
Jim Sharp

OTHER OFFICIALS PRESENT:

Patrick H. Boone, City Attorney
Rebecca Leavings, City Clerk
Melvin Turner, Finance Director
George Sawaya, Deputy Treasurer
Dan Rary, Police Chief
Tim Holcomb, Asst. Police Chief
Lt. Kevin York, Police Dept.
Jim St. John, Fire Chief
Terry Ray, Asst. Fire Chief

Invocation was given by Brad Allison, Altadena Valley Presbyterian Church, followed by the Pledge of Allegiance.

ANNOUNCEMENTS, GUEST RECOGNITION

- Steve Ammons stated that he is running for Jefferson County Tax Collector and asked for support in the November general election.
- The Mayor welcomed Jefferson County Commissioner President David Carrington along with his Executive Assistant Pascal Caputo, School Board members Mark Hogewood and Jerry Dent and Doug Dean from the Chamber of Commerce Board.

CITY MANAGER REPORT

- Mr. Downes invited everyone out to the Vestavia Hills Bill F. Towers Fire Station Number 1 for an official ceremony of the new ladder truck just being placed into service. The meeting recessed at 5:10 PM for the ceremony.
- Meeting resumed at 5:15 PM with the Mayor calling the meeting back to order. Mr. Downes resumed his report by indicating that Veterans Landscaping is finishing the required contracts and bonds to begin work on both the parking lot adjacent to the Library and the new City Hall. He stated that they were out marking the footprint of the City Hall building today.
- Demolition of the existing home on the property for the new library parking should be completed by August 15.
- Jefferson County Courts validated the incentive agreement with GBT and work on that retail project should be forthcoming soon.
- Mr. Downes presented his proposed budget by distributing copies of said budget to the Council and explaining some of the highlights:
 - Funding of merits for employees
 - A 2% COLA for employees
 - Upgrade in technology
 - Preparing for long-term IT upgrades
 - Improved engineering capacity
 - City-led sidewalk improvements
 - Park maintenance enhancement
 - Code enforcement officer from within the Police Department
 - Improvement in court accounting software and the addition of a 4th court night beginning next year.

COUNCILOR REPORTS

- Mr. Pierce stated that the Chamber of Commerce will host a Back-To-School celebration in Oliver Square on August 15 with lots of activities for the kids. He invited everyone to attend.
- Mr. Pierce stated that drug testing has been kicked off with this upcoming school year and there are more than 624 students participating.
- The Mayor thanked Mr. Pierce for his hard work in helping to put the drug testing initiative together.
- Mr. Ammons stated that National Night Out is scheduled for October 7 with the 365 project highlighting safe driving.
- Mr. Henley stated that there will be a community meeting on Monday, August 18 at the Vestavia United Methodist Church discussing drug awareness and the dangers of drugs in the community. He stated that they intend to hold smaller groups throughout the year in various locations.

CITIZEN PRESENTATION

Mr. Jack Norris, Pruitt Place, spoke to the Mayor and Council expressing gratitude for the City listening to his grievances regarding properties in and around his subdivision and the City's response. He indicated that several employees of the City were quite responsive and thanked them individually by name.

APPROVAL OF MINUTES

The minutes of July 28, 2014 (Work Session) and July 28, 2014 (Regular Meeting) were presented for approval.

MOTION Motion to dispense with the reading of the minutes of the meeting of July 28, 2014 (Work Session) and July 28, 2014 (Regular Meeting) and approve them as presented was by Mr. Pierce and second by Mr. Henley. Roll call vote as follows:

Mr. Pierce – yes	Mr. Henley – yes
Mr. Sharp – yes	Mr. Ammons – yes
Mayor Zaragoza – yes	motion carried.

OLD BUSINESS

RESOLUTION NUMBER 4613

Resolution Number 4613 – A Resolution Authorizing The City Manager To Purchase Radio Equipment From E-911 Special Funds And To Reimburse The General Fund For A Prior Purchase Of Radio Equipment (public hearing)

MOTION Motion to approve Resolution Number 4613 was by Mr. Ammons and second was by Mr. Henley.

Mr. Downes stated that the Council previously approved the purchasing of radio equipment for dispatched calls to be expensed to special 9-1-1 funds. This Resolution requests the purchase of some equipment along with reimbursement to the general fund for a prior purchase in this fiscal year. He explained the totals which have changed slightly since the first reading of the Resolution.

The Mayor indicated that the Resolution needed to be amended to reflect the requested totals and opened the floor for a motion.

MOTION Motion to change the total from \$19,921 to \$21,259 as requested was by Mr. Sharp. Second was by Mr. Pierce and roll call vote as follows:

Mr. Pierce – yes
Mr. Sharp – yes
Mayor Zaragoza – yes

Mr. Henley – yes
Mr. Ammons – yes
motion carried.

The Mayor opened the floor for a public hearing. There being no one to address the Council concerning this request, the he closed the floor and asked for the question.

The Mayor called for the question. Roll call vote as follows:

Mr. Pierce – yes
Mr. Sharp – yes
Mayor Zaragoza – yes

Mr. Henley – yes
Mr. Ammons – yes
motion carried.

RESOLUTION NUMBER 4614

Resolution Number 4614 – Annexation – 90-Day – 4624 Old Looney Mill Road; Eric And Meredith Mann, Owners (*public hearing*)

MOTION Motion to approve Resolution Number 4614 was by Mr. Pierce and second was by Mr. Henley.

The Mayor explained that this Resolution begins the 90-day annexation of this property.

Mr. Pierce presented the findings of the standing Annexation Committee which found no adverse information on this property. He stated that all fees and contributions have been paid and are on file with the City Clerk.

Mr. and Mrs. Eric Mann were present for this request.

The Mayor opened the floor for a public hearing. There being no one to address the Council concerning this request, the he closed the floor and asked for the question.

Roll call vote as follows:

Mr. Pierce – yes
Mr. Sharp – yes
Mayor Zaragoza – yes

Mr. Henley – yes
Mr. Ammons – yes
motion carried.

ORDINANCE NUMBER 2522

Ordinance Number 2522 – Annexation – Overnight – 4624 Old Looney Mill Road; Eric and Meredith Mann, Owners (*public hearing*)

MOTION Motion to approve Ordinance Number 2522 was by Mr. Pierce and second was by Mr. Henley.

The Mayor stated that this is the overnight annexation of the same property.

The Mayor opened the floor for a public hearing. There being no one to address the Council concerning this request, the he closed the floor and asked for the question.

Roll call vote as follows:

Mr. Pierce – yes	Mr. Henley – yes
Mr. Sharp – yes	Mr. Ammons – yes
Mayor Zaragoza – yes	motion carried.

RESOLUTION NUMBER 4615

Resolution Number 4615 – Annexation – 90-Day – 1512 Oak Leaf Trail; Lot 12, Gresham Woods; Nicholas Elkhoury, Owner; Paul Norris, Representing (*public hearing*)

MOTION Motion to approve Resolution Number 4615 was by Mr. Pierce and second was by Mr. Ammons.

The Mayor explained that this Resolution begins the 90-day annexation of this property.

Mr. Pierce presented the findings of the standing Annexation Committee which found no adverse information on this property. He stated that all fees and contributions have been paid and are on file with the City Clerk.

Paul Norris indicated that he has a contract to purchase the property from the owner and that he was present in regard to this request.

The Mayor opened the floor for a public hearing. There being no one to address the Council concerning this request, the he closed the floor and asked for the question.

Roll call vote as follows:

Mr. Pierce – yes	Mr. Henley – yes
Mr. Sharp – yes	Mr. Ammons – yes
Mayor Zaragoza – yes	motion carried.

ORDINANCE NUMBER 2523

Ordinance Number 2523 – Annexation – Overnight – 1512 Oak Leaf Trail, Lot 12, Gresham Woods; Nicholas Elkhoury, Owner; Paul Norris, Representing (*public hearing*)

MOTION Motion to approve Ordinance Number 2523 was by Mr. Pierce and second was by Mr. Henley.

The Mayor stated that this is the overnight annexation of the same property.

The Mayor opened the floor for a public hearing. There being no one to address the Council concerning this request, the he closed the floor and asked for the question.

Roll call vote as follows:

Mr. Pierce – yes	Mr. Henley – yes
Mr. Sharp – yes	Mr. Ammons – yes
Mayor Zaragoza – yes	motion carried.

RESOLUTION NUMBER 4616

Resolution Number 4616 – Annexation – 90-Day – 2429 Dolly Ridge Road; Lot 36, Rocky Ridge Estates; Lila P. Williams, Owner; Earl Gibson, Representing (*public hearing*)

MOTION Motion to approve Resolution Number 4616 was by Mr. Pierce and second was by Mr. Ammons.

The Mayor explained that this Resolution begins the 90-day annexation of this property.

Mr. Pierce presented the findings of the standing Annexation Committee which found no adverse information on this property. The City Engineer recommended a redevelopment of this property in order to allow better access to Dolly Ridge Road. He stated that all fees and contributions have been paid and are on file with the City Clerk.

Earl Gibson indicated that he has a contract to purchase the property from the owner and that he was present in regard to this request.

The Mayor opened the floor for a public hearing. There being no one to address the Council concerning this request, the he closed the floor and asked for the question.

Roll call vote as follows:

Mr. Pierce – yes	Mr. Henley – yes
Mr. Sharp – yes	Mr. Ammons – yes
Mayor Zaragoza – yes	motion carried.

ORDINANCE NUMBER 2524

Ordinance Number 2524 – Annexation – Overnight - 2429 Dolly Ridge Road; Lot 36, Rocky Ridge Estates; Lila P. Williams, Owner; Earl Gibson, Representing (public hearing)

MOTION Motion to approve Ordinance Number 2524 was by Mr. Pierce and second was by Mr. Henley.

The Mayor stated that this is the overnight annexation of the same property.

The Mayor opened the floor for a public hearing. There being no one to address the Council concerning this request, the he closed the floor and asked for the question.

Roll call vote as follows:

Mr. Pierce – yes	Mr. Henley – yes
Mr. Sharp – yes	Mr. Ammons – yes
Mayor Zaragoza – yes	motion carried.

RESOLUTION NUMBER 4617

Resolution Number 4617 – Annexation – 90-Day – 3633 Dabney Drive; Lot 37, Altadena Forest Estates, 2nd Sector; William Jenkins, Owner; Sarah Macon, Representing

MOTION Motion to approve Resolution Number 4617 was by Mr. Pierce and second was by Mr. Henley.

The Mayor explained that this Resolution begins the 90-day annexation of this property.

Mr. Pierce presented the findings of the standing Annexation Committee which found no adverse information on this property. The City Engineer recommended some drainage problems to be addressed on the property and he understands that the owner is willing to work with him to make the repairs. He stated that all fees and contributions have been paid and are on file with the City Clerk.

Mr. Brady stated that he feels the erosion problems will be addressed by the owner.

Sarah Macon indicated that she is the owner's daughter and that she was present in regard to this request.

The Mayor opened the floor for a public hearing. There being no one to address the Council concerning this request, the he closed the floor and asked for the question.

Roll call vote as follows:

Mr. Pierce – yes	Mr. Henley – yes
Mr. Sharp – yes	Mr. Ammons – yes
Mayor Zaragoza – yes	motion carried.

ORDINANCE NUMBER 2525

Ordinance Number 2525 – Annexation – Overnight - 3633 Dabney Drive; (*public hearing*) Lot 37, Altadena Forest Estates, 2nd Sector; William Jenkins, Owner; Sarah Macon, Representing (*public hearing*)

MOTION Motion to approve Ordinance Number 2525 was by Mr. Pierce and second was by Mr. Henley.

The Mayor stated that this is the overnight annexation of the same property.

The Mayor opened the floor for a public hearing. There being no one to address the Council concerning this request, the he closed the floor and asked for the question.

Roll call vote as follows:

Mr. Pierce – yes	Mr. Henley – yes
Mr. Sharp – yes	Mr. Ammons – yes
Mayor Zaragoza – yes	motion carried.

NEW BUSINESS

RESOLUTION NUMBER 4620

Resolution Number 4620 – A Resolution Determining That Certain Personal Property Is Not Needed For Public Or Municipal Purposes And Directing The Sale/Disposal Of Said Surplus Property

MOTION Motion to approve Resolution Number 4620 was by Mr. Ammons and second was by Mr. Sharp.

Mr. Downes stated that this is a request to declare two fire apparatus as surplus and allow the City Manager and the Fire Chief to find the best resale possible for said surplus items.

Mr. Sharp asked if a buyer has been located.

Chief St. John explained they believe they might have a buyer for one but if the financing cannot be done, they will list it through the same broker.

The Mayor opened the floor for a public hearing. There being no one to address the Council concerning this request, the he closed the floor and asked for the question.

Roll call vote as follows:

Mr. Pierce – yes	Mr. Henley – yes
Mr. Sharp – yes	Mr. Ammons – yes
Mayor Zaragoza – yes	motion carried.

RESOLUTION NUMBER 4621

Resolution Number 4621 – A Resolution Authorizing The Mayor And City Manager To Enter Into An Agreement For Landscape Permit (MB-05) And A Permit To Construct A Turnout (BM-111-B) With Alabama Department Of Transportation (ALDOT) For Improvements Along Highway 31 At The New City Hall Site

MOTION Motion to approve Resolution Number 4621 was by Mr. Pierce and second was by Mr. Henley.

Mr. Downes stated that this Resolution authorizes him to execute two ALDOT agreements for improvements along Montgomery Highway for the new City Hall facility.

Mr. Pierce asked if the owners of Red Lobster are aware of the designs.

Mr. Downes stated that they are participating in the designs which closes one of their accesses and allows a better one from the side.

Roll call vote as follows:

Mr. Pierce – yes	Mr. Henley – yes
Mr. Sharp – yes	Mr. Ammons – yes
Mayor Zaragoza – yes	motion carried.

RESOLUTION NUMBER 4623

Resolution Number 4623 – A Resolution For Approval Of The Final 10% Of The General Fund Budget, Special Fund Budget And Capital Fund Budget For Fiscal Year 2013-2014

MOTION Motion to approve Resolution Number 4623 was by Mr. Ammons and second was by Mr. Henley.

Mr. Downes stated that this is a request to approve the final 10% of the current fiscal year's budget pursuant to state law.

The Mayor opened the floor for a public hearing. There being no one to address the Council concerning this request, the he closed the floor and asked for the question.

Roll call vote as follows:

Mr. Pierce – yes	Mr. Henley – yes
Mr. Sharp – yes	Mr. Ammons – yes
Mayor Zaragoza – yes	motion carried.

NEW BUSINESS (REQUESTING UNANIMOUS CONSENT)

MOTION Motion for unanimous consent for the immediate consideration and action on Resolution Number 4622, Ordinance 2527 and Resolution Number 4624 was by Mr. Henley. Second was by Mr. Sharp. Roll call vote as follows:

Mr. Pierce – yes	Mr. Henley – yes
Mr. Sharp – yes	Mr. Ammons – yes
Mayor Zaragoza – yes	motion carried.

RESOLUTION NUMBER 4622

Resolution Number 4622 - A Resolution Authorizing The City Manager To Execute And Deliver Agreements To Expedite And Facilitate The Development Of Patchwork Farms (*public hearing*)

MOTION Motion to approve Resolution Number 4622 was by Mr. Pierce and second was by Mr. Henley.

Mr. Downes gave a brief background of the development of Patchwork Farms and the steps necessary to accomplish the task. This Resolution sets forth agreements with Goodwyn Mills and Cawood for various planning and surveying tasks, Terracon for environmental testing and reports and other items such as title policies, etc.

Mr. Boone stated that some due diligence was done on the school site prior to the Board of Education’s purchase and suggested that the Board share that with the developers.

Doug Neil, Daniel Corporation, stated that the contract is between the City and the Board but certain tasks needs to be complete in order to finalize the due diligence and this Resolution will accomplish many of those tasks.

The Mayor opened the floor for a public hearing. There being no one to address the Council concerning this request, the he closed the floor and asked for the question.

Roll call vote as follows:

Mr. Pierce – yes Mr. Henley – yes
Mr. Sharp – yes Mr. Ammons – yes
Mayor Zaragoza – yes motion carried.

ORDINANCE NUMBER 2527

Ordinance Number 2527 – An Ordinance Declaring Certain Real Property As Surplus And Directing The City Manager To Execute And Deliver Documents For The Sale Of Said Property (public hearing)

MOTION Motion to approve Ordinance Number 2527 was by Mr. Ammons and second was by Mr. Henley.

Mr. Downes stated that this request declares a piece of property located by the Cahaba Heights School as surplus and allows the sale of said property. He then gave a brief background of the plans for a company to purchase the property for the development of a dermatology clinic and the plans of the Board of Education to redevelop some of the school site and begin a roadway to eventually link into Oakview Lane. He explained that this included some cooperation with the School Board and the details of the contract.

Jerry Dent, Past President of the Board of Education, stated that the Board has worked with Mr. Downes on this endeavor and is excited about this proposed plan.

Mr. Henley asked about the timeline if all goes as expected.

Discussion ensued as to the timeline, process of rezoning, etc.

The Mayor opened the floor for a public hearing. There being no one to address the Council concerning this request, the he closed the floor and asked for the question.

Roll call vote as follows:

Mr. Pierce – yes Mr. Henley – yes
Mr. Sharp – yes Mr. Ammons – yes
Mayor Zaragoza – yes motion carried.

RESOLUTION NUMBER 4624

Resolution Number 4624 – A Resolution Authorizing The City Manager To Execute And Deliver An Agreement With Sain Associates For Engineering, Surveying And Designing A New Roadway Located Adjacent To Vestavia Hills Elementary Cahaba Heights (public hearing)

MOTION Motion to approve Resolution Number 4624 was by Mr. Sharp and second was by Mr. Pierce.

Mr. Downes stated that this Resolution authorizes him to execute an agreement with Sain and Associates to design the proposed roadway that would eventually link with Oakview Lane. He explained the terms of the agreement and the proposed plan.

Mr. Ammons pointed out that the Community Plan calls for this roadway and the plans need to be made even if this particular development doesn't occur?

Mr. Downes stated that is correct.

The Mayor opened the floor for a public hearing. There being no one to address the Council concerning this request, the he closed the floor and asked for the question.

Roll call vote as follows:

Mr. Pierce – yes	Mr. Henley – yes
Mr. Sharp – yes	Mr. Ammons – yes
Mayor Zaragoza – yes	motion carried.

FIRST READING (NO ACTION TO BE TAKEN AT THIS MEETING)

The Mayor stated that the following Resolutions and/or Ordinances will be presented at a public hearing at the Council's next regularly scheduled meeting on August 25, 2014 at 5 PM.

- Ordinance Number 2526 – Conditional Use Approval – Conditional Use Approval – 4871 Sicard Hollow Road; To Extend An Existing 120' Stealth Monopole (Flagpole) To A Maximum Height Of 140'; City Of Vestavia Hills, Owners; New Cingular Wireless PCS, LLC D/B/A AT&T Mobility, Andy Rotenstreich, Representing (*public hearing*)
- Resolution Number 4625 – A Resolution Authorizing A Special Economic Development Agreement By The City Of Vestavia Hills And Northport Holding LLC (*public hearing*)
- Resolution Number 4626 – A Resolution Accepting A Bid For Construction Of A Pedestrian Bridge And Certain Other Improvements At McCallum Park (*public hearing*)
- Resolution Number 4627 – A Resolution Authorizing A General Fund Budget, A Special Fund Budget And A Capital Fund Budget For Fiscal Year 2014-2015 (*public hearing*)
- Resolution Number 4628 – A Resolution Electing To Provide A One-Time Bonus To City Retirees Pursuant To Alabama Act No. 2014-429

CITIZENS COMMENTS

David Carrington, President of the Jefferson County Commission, addressed the Council with concerns over a proposed buffer within parts of the Altadena Park Subdivision. He stated that some of the lots have been clear cut and the City needs to go back in and have the owners install the buffers that were promised. Mr. Carrington also stated that the Council needs to address loose language within the proposed agreement for the development of Patchwork Farms and why incentives are being given to Northport when they are building in Hoover without any incentives. He asked the Council to review the language.

MOTION Motion to adjourn was by Mr. Ammons and second was by Mr. Sharp. Meeting adjourned at 6:35 PM.

Alberto C. Zaragoza, Jr.
Mayor

Attested by:

Rebecca Leavings
City Clerk

PROCLAMATION

WHEREAS, over 91,000 women are diagnosed with gynecological cancers each year; and

WHEREAS, more than 2.5 million American women are alive with a history of gynecological cancers; and

WHEREAS, ovarian and uterine cancers are the leading cause of gynecological cancer deaths among women in the United States; and

WHEREAS, while it occurs in women of all ages and backgrounds; and

WHEREAS, their loved ones also join them in fighting their battle; and

WHEREAS, this inside-knowledge campaign encourages women to know what is normal for their bodies; and

WHEREAS, we offer our support of future generations of women and hope that they have a safer, healthier life; and

WHEREAS, because women need to know the signs and symptoms of gynecological cancers for a successful intervention;

NOW, THEREFORE, I, Alberto C. Zaragoza, Jr., by virtue of the authority vested in me as Mayor of the City of Vestavia Hills in the State of Alabama, do hereby proclaim September 2014 as

GYNECOLOGICAL CANCER AWARENESS MONTH

in Vestavia Hills to encourage women to talk to their health-care providers to learn more about the disease.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Vestavia Hills to be affixed this the 25th day of August, 2014.

Alberto C. Zaragoza, Jr.
Mayor

ORDINANCE NUMBER 2526

AN ORDINANCE GRANTING A CONDITIONAL USE APPROVAL FOR AN EXTENSION OF A 120' STEALTH MONOPOLE (FLAGPOLE) TO A MAXIMUM HEIGHT OF 140'

WHEREAS, on December 13, 2010 the City Council of the City of Vestavia Hills, Alabama approved and adopted Ordinance Number 2331 entitled the Vestavia Hills Zoning Code and establishing a conditional use approval for certain uses not permissible by right in zoning classifications; and

WHEREAS, on May 28, 2014, New Cingular Wireless PCS, LLC d/b/a AT&T Mobility (AT&T) submitted an application for extension of a 120' stealth flagpole (flagpole) on the property located at 4871 Sicard Hollow Road currently zoned Vestavia Hills Inst-1; and

WHEREAS, Section 7.9 of the Vestavia Hills Zoning Code sets forth development criteria for new telecommunications facilities; and

WHEREAS, AT&T has shown a need for added coverage in the general area of subject property in and along area rights-of-way; and

WHEREAS, the Vestavia Hills Planning and Zoning Commission at its regular meeting of July 10, 2014 voted unanimously to recommend approval of the request for an extension of a 120' stealth flagpole (flagpole) to a maximum height of 140' be approved as requested, with the stipulation that the flag and flagpole meet the requirements of the United States Flag Code; and

WHEREAS, a copy of said application dated May 28, 2014 is attached and hereby incorporated into this Ordinance Number 2526.

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

1. Conditional Use Approval is hereby approved for AT&T, for extension of a 120' stealth monopole (flagpole) for the property located at 4871 Sicard Hollow Road to a maximum height of 140' with the following conditions:

(1) "Said flag and flagpole to be kept perpetually in good condition by owner and meet the requirements of the United States Flag Code; and

ADOPTED and APPROVED this the 25th day of August, 2014.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

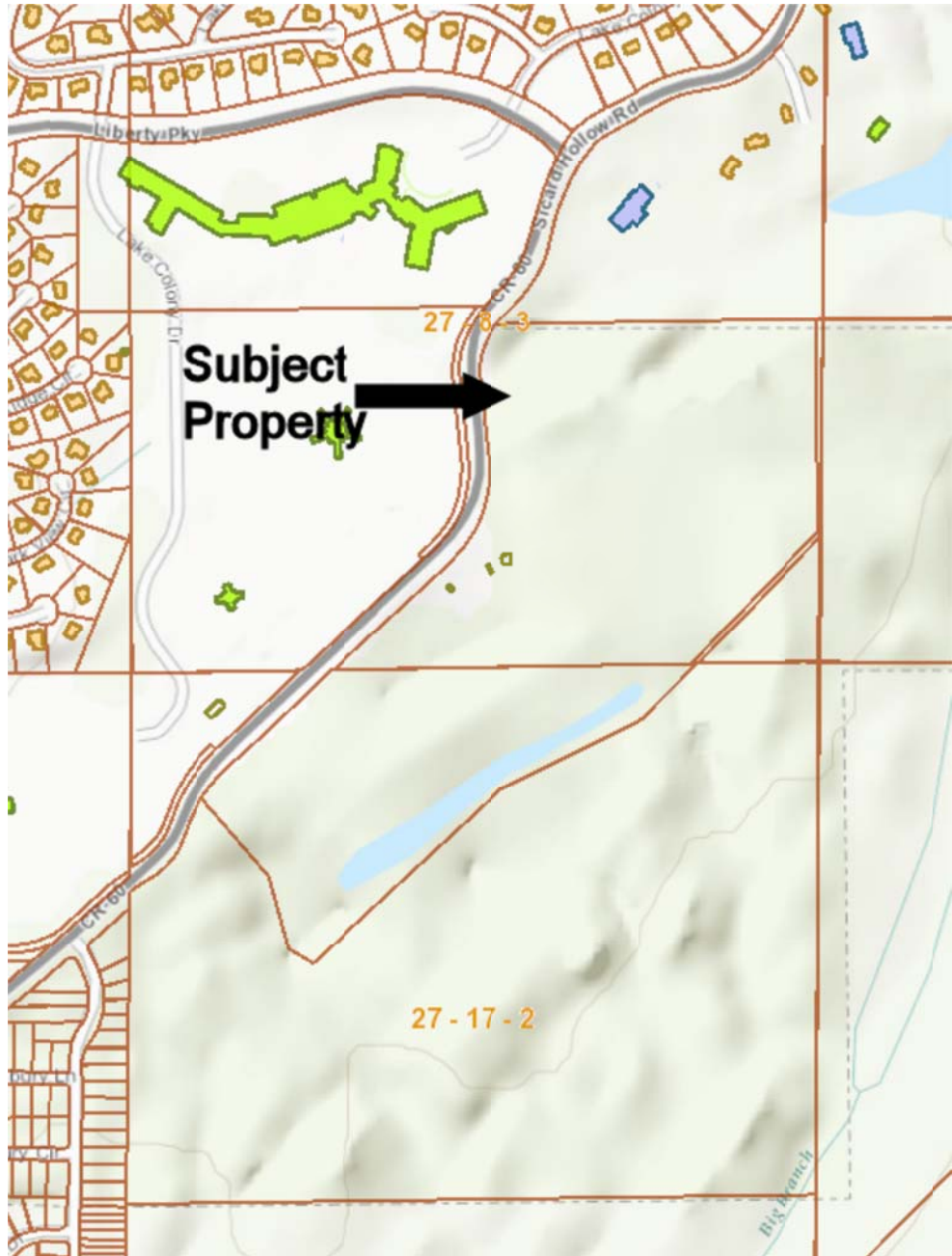
Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as Acting City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2526 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 25th day of August, 2014 as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills Library in the Forest, New Merkle House and Vestavia Hills Recreational Center this the _____ day of _____, 2014.

Rebecca Leavings
City Clerk



//
CITY OF VESTAVIA HILLS

APPLICATION

PLANNING AND ZONING COMMISSION

I. INSTRUCTIONS AND INFORMATION:

- (1) The Vestavia Hills Planning and Zoning Commission meets regularly on the second Thursday of each month at 6:00 PM in Council Chambers at the Municipal Center.
- (2) All materials and information relating to a zoning/rezoning request or conditional use approval before the Planning and Zoning Commission must be submitted to the Office of the City Clerk no later than **25 working days prior to the scheduled meeting at which it shall be considered.** All information relating to Preliminary Map approvals must be submitted to the Office of the City Clerk no later than 20 days prior to the scheduled meeting at which is shall be considered. All information relating to Final Map approvals must be submitted to the Office of the City Clerk no later than 15 days prior to the scheduled meeting at which it is to be considered.
- (3) This application must be filled out in its entirety complete with zip codes.
- (4) All applicable fees shall accompany this application prior to its being considered complete. Fees include an application fee of \$100.00 along with applicable postage per property owner to be notified for Commission meeting. Fees may also include notification fees for City Council meeting and publication fees which will be billed to applicant at a later date. ***No permits will be issued until all fees have been paid.*
- (5) Appropriate plats and maps with proper legal description shall accompany this application. **Please refer to attached checklist.**

II. APPLICANT INFORMATION: (owner of property)

NAME: Crown Castle / AT+T Mobility, PCS, LLC

ADDRESS: 90 Baker Donelson, 420 N. 20th Street, Ste 1400
Birmingham, AL

MAILING ADDRESS (if different from above) Same as above

PHONE NUMBER: Home (205) 250-8353 Office (205) 250-8304

NAME OF REPRESENTING ATTORNEY OR OTHER AGENT: Andy Rotenstreich / Mary Palmer

4871 Sicard Hollow Rd.

Cond. Use to extend existing

flagpole 20 ft.

Crown Castle

III. ACTION REQUESTED

Request that the above described property be approved conditional use approval pursuant to Section _____ of the Vestavia Hills Zoning Code.

Current Zoning of Property: MXD

Requested Conditional use For the intended purpose of: extend existing flagpole telecommunications 20' and Compound expansion

(Example: From "VH R-1" to "VH O-1" for office building)

if additional information is needed, please attached full description of request

IV. PROPERTY DESCRIPTION: (address, legal, etc.)

4871 Sicard Hollow Rd., Vestavia Hills, Az

Property size: _____ feet X _____ feet. Acres: _____

V. INFORMATION ATTACHED:

Attached Checklist complete with all required information.

Application fees submitted.

VI. I do hereby declare the above statements are true and that I, the owner, and/or my duly appointed representative will be at the scheduled hearing.

[Signature]
Owner Signature/Date

[Signature]
Representing Agent (if any)/date

Given under my hand and seal this 3rd day of June, 2014

[Signature]
Notary Public
My Commission Expires
November 18, 2016
My commission expires _____
day of _____, 20____.

FORESITE SERVICES, LLC

SAW ENGINEERING GROUP, INC.
 139 BUSINESS CENTER DRIVE
 TOMBALA BLAFFERS A BEETLE TOMORROW
 FLY, AL 36526-0985 FAX: 205-303-1504

THE INFORMATION CONTAINED IN THIS DRAWING IS THE PROPERTY OF FORESITE SERVICES, LLC. ANY REUSE OR DISCLOSURE OF THIS INFORMATION TO ANY OTHER PARTY WITHOUT THE WRITTEN PERMISSION OF FORESITE SERVICES, LLC IS STRICTLY PROHIBITED.

DATE PROJECT: 10-1071.2
 DRAWN BY: D.A.
 CHECKED BY: J.S.

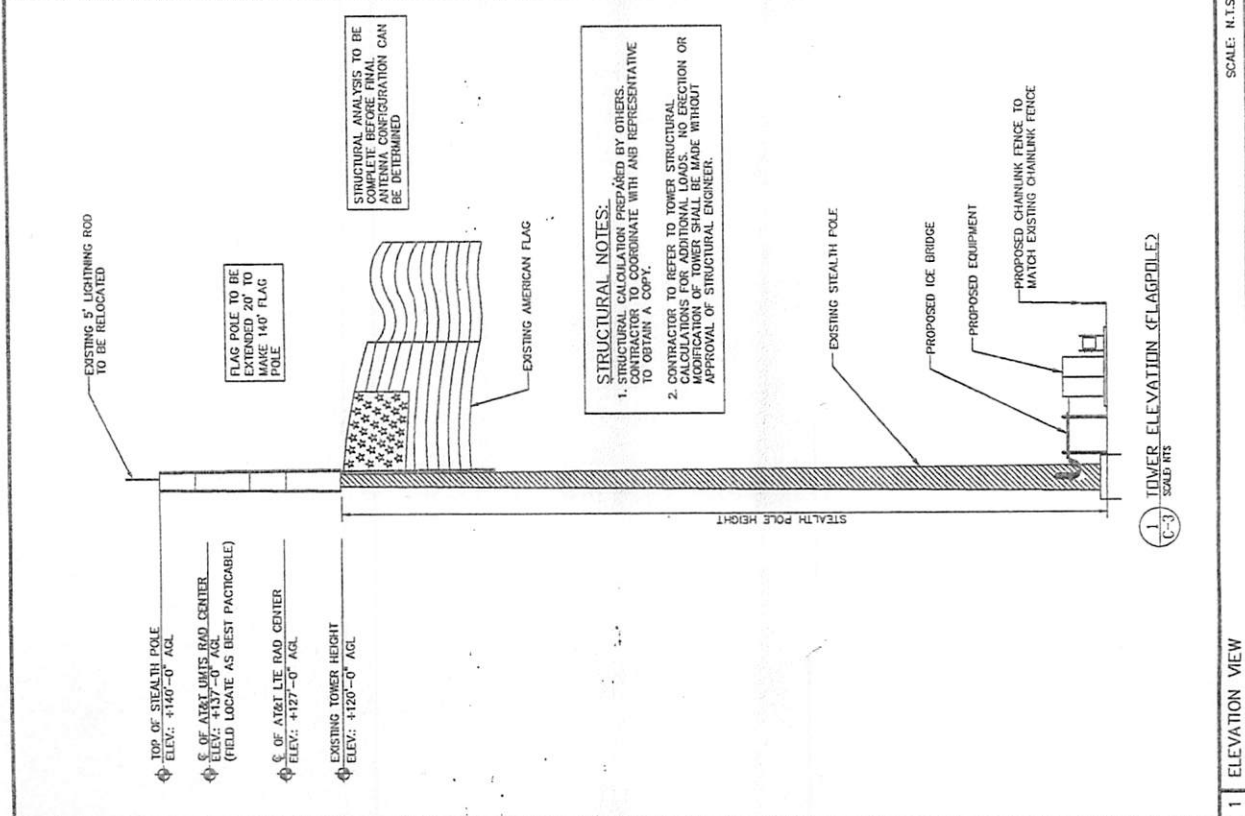
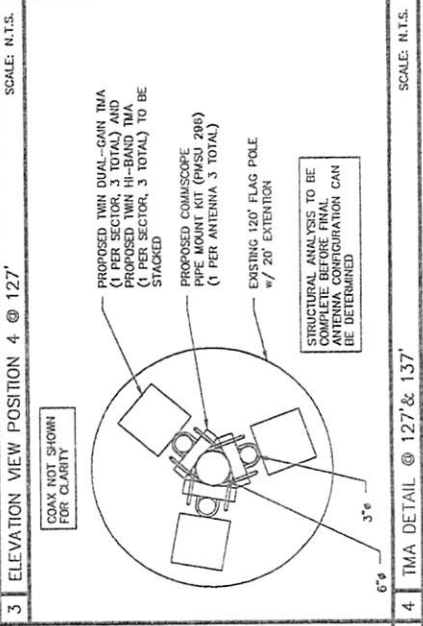
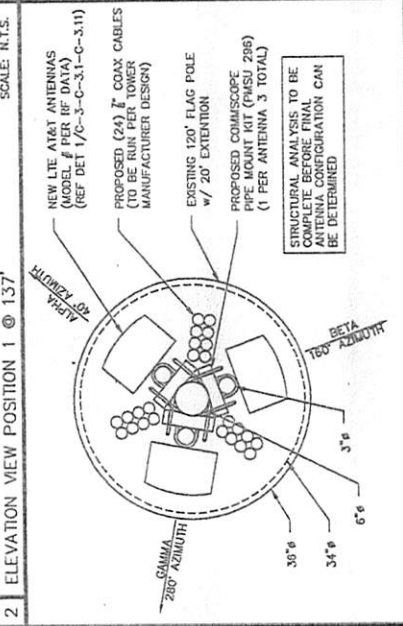
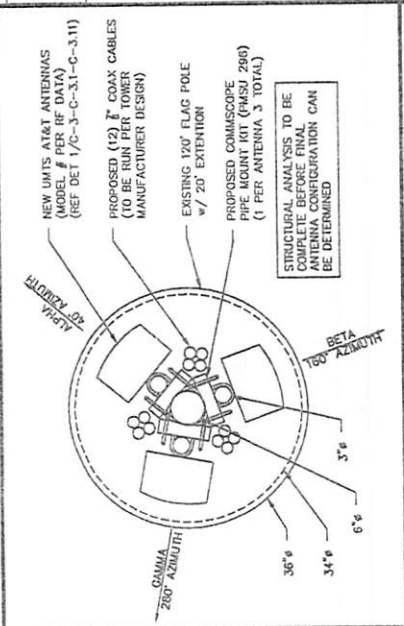
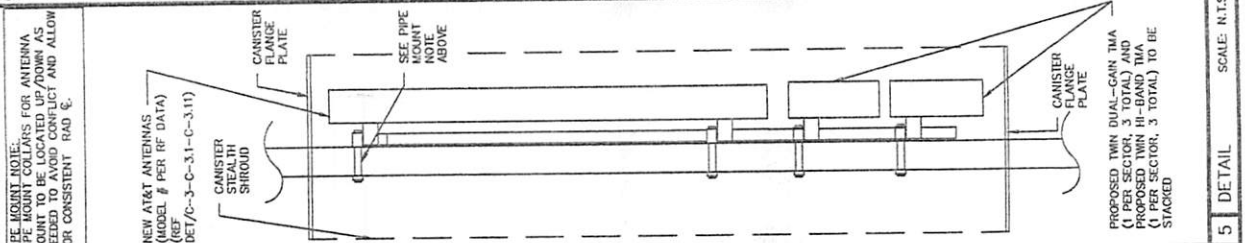
REVISIONS

NO.	DATE	DESCRIPTION
1	04/25/14	REV. PER CLIENT COMMENT
2	05/27/14	REV. PER PER DATA
3	05/27/14	REV. PER PER DATA
4	05/27/14	REV. PER CLIENT APPROVAL

CAD: AL 2544-E

PRELIMINARY DRAWING
 NOT VALID UNLESS STAMPED AND SIGNED

PROJECT No. 10-1071.2
 SITE NAME: LIBERTY PARK SOUTH
 SITE NUMBER: 12778284
 SITE ADDRESS: E011 ADDRESS N/P VESTAVIA HILLS, AL 35242
 DEBRITY TYPE: CO-Locate
 SHEET TITLE: SITE ELEVATIONS
 DRAWING No. C-3 A



BAKER DONELSON
BEARMAN, CALDWELL & BERKOWITZ, PC

Exhibit A - Ordinance No. 2526

WELLS FARGO TOWER
420 20TH STREET NORTH
SUITE 1400
BIRMINGHAM, ALABAMA 35203

PHONE: 205.328.0480
FAX: 205.322.8007

www.bakerdonelson.com

N. ANDREW ROTENSTREICH, SHAREHOLDER
Direct Dial: 205.250.8304
Direct Fax: 205.488.3704
E-Mail Address: nar@bakerdonelson.com

May 28, 2014

P0714-30//27-8-3-3
4871 Sicard Hollow Rd.
Cond. Use to extend existing
flagpole 20 ft.
Crown Castle

//

VIA HAND DELIVERY

City of Vestavia Hills, AL
Attn: City Clerk
513 Montgomery Hwy
Vestavia Hills, AL 35216

RE: Proposed Extension of Existing Telecommunications Tower
Site Name: Liberty park South
Site Address: 4871 Sicard Hollow Road

To Whom It May Concern:

Due to needed coverage and capacity issues due to increased telecom traffic, New Cingular Wireless PCS, LLC d/b/a AT&T Mobility (AT&T) is requesting a new cell-site in the City of Vestavia Hills, Jefferson County, Alabama. There was one suitable existing structure in the area upon which to co-locate, but the proposed tower will require an extension of Twenty feet (20') in order to accommodate proposed AT&T equipment.

In that regard, enclosed please find AT&T's application and supporting documentation for the placement of its equipment and extension of the existing wireless telecommunications facility located at 4871 Sicard Hollow Road, Vestavia Hills, Jefferson County, Alabama. The existing tower is owned by Crown Castle and the property is owned by The City of Vestavia Hills, AL.

The existing telecommunications facility currently is a One Hundred Twenty Foot (120') flagpole telecommunications facility located in a MXD zoning district. The tower will need to be extended Twenty Feet (20') and the fenced compound will need to be enlarged to accommodate the proposed equipment and shelter.

AT&T's proposed site will be compliant with Enhanced 911, a federally-mandated program to improve the reliability of e911 service to the surrounding area and citizens of the City of Vestavia Hills, AL and Jefferson County, Alabama.

City of Vestavia
May 28, 2014
Page 2

In that regard, and in order to maintain a level playing field with its competitors also offering 4G services, AT&T's needs to install its antennas on the existing tower, at the proposed height, and at the requested signal levels, to deliver consistently reliable signal in this geographic area.

We would appreciate this application being placed on the next available meeting agenda.

Should you require any additional information to assist your review, or if you should have any questions, please feel free to contact me.

Sincerely,

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, PC

N. Andrew Rotenstreich
by MSPO2

N. Andrew Rotenstreich
Shareholder

Enclosures

CITY OF VESTAVIA HILLS
SYNOPSIS AND STAFF RECOMMENDATION CONCERNING
APPLICATION BEFORE THE PLANNING AND ZONING COMMISSION

Date: **JULY 10, 2014**

- **CASE:** P-0714-30
- **REQUESTED ACTION:** Conditional Use approval to extend existing flagpole telecommunications 20' and compound expansion
- **ADDRESS/LOCATION:** 4871 Sicard Hollow Rd.
- **APPLICANT/OWNER:** Crown Castle/AT&T Mobility, PCS, LLC; Baker Donelson
420 N. 20th St. Ste 1400
Birmingham, AL
- **REPRESENTING AGENT:** Andy, Rotenstreich, Mary Palmer
- **GENERAL DISCUSSION:** The applicant and AT&T wish to extend the current 120' flag pole tower by 20' to 140' and the Sicard Hollow sports complex. The pad would also be enlarged to allow the additional equipment. The application meets the requirements for telecommunication facilities in Section 7.9 of the Zoning Code. The property is currently zoned Vestavia Hills MXD.
- **LIBERTY PARK PUD:** The request is consistent with the PUD Plan.
- **STAFF REVIEW AND RECOMMENDATION:**
 1. **City Planner Review:** I have looked at all of the relevant zoning / subdivision requirements related to this proposal, including application, notification, setbacks, area of lot development, etc. Notification has been sent to property owners pursuant to Alabama law. I have reviewed this request and find it does meet the minimum requirements of the proposed zoning.

City Planner Recommendation: Recommended with the flag remaining at the top of the tower.
 2. **City Engineer Review:** I have reviewed the application and I have no issues with this request.
 3. **City Fire Marshal Review:** I have reviewed the application and I have no issues with this request.

4. **Building Safety Review:** I have reviewed the application and I have no issues with this request.

MOTION: Motion to recommend approval with the conditions that

1. The Flag and flag pole meet the requirements of the US Flag Code ;

was made by Mr. Visintainer and 2nd was made by Mr. Burrell. Motion was carried on a roll call; vote as follows:

Mr. Goodwin – yes
Mr. Visintainer – yes
Mr. Gilchrist – yes
Motion carried.

Mr. Burrell – yes
Mr. House – yes
Mr. Larson – yes

RESOLUTION NO. 4625

A RESOLUTION AUTHORIZING A SPECIAL ECONOMIC DEVELOPMENT AGREEMENT BY THE CITY OF VESTAVIA HILLS, ALABAMA AND NORTHPORT HOLDING, LLC

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA (THE "COUNCIL"), AS GOVERNING BODY OF THE CITY OF VESTAVIA HILLS, ALABAMA (the "Municipality"), as follows:

Section 1. The Council, upon evidence duly presented to and considered by it, has found and determined, and does hereby find, determine and declare as follows:

(a) Pursuant to the applicable laws of the State of Alabama, the Municipality and Northport Holding, LLC (the "Owner") have prepared that certain Special Economic Development Agreement to be dated the date of delivery (the "Special Economic Development Agreement"), as set forth hereinafter, for the purposes referenced therein.

(b) The Municipality is without absolute authority or power under any local constitutional amendment to do any of the actions or undertakings referenced in Amendment No. 772 of the Constitution of Alabama of 1901, as amended ("Amendment No. 772").

(c) The Municipality is authorized under Amendment No. 772 to become indebted, and to issue obligations as referenced therein, upon the full faith and credit of the Municipality, to a principal amount not exceeding 50% of the assessed value of taxable property therein, as determined for state taxation, in furtherance of the powers and authorities granted in Amendment No. 772.

(d) Pursuant to, and for the purposes of, Amendment No. 772, it is necessary, desirable and in the public interest for the Municipality to grant public funds in an amount of approximately \$3,150,000 for the economic development of the Municipality pursuant to the terms of the Special Economic Development Agreement.

(e) The expenditure of public funds for the purposes specified in the Special Economic Development Agreement will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities.

(f) (1) On August __, 2014, the Municipality caused to be published in *The Birmingham News*, which newspaper has the largest circulation in the Municipality, the notice required by Amendment No. 772(c)(2), a true and correct copy of which notice is set forth as follows:

**LEGAL NOTICE
OF
PUBLIC MEETING AND PUBLIC HEARING
ON MONDAY, AUGUST 25, 2014
OF
CITY COUNCIL OF VESTAVIA HILLS, ALABAMA**

Notice is hereby given that the City Council (the "Council") of the City of Vestavia Hills, Alabama (the "City") will meet in public session at 5:00 p.m. on Monday, August 25, 2014 at the Vestavia Hills Municipal Center in the City of Vestavia Hills, Alabama for the purpose of considering the transaction of business that may properly come before the Council, such business to include, but not be limited to, the authorization by the Council, pursuant to Amendment No. 772 of the Constitution of Alabama of 1901, as amended, of a resolution (the "Resolution") approving the execution and delivery of a Special Economic Development Agreement (the "City Agreement") by the City and Northport Holding, LLC, a Delaware limited liability company (the "Owner"), to be dated the date of delivery, pursuant to which City Agreement the City shall make available to the Owner financial economic incentives for purposes referenced in the City Agreement.

The City Agreement shall evidence the agreement of the City to make the following economic development grants to the Owner for the purpose of promoting the economic development of the City and in consideration of the acquisition, construction, installation and operation by the Owner of commercial and related facilities in the City (the "Project"): (1) the City shall make an economic development grant to the Owner, with respect to the acquisition, construction and installation of the Project, in an amount equal to approximately \$1,550,000; and (2) the City shall make economic development grants to the Owner, in each year for a period of approximately 20 years after the Project shall have been opened for business to the public, in an amount equal to the amount of ad valorem taxes paid by the Owner in each such year with respect to the Project, which annual amounts, over the entire 20-year term, are estimated by the City, and are limited to, an aggregate amount of approximately \$1,600,000; and (3) the City shall perform site preparation work, consisting of grading, acquisition and installation of utilities, and construction of roads, for the benefit of the Project.

The City seeks to achieve, by undertaking its obligations pursuant to the City Agreement and the Resolution, to promote the local economic and commercial development of the City, to increase employment in the City, and to increase the tax and revenue base of the City.

The business entities to whom or for whose benefit the City propose to lend its credit or grant public funds or thing of value are the Owner and the entities that locate in the facilities established by the Owner.

All interested persons may examine and review the City Agreement, the Resolution, and all relevant documents pursuant to which the City Agreement is to be issued and secured, and make copies thereof at personal expense, at the offices of the City Manager during normal business hours, before and after the meeting referenced herein.

Further information concerning the information in this notice can be obtained from the City Manager at the offices thereof during normal business hours.

(2) The information set forth in said notice is true and correct.

(3) Publication of said notice is hereby ratified and confirmed.

(h) (1) The assessed valuation of the taxable property in the Municipality for the preceding fiscal year (ending September 30, 2013 and on the basis of which taxes became due and payable on October 1, 2013) was not less than \$630,314,820.

(2) The total indebtedness of the Municipality chargeable against the debt limitation for the Municipality prescribed by Section 225 of the Constitution of Alabama of 1901, as amended, (which indebtedness does not include the Warrant issued under Amendment No. 772), is not more than twenty percent of said assessed valuation.

(3) The total indebtedness of the Municipality chargeable against the debt limitation for the Municipality prescribed by Amendment No. 772(a)(4) (which indebtedness does include the economic incentives referenced under Section 1(d)), is not more than fifty percent of said assessed valuation.

Section 2. The Council does hereby approve, adopt, authorize, direct, ratify and confirm:

(a) the agreements, covenants, and undertakings of the Municipality set forth in the Special Economic Development Agreement, and

(b) the terms and provisions of the Special Economic Development Agreement, in substantially the form and of substantially the content as set forth as follows, with such changes thereto (by addition or deletion) as the Mayor shall approve, which approval shall be conclusively evidenced by execution and delivery of the Special Economic Development Agreement as hereinafter provided:

Section 3.

(a) The Mayor and the City Manager are each hereby authorized and directed to execute and deliver the Special Economic Development Agreement for and on behalf of and in the name of the Municipality. The City Clerk is hereby authorized and directed to affix the official seal of the Municipality to the Special Economic Development Agreement and to attest the same.

(b) The Mayor, the City Manager, and the officers of the Municipality are each hereby authorized and directed to take all such actions, and execute, deliver and perform all such agreements, documents, instruments, notices, and petitions and proceedings, with respect to the Special Economic Development Agreement, as the Mayor and such officers shall determine to be necessary or desirable to carry out the provisions of this resolution or the Special Economic Development Agreement or duly and punctually observe and perform all agreements and obligations of the Municipality under the Special Economic Development Agreement.

Section 4. The Municipality desires, before the delivery of the Special Economic Development Agreement, to validate the legality of all proceedings had or taken in connection therewith, the validity of the means provided for the payment of the economic incentives set forth in the Special Economic Development Agreement, and the validity of all covenants and provisions contained in this resolution and the Special Economic Development Agreement, by filing a petition against the taxpayers and citizens of the Municipality in the Circuit Court of Jefferson County, Alabama. A complaint to validate the Special Economic Development Agreement, proceedings, and covenants shall be filed and validation proceedings shall be instituted in the name of the Municipality and the members of the governing body of the Municipality. Maynard, Cooper & Gale, P.C., Birmingham, Alabama, and Patrick H. Boone, Esq., are hereby designated and appointed as the attorneys of the Municipality to file such complaint, institute such proceedings, and to take all steps necessary to complete such validation proceedings in accordance with the provisions of Article 17 of Chapter 6 of Title 6 of the CODE OF ALABAMA 1975. Any actions heretofore taken by such attorneys in connection with the filing of such petition or such validation proceedings are hereby ratified and confirmed.

Section 5. All prior actions taken, and agreements, documents or notices executed and delivered, by the Mayor or any officer or member of the Council or other representative of the Municipality, in connection with the agreements, covenants, and undertakings of the Municipality hereby approved, or in connection with the preparation of the Special Economic Development Agreement and the terms and provisions thereof, are hereby approved, ratified and confirmed.

Section 6. All ordinances, resolutions, orders, or parts of any thereof, of the Council in conflict, or inconsistent, with any provision of this resolution hereby are, to the extent of such conflict or inconsistency, repealed.

Section 7. This resolution shall take effect immediately.

After said resolution had been discussed and considered in full by the Council, it was moved by Councilmember _____ that said resolution be now placed upon its final passage and adopted. The motion was seconded by Councilmember _____. The question being put as to the adoption of said motion and the final passage and adoption of said resolution, the roll was called with the following results:

Ayes: Alberto C. Zaragoza, Jr., Mayor
 Steve Ammons, Mayor Pro-Tempore
 John Henley
 George Pierce
 Jim Sharp

Nays: None

The Mayor thereupon declared said motion carried and the resolution passed and adopted as introduced and read.

* * * *

There being no further business to come before the meeting, it was moved and seconded that the meeting be adjourned. Motion carried.

Minutes approved:

Mayor

Mayor Pro-Tem

Member of the City Council

Member of the City Council

Member of the City Council

SEAL

Attest: _____
City Clerk

STATE OF ALABAMA)
JEFFERSON COUNTY)

CERTIFICATE OF CITY CLERK

I, the undersigned, do hereby certify that (1) I am the duly elected, qualified and acting City Clerk of the City of Vestavia Hills, Alabama (the "Municipality"); (2) as Clerk of the Municipality I have access to all original records of the Municipality and I am duly authorized to make certified copies of its records on its behalf; (3) the attached pages constitute a complete, verbatim and compared copy of excerpts from the minutes of a regular meeting of the City Council of the Municipality duly held on August 25, 2014, the original of which is on file and of record in the minute book of the City Council in my custody; (4) the resolution set forth in such excerpts is a complete, verbatim and compared copy of such resolution as introduced and adopted by the City Council on such date; and (5) said resolution is in full force and effect and has not been repealed, amended or changed.

IN WITNESS WHEREOF, I have hereunto set my hand as Clerk of the Municipality and have affixed the official seal of the Municipality, this ____ day of _____, 2014.

Clerk of the City of Vestavia Hills,
Alabama

SEAL

**EXCERPTS FROM THE MINUTES OF A REGULAR MEETING OF
THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA**

Regarding Special Economic Development Agreement by the City
of Vestavia Hills, Alabama and Northport Holding, LLC

The City Council of the City of Vestavia Hills met in regular public session at the Vestavia Hills Municipal Center in the City of Vestavia Hills, Alabama, at 5:00 p.m. on August 25, 2014. The meeting was called to order by the Mayor, and the roll was called with the following results:

Present: Alberto C. Zaragoza, Jr., Mayor
 Steve Ammons, Mayor Pro-Tempore
 John Henley
 George Pierce
 Jim Sharp

Absent: _____

* * *

The Mayor stated that a quorum was present and that the meeting was open for the transaction of business.

* * *

Thereupon, the following resolution was introduced in writing by the Mayor, and considered by the City Council:

SPECIAL ECONOMIC DEVELOPMENT AGREEMENT

Dated Date of Delivery

by

CITY OF VESTAVIA HILLS, ALABAMA

and

NORTHPORT HOLDING, LLC

This Special Economic Development Agreement was prepared by Heyward C. Hosch of Maynard, Cooper & Gale, P.C., 1901 Sixth Avenue North, 2400 Regions/Harbert Plaza, Birmingham, Alabama 35203-2618.

SPECIAL ECONOMIC DEVELOPMENT AGREEMENT

August __, 2014

This **SPECIAL ECONOMIC DEVELOPMENT AGREEMENT** is made and entered on the above Date of Delivery by the City **OF VESTAVIA HILLS, ALABAMA**, an Alabama municipal corporation (the "City"), and **NORTHPORT HOLDING, LLC**, a Delaware limited liability company (the "Owner").

Recitals

The Owner purchased from the City a lot within the Patchwork Farms PUD (the "Original Site"), which PUD is located wholly within the corporate limits of City (the "Development"), for the purpose of constructing and operating a skilled nursing facility pursuant to Certificate of Need No. 2003-NH (Project No. AL 2012-06) issued by the Alabama State Health Planning and Development Board (the "Project"), as more particularly described in the within-referenced Exchange Agreement. The City has requested Owner to develop the Project on a smaller lot within the Development (the "Project Site").

The City has determined that the relocation of the Project by the Owner and the development of the Project by the Owner will increase the tax and revenue base of the City, and will create further opportunities for increase of the tax and revenue base of the City and employment opportunities in the City. As a result thereof, the City has agreed to provide to the Owner the within-referenced Total City Commitment.

Pursuant to the applicable laws of the State of Alabama and for the purposes referenced herein, City and Owner have delivered this Agreement.

Agreement

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

ARTICLE 1

DEFINITIONS

For purposes of this Agreement the following terms shall have the following meanings:

Act of Insolvency shall mean, with respect to Owner, the appointment of a receiver, liquidator, or trustee of Owner or any of its properties or assets; or a general assignment by Owner for the benefit of the creditors thereof; or the commencement of proceedings by or against Owner under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law or any jurisdiction, now or hereafter in effect.

Annual Payment Date shall mean that date established by the City for payment of the Annual Property Tax Reimbursement Amount in each year, which shall be within 45 days after the receipt by City of the Request for Payment of Annual Property Tax Reimbursement Amount from Owner pursuant to Section 4.02(2).

Annual Property Tax Reimbursement Amount shall mean, for any Annual Payment Date, an amount equal to the Noneducational Ad Valorem Taxes actually paid by Owner to the City for the then immediately preceding tax year with respect to the Project, subject to the limitation of Section 4.02(2)(c).

Closing Conditions shall mean and include the following: (a) the Date of Validation shall have occurred; (b) the Closing under the Exchange Agreement shall have occurred; (c) Owner shall have performed and observed all agreements of Owner herein precedent to the performance to the obligations of City herein; and (d) all representations and warranties of the City and the Owner herein shall be true and correct in all material respects as of the Date of Closing.

Date of Closing shall mean the date determined and established as the Date of Closing pursuant to Section 3.01.

Date of Delivery shall mean August __, 2014.

Date of Termination shall mean the first to occur of: (1) the termination of this Agreement pursuant to Section 7.11; or (2) the Annual Payment Date for the tax year in which occurs the twentieth (20th) anniversary of the Date of Closing; or (3) the date on which the Infrastructure Work shall have been completed and the City shall have paid as Economic Development Payments hereunder an aggregate amount equal to the Total Economic Development Payment Commitment; or (4) the termination of this Agreement by City under Section 6.02(2) hereof.

Date of Validation shall mean that date on which a judgment entered by the Circuit Court of Jefferson County, Alabama validating and confirming the Warrant shall have become forever conclusive in accordance with, and as provided in, Section 6-6-755 of the Code of Alabama 1975.

Economic Development Payments shall mean collectively the Project Costs Amount and the Annual Property Tax Reimbursement Amount.

Enabling Law shall mean Amendment No. 772 of the Constitution of Alabama of 1901, as amended, as at any time amended or supplemented, or any successor provision of law.

Exchange Agreement shall mean that certain Project Development and Exchange Agreement dated the date of delivery by the City and the Owner, as at any time amended, restated or supplemented.

Force Majeure shall mean and include acts of God or the public enemy, strikes, lockouts, work slowdowns or stoppages or other labor disputes, insurrections, adverse weather, riots or other civil disturbances, orders of the government of the United States of America or of any state of the United States of America or of any of the departments, agencies, political subdivisions or officials of the United States of America or of any state thereof, or orders of any civil or military authority, or partial or entire failure of public utilities or other condition or event beyond the reasonable control of Owner; provided, however, Force Majeure shall not include a failure or inability to pay money.

Infrastructure Work shall have the meaning assigned in Section 4.03.

Noneducational Ad Valorem Taxes shall mean all ad valorem taxes levied by the City, and all payments required to be made in lieu thereof by the City, that are not dedicated, and are not required by law, to be used for public school purposes or education purposes in the City.

Owner shall mean Northport Holding, LLC, and the successors and assigns thereof, including without limitation, its wholly owned subsidiary, Cahaba River Health Realty, which will own the Project Site and develop the Project.

Project shall have the meaning set forth in the Recitals.

Project Costs shall mean (i) the cost of Turner Batson, architect for the Project, to modify the plans and specifications for the construction of the Project as a two-story facility to allow for the relocation of the Project from the Original Site to the smaller Project Site; (ii) the additional cost to be incurred by Maxus Construction, general contractor for the Project, as a result of the delay in the construction of the Project and the conversion of the Project from a one-story facility to a two-story facility.

Project Costs Amount shall mean an amount equal to \$1,550,000.

Project Site shall have the meaning set forth in the Recitals.

Total City Commitment shall mean the sum of the Total Economic Development Payment Commitment and the Total Infrastructure Work Commitment.

Total Economic Development Payment Commitment shall mean the amount of Three Million One Hundred Fifty Thousand Dollars (\$3,150,000).

Total Infrastructure Work Commitment shall mean an amount equal to \$2,000,000.

Warrant shall have the meaning set forth in Section 4.05.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES

SECTION 2.01 City. City hereby represents as follows:

(1) City has corporate power and authority to enter into this Agreement, pursuant to the Enabling Law, and to carry out its obligations hereunder, and by proper corporate action City has duly authorized the execution, delivery and performance of this Agreement.

(2) The Warrant shall be issued, sold and delivered upon condition, and purchased by Owner thereof in the reliance, that this Agreement is enforceable against City in accordance with the terms hereof.

(3) The issuance of the Warrant and the application of the proceeds thereof for the purposes set forth in this Agreement (i) will result in direct financial benefits to City and (ii) will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities.

(4) City represents and certifies that the indebtedness of City incurred pursuant to the Enabling Law is less than 50 percent of the assessed value of the taxable property in City as determined for state taxation for the fiscal year immediately preceding the Date of Delivery.

SECTION 2.02 Owner. Owner hereby represents and warrants as follows:

(1) (a) Owner is duly organized and validly existing as a limited liability company under the laws of the State of Delaware.

(b) Owner is duly registered to do business in the State of Alabama.

(2) Owner has duly authorized the execution, delivery and performance of this Agreement.

(3) The execution, delivery and performance of this Agreement by Owner does not conflict with or result in a violation of any agreement, contract, instrument, order, writ, judgment or decree to which Owner is a party or is subject.

(4) Other than the application for the Certificate of Need filed with the Alabama Health Planning Development Agency, no consent or approval by, or filing with, any governmental authority in the State of Alabama is required for the execution or delivery of this Agreement by Owner or for the full effectiveness or enforceability thereof under the laws of the State of Alabama.

(5) There is no action, suit, proceeding, inquiry or investigation pending before any court or governmental authority, or threatened in writing against or affecting Owner, which involves the consummation of the transactions contemplated by, or the validity of, this Agreement.

ARTICLE 3

DETERMINATION OF DATE OF CLOSING; DURATION OF AGREEMENT

SECTION 3.01 Determination of Date of Closing. At such time as the City and the Owner are satisfied that all Closing Conditions shall have been met to the satisfaction of City and Owner, City and Owner shall determine and establish the Date of Closing for purposes of this Agreement.

SECTION 3.02 Duration of Agreement.

(1) The obligations of City and Owner hereunder shall arise on the Date of Delivery and shall continue until the Date of Termination, except with respect to any specific agreement or covenant which by its terms expressly survives termination of this Agreement.

(2) From and after the termination of this Agreement, neither party shall have any rights against the other under this Agreement save and excepting those that shall have already vested.

ARTICLE 4

AGREEMENTS AND OBLIGATIONS OF CITY

SECTION 4.01 Nature, Amount and Duration of Obligation of City. City and Owner agree:

(1) Purpose. Pursuant to this Agreement, City has agreed to undertake the Infrastructure Work and pay the Economic Development Payments determined by City to be due and payable in accordance with the terms hereof.

(2) Nature of Obligation.

The obligation of City for the payment of the costs of the Infrastructure Work and the payment of the Economic Development Payments is a general obligation for which the full faith, credit and taxing power of City are hereby pledged.

(3) Maximum Amount.

Anything in this Agreement to the contrary notwithstanding, the maximum amount City shall pay under this Agreement and the Warrant shall be limited to and shall not exceed the Total City Commitment.

(4) Duration and Termination.

Anything in this Agreement or in the Warrant to the contrary notwithstanding, City shall have no obligation to pay any amount of the costs of the Infrastructure Work or of Economic Development Payments under this Agreement or the Warrant:

- (a) prior to the Date of Closing; or

- (b) after the Date of Termination.

SECTION 4.02 Determination and Payment of Economic Development Payments.

- (1) Project Costs Amount.

City covenants and agrees:

The City shall deliver the Project Costs Amount, in immediately available funds, upon receipt of a written request therefor, satisfactory to the City, executed by a duly authorized representative of the Owner, as follows:

(a) on the Closing Date under the Exchange Agreement, the amount of \$500,000 to Turner Batson;

(b) on April 1, 2015, an amount equal to \$500,000 to Maxus Construction; and

(c) on October 1, 2015, an amount equal to \$550,000 to Maxus Construction.

- (2) Annual Property Tax Reimbursement Amount.

(a) In order to receive an Annual Property Tax Reimbursement Amount, Owner shall execute and deliver to City, on or after January 31 in each year in which this Agreement is in effect, a Request for Payment of Annual Property Tax Reimbursement Amount in form and of content as attached as **Exhibit B** hereto.

(b) Subject to Section 4.02(2)(c), City shall, on the Annual Payment Date, determine as provided herein, and pay to Owner, the amount, if any, of the Annual Property Tax Reimbursement Amount due hereunder for the period referenced in such certificate.

(c) Anything in this Agreement to the contrary notwithstanding, the total aggregate amount of all Annual Property Tax Reimbursement Amounts to be paid under this Agreement shall not exceed \$1,600,000. The records of the City as to the total aggregate amount of all Annual Property Tax Reimbursement Amounts paid by the City hereunder shall be conclusive for all purposes of this Agreement, absent manifest error.

(d) City will permit any attorneys, accountants or other agents or representatives designated by Owner to visit and inspect any of the accounting systems, books of account, and financial records and properties of City which pertain to the determination of Annual Property Tax Reimbursement Amount, all at reasonable business times and upon reasonable notice.

SECTION 4.03 Performance of Infrastructure Work.

(1) Turner Batson prepared plans and specifications of the Project as a one-story building on the Original Site. In order to relocate the Project to the Project Site, the Project will have to be constructed as a two-story building. As part of the Economic Development Payments, the City has agreed to pay Turner Batson the sum of \$500,000 for the cost of modifying the architectural plans to convert the Project to a two-story building pursuant to Section 4.02(1)(a) hereof.

(2) Maxus Construction has been or will be engaged by the Owner as the general contractor for the construction of the Project. Maxus estimates that the delay in construction of the Project resulting from the relocation of the Project Site and the additional cost to construct a two-story building instead of a one-story building will result in an increase in the cost of construction of not less than \$1,050,000. As part of the Economic Development Payments, the City has agreed to pay Maxus the sum of \$1,050,000 pursuant to Sections 4.02(1)(b) and 4.02(1)(c) hereof.

(3) Promptly following the execution of this Agreement, the City shall cause Goodwyn, Mills and Cawood, Inc. to prepare preliminary grading and utility plans (collectively, the "Preliminary Plans") for the Project Site (described as "Lot A" on Exhibit A hereto) and the other real property (collectively, "Lots B and C") designated as Lots B and C on Exhibit A hereto and shall submit the same to the Owner for review and approval, which approval shall not be unreasonably withheld or delayed. Upon approval of such Preliminary Plans by Owner (the "Approved Plans"), but in no event more than thirty (30) days from the Closing Date, the City shall undertake, or cause to be undertaken, the following, to be paid by the City as hereinafter provided in Section 4.03(3) (collectively, the "Infrastructure Work"), subject to the limitations of Section 4.03(c):

(a) The rough grading of the Project Site and Lots B and C in substantial accordance with the Approved Plans. In addition, the Project Site shall be graded at +/-0.2 feet from finished grade and at 95% Standard Proctor soil compaction, as certified by Goodwyn, Mills and Cawood, Inc.;

(b) The construction and installation of water, electrical, sanitary sewer and storm drainage lines, pipe, conduit and other apparatus to the property line of the Project Site and storm water detention facilities in order to serve the Project Site and Lots B and C (in which event additional easements shall be established which benefit the Project Site and burden Lots B and C and require each such property to pay a prorata share of maintenance costs with respect to any such storm water detention facilities) in substantial accordance with Approved Plans; and

(c) The construction of (i) a public roadway from Caldwell Mill Road along the easternmost boundary of the Property, as shown in Exhibit A hereto and (ii) the extension of Healthy Way, a public roadway, from its current point of termination adjacent to the Owner Property to Caldwell Mill Road (collectively, the "Roads").

(2) The Infrastructure Work shall achieve substantial completion no later than 200 days following the Date of Closing (the "Substantial Completion Date"), subject to extensions thereof as a result of any matters of Force Majeure; provided, however, that the City may elect to postpone application of the final seal coat to the Roads to a date after the Substantial Completion Date. Substantial completion of the Infrastructure Work shall be conclusively presumed to have occurred upon the issuance of a certificate or letter of substantial completion of all of the Infrastructure Work by Goodwyn, Mills and Cawood, Inc.

(3) (a) Subject to Section 4.03(b), the City shall pay the costs of the Infrastructure Work, as economic development payments for the benefit of the Owner, either directly as the work progresses, or in reimbursement of costs therefor incurred and paid by the Owner.

(b) Anything in this Agreement to the contrary notwithstanding, the City and the Owner agree the maximum amount the City shall pay under this Agreement and the Warrant with respect to the Infrastructure Work shall be limited to and shall not exceed the Total Infrastructure Work Commitment.

SECTION 4.04 Conveyance of Project Site.

(1) The City hereby agrees to acquire, and convey to the Owner, the Project Site in exchange for the simultaneous conveyance to the City by the Owner of the Northport Property (as defined in the Exchange Agreement), pursuant to the Exchange Agreement as provided therein.

(2) The City hereby finds, determines and declares that:

(a) the Project Site shall be acquired by the City from The City Board of Education of the City of Vestavia Hills, which has determined the Project Site is not needed for public or municipal purposes; and

(b) the Project Site is not now, and will not ever be, needed by the City for public or municipal purposes; and

(c) the receipt by the City of the Northport Property from the Owner under the Exchange Agreement, in simultaneous exchange for the Project Site, will constitute a present, fair and adequate consideration to the City for the conveyance by the City to the Owner of the Project Site.

SECTION 4.05 The Warrant.

(1) The City shall issue the Warrant, in form and of content as the form of warrant attached to this Agreement as **Exhibit C** (the "Warrant"), as evidence of the obligations of the City under this Agreement. The Owner will not have any right to enforce the Warrant except with respect to the failure of the City to pay or perform any obligations thereof under Section 4.02 or Section 4.03 hereof.

(2) The Warrant shall not bear interest, shall be issued in an aggregate principal amount not exceeding the Total City Commitment, shall be dated the date of delivery, shall be delivered after the Date of Validation and on the Date of Closing, and shall mature on the Date of Termination.

(3) The Warrant shall be duly executed, sealed, and attested by City, and shall be registered by City as a conditional claim against the Total City Commitment.

(4) The Warrant shall be registered and transferred as provided therein.

ARTICLE 5

OBLIGATIONS OF OWNER

(1) Owner hereby agrees to duly and punctually observe and perform all agreements thereof under this Agreement.

(2) (a) Owner agrees to defend, protect, indemnify, and hold harmless City, its agents, employees, and members of its governing body, from and against all claims or demands, including actions or proceedings brought thereon, and all costs, expenses, and liabilities of any kind relating thereto, including reasonable attorney's fees and cost of suit, arising out of or resulting from any of the following, provided, however, that the foregoing indemnity will not extend to the negligent misconduct of City, its agents, employees, and members of its governing body: (i) any construction activity performed by Owner, or anyone claiming by through, or under Owner; and (ii) any loss of life, personal injury, or damage to property arising from or in relation to the entry upon, construction, use, operation or occupancy of the Project, including, without limitation, tenants, customers and invitees of the Project and/or Owner.

(b) The agreements and covenants in this Article 5 shall survive the termination of this Agreement with respect to events or occurrences happening prior to or upon the termination of this Agreement and shall remain in full force and effect until commencement of an action with respect to any thereof shall be prohibited by law.

ARTICLE 6

EVENTS OF DEFAULT AND REMEDIES

SECTION 6.01 Events of Default.

Any one or more of the following shall constitute an event of default by City or Owner hereunder (an "Event of Default") under this Agreement:

(1) default in the performance, or breach, of any covenant or warranty of City in this Agreement, including without limitation default in the payment of the Project Cost Amount, any Annual Property Tax Reimbursement Amount under Section 4.02 hereof, and the continuance of such default or breach for a period of 30 days after there has been given, by registered or certified mail, to City by Owner a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "notice of default" hereunder, provided that if such default is of a kind which cannot reasonably be cured within such thirty-day period, City shall have a reasonable period of time within which to cure such default, provided that it begins to cure the default promptly after its receipt of such written notice and proceeds in good faith, and with due diligence, to cure such default; or

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

(3) the occurrence of an Act of Insolvency with respect to Owner; or

(4) any material representation or warranty made by or on behalf of Owner in this Agreement, or otherwise made in any manner to City shall be false, misleading or incorrect at the time made.

SECTION 6.02 Remedies.

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

(2) Anything in this Agreement to the contrary notwithstanding, City may terminate this Agreement upon the occurrence of an Event of Default under Section 6.01(2), Section 6.01(3), or Section 6.01(4), whereupon City shall have no further obligation hereunder.

SECTION 6.03 Remedies Subject to Applicable Law.

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

ARTICLE 7
PROVISIONS OF GENERAL APPLICATION

SECTION 7.01 Enforceability.

The provisions of this Agreement shall be severable. In the event any provision hereof shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any of the remaining provisions hereof.

SECTION 7.02 Prior Agreements Cancelled.

This Agreement shall completely and fully supersede all other prior agreements, both written and oral, by the parties hereto relating to the matters contained herein. None of the parties hereto shall hereafter have any rights under any of such prior agreements but shall look to this Agreement for definition and determination of all of their respective rights, liabilities and responsibilities relating to the matters contained herein.

SECTION 7.03 Counterparts.

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

SECTION 7.04 Binding Effect; Governing Law.

(1) This Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective successors and assigns except as otherwise provided herein.

(2) This Agreement shall be governed exclusively by the laws of the State of Alabama.

SECTION 7.05 Notices.

(1) All notices, demands, consents, certificates or other communications hereunder shall be in writing, shall be sufficiently given and shall be deemed given when delivered personally to the party or to an officer of the party to whom the same is directed, or mailed by registered or certified mail, postage prepaid, or sent by overnight courier, addressed as follows:

if to City:

City of Vestavia Hills, Alabama
City Hall
513 Montgomery Highway
Vestavia Hills, Alabama 35216

if to Owner:

Northport Holding, LLC
931 Fairfax Park
Tuscaloosa, Alabama 35406

(2) Any such notice or other document shall be deemed to be received as of the date delivered, if delivered personally, or as of three (3) days after the date deposited in the mail, if mailed, or the next business day, if sent by overnight courier.

SECTION 7.06 Delegation and Assignment of this Agreement by Owner.

(1) Owner shall have no authority or power to, and shall not, without the prior written consent of the City (which shall not be unreasonably withheld, delayed or conditioned), delegate to any Person the duty or obligation to observe or perform any agreement or obligation of Owner hereunder.

(2) Owner shall not have any authority or power to, and shall not, without the prior written consent of City (which shall not be unreasonably withheld, delayed or conditioned), assign or pledge to any Person any right of Owner hereunder or any interest of Owner herein.

(3) Notwithstanding the foregoing, the City understands that Northport Holding, LLC intends to transfer the Project Site to its wholly owned subsidiary, Cahaba River Health Realty LLC, which will construct the Project on the Project Site and lease the Project to its commonly owned affiliate, Cahaba River Health and Rehabilitation, LLC, and the City hereby consents to such transactions.

SECTION 7.07 Amendments.

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

SECTION 7.08 Agreement Not To Be a Negotiable Instrument; Registration of Agreement and Assignment or Pledge of this Agreement.

(1) This Agreement (i) shall not operate or be construed as a negotiable instrument under the laws of the State of Alabama (including without limitation the Uniform Commercial Code as at any time in effect in Alabama) and (ii) may not be assigned, pledged, or transferred except in accordance with this Section.

(2) This Agreement shall be registered in the name of Owner, or any permitted assignee, on the books of City maintained for such purpose. Owner, or any permitted assignee in whose name this Agreement shall be registered as provided herein, may, upon prior compliance with Section 7.06 (to the extent then applicable), assign or pledge any right hereunder or interest herein only upon (i) surrender of this Agreement to City, (ii) recordation of such assignment or pledge on such books, and (iii) endorsement of such assignment or pledge by City on the Registration of Ownership attached hereto. Owner, or any such permitted assignee, shall pay all expenses of City in connection with compliance with Section 7.06 and this Section.

(3) Each permitted assignee shall take this Agreement subject to all payments of the Annual Property Tax Reimbursement Amount that shall have been made hereunder, and all amendments, modifications and supplements that shall have been made hereto, prior to the date of registration of this Agreement in the name of such permitted assignee.

Section 7.09 No Joint Venture.

City and Owner agree this Agreement shall not operate or be construed to create a joint venture between or by City and Owner.

Section 7.10 Consent to Jurisdiction.

Owner agrees that it (and any successor entity or corporation by merger or consolidation) will continuously remain qualified to do business in the State of Alabama at all times during which this Agreement is in effect. Both City and Owner, for themselves and their respective successors and assigns, (a) irrevocably agree that any suit, action or proceeding arising out of or relating to this Agreement shall be instituted only in the Circuit Court of Jefferson County, Alabama, and generally and unconditionally accept and irrevocably submit to the exclusive jurisdiction of the aforesaid court and irrevocably agree to be bound by any final judgment rendered thereby from which no appeal has been taken or is available in connection with this Agreement, (b) irrevocably waive any objection either may have now or hereafter to the laying of the venue of any such suit, action or proceeding, including, without limitation, any objection based on the grounds of forum non conveniens, in the aforesaid court, (c) agree not to commence any action, suit or proceeding relating hereto except in the aforesaid court, and (d) irrevocably agree that all process, summons, notices or documents in any such proceedings in any such court may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to them at their respective addresses set forth in Section 7.05 or at such other address of which the other parties shall have been notified in accordance with the provisions of Section 7.05, such service being hereby acknowledged by City and Owner to be effective and binding service in every respect. Nothing herein shall affect the right to serve process in any other manner permitted by law.

Section 7.11 Rights of Termination.

City and Owner agree that, anything in this Agreement to the contrary notwithstanding:

- (1) Owner may, in its sole and absolute discretion, terminate this Agreement on _____, 2014, if the Closing Conditions are not satisfied prior to or on such date;
- (2) City may, in its sole and absolute discretion, terminate this Agreement on _____, 2014, if the Closing Conditions are not satisfied prior to or on such date.

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

CITY OF VESTAVIA HILLS, ALABAMA

By _____
Mayor

SEAL

By _____
City Manager

ATTEST: _____
City Clerk

NORTHPORT HOLDING, LLC, a Delaware
limited liability company

By: _____ (L.S.)

Its: _____

REGISTRATION OF OWNERSHIP

In accordance with Section 7.08 of the Special Economic Development Agreement to which this Schedule is attached, this Agreement is registered in the name of the last owner hereof named below and such owner has all interests of the person named as Owner in such Agreement.

<u>Date of Registration</u>	<u>Name of Registered Owner</u>	<u>Signature of Authorized Officer of City</u>
Date of Closing	Northport Holding, LLC	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

EXHIBIT A

LEGAL DESCRIPTION OF PROJECT SITE

EXHIBIT B

Request for Payment of Annual Property Tax Reimbursement Amount

From: Northport Holding, LLC

To: City of Vestavia Hills, Alabama

Date: _____, 20__

Re: **Special Economic Development Agreement dated the Date of Delivery by City of Vestavia Hills, Alabama (the "City") and Northport Holding, LLC (the "Owner").**

The undersigned, as Owner under the above Agreement, hereby requests payment to Owner by City of the Annual Property Tax Reimbursement Amount, to be determined by City as provided in the Agreement, for the following tax year:

_____ 1, 20__ to _____ 1, 20__

and in connection therewith does hereby represent, warrant and certify to City as follows:

1. (a) The total amount paid by Owner as Noneducational Ad Valorem Taxes with respect to the Project for the above tax year was \$_____.
- (b) Attached hereto is a true and correct copy of the ad valorem tax bill for the Project for the above tax year, setting forth the assessed value of the Project and the total amount of Noneducational Ad Valorem Taxes due for such tax year.
2. Owner is in full compliance with the agreements and covenants thereof under the Agreement and no Event of Default, or any event which upon notice, or lapse of time, or both shall become an Event of Default, has occurred and is continuing.
3. The Agreement is in full force and effect.
4. Owner is in full compliance with all applicable resolutions and regulations of City.
5. The total aggregate amount of all Annual Property Tax Reimbursement Amounts paid by the City under the Agreement prior to the submission of this Request is \$_____ and does not exceed \$1,600,000.

Capitalized terms used herein shall have the respective meanings assigned in the above Agreement.

In Witness Whereof, the undersigned Owner has caused this instrument to be executed in its name, under seal, by an officer thereof duly authorized thereunto.

Northport Holding, LLC
as Owner

By _____

Its _____

EXHIBIT C

Form of Warrant

THIS WARRANT, AND ANY INTEREST HEREIN, MAY ONLY BE TRANSFERRED IN COMPLIANCE WITH THE WITHIN-REFERENCED AGREEMENT AND APPLICABLE FEDERAL AND STATE SECURITIES LAWS.

THIS WARRANT DOES NOT BEAR INTEREST

**UNITED STATES OF AMERICA
STATE OF ALABAMA**

**CITY OF VESTAVIA HILLS
ECONOMIC DEVELOPMENT WARRANT
(NORTHPORT HOLDING, LLC)**

No. R-1

DATED DATE:

_____, 2014

MATURITY DATE:

Date of Termination

City OF VESTAVIA HILLS, a municipal corporation organized and existing under and by virtue of the laws of the State of Alabama (the "City"), for value received, hereby acknowledges itself indebted to

NORTHPORT HOLDING, LLC

or registered assigns (collectively the "Warrantholder") in a principal amount not exceeding

**FIVE MILLION ONE HUNDRED FIFTY THOUSAND DOLLARS
(\$5,150,000)**

as determined pursuant to the within-referenced Agreement, and hereby orders and directs the Finance Director of City to pay, to the Warrantholder or as provided in the Agreement, solely from the amounts deposited in the Warrant Fund hereinafter designated, said principal amount, without interest, as provided in the within-referenced Agreement, until and including the Maturity Date specified above.

Authority for Issuance

This Warrant is issued pursuant to the authority of the Constitution and laws of the State of Alabama, including particularly and without limitation Amendment No. 772 of the Constitution of Alabama of 1901, as amended (collectively the "Enabling Law"), and that certain Special Economic Development Agreement dated the above Dated Date (the "Agreement") by City and Northport Holding, LLC.

Capitalized terms used hereinbefore and hereinafter without definition shall have the respective meanings assigned thereto in the Agreement.

Reference is made to the provisions of the Agreement, to and by which all of which provisions the Warrantholder, by acceptance of this Warrant, assents and agrees to be bound.

Payment

This Warrant is payable solely from amounts made available as the Total City Commitment on the terms and as provided in Article 4 of the Agreement.

The City has established a special fund designated "Warrant Fund" (the "Warrant Fund") for the payment of this Warrant and has obligated itself to pay or cause to be paid into the Warrant Fund sums sufficient to provide for the payment of this Warrant as provided in the Agreement.

Payment of this Warrant shall be made as provided in the Agreement; provided the final payment of principal of this Warrant shall be made only upon presentation and surrender of this Warrant to City for cancellation.

Each payment of principal made on this Warrant shall be reflected by the notations made by City on its internal records (which may be kept by computer or by other means determined by City) and City is hereby authorized so to record thereon all such payments. All payments of principal on this Warrant and the aggregate unpaid principal amount of this Warrant reflected on the internal records of City (whether by computer or otherwise) shall be rebuttably presumptive evidence of the principal amount of this Warrant outstanding and unpaid.

All payments of principal of this Warrant by City shall be made at par in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts, and shall be valid and effectual to satisfy and discharge the liability of City upon this Warrant to the extent of the amounts so paid.

The person in whose name this Warrant is registered shall be deemed and regarded as the absolute owner hereof for all purposes.

Registration and Transfer

This Warrant is registered as to principal and interest in the name of the Warrantholder on the book of registration maintained for that purpose by City.

This Warrant may be transferred only upon written direction of the registered owner or his legal representative, addressed to City, presentation of this Warrant to City accompanied by a written instrument of transfer, satisfactory to City, duly executed by the registered owner or his attorney duly authorized in writing, and compliance with Section 7.06 and Section 7.08 of the Agreement. Upon presentation of this Warrant to City for transfer, City shall record such transfer on the said book of registration and execute and deliver, in exchange for this Warrant, a new warrant or warrants of like tenor hereof, registered in the name of the transferee in an aggregate principal amount equal to the unpaid or unredeemed portion of the principal of this Warrant. No charge shall be made for the privilege of transfer, but the registered owner of this Warrant requesting any such transfer shall pay any tax or other governmental charge required to be paid with respect thereto.

General

No covenant or agreement contained in this Warrant or in the Agreement shall be deemed to be a covenant or agreement of any officer, agent, employee, or member of the governing body of City in the individual capacity thereof and none of such parties or persons nor any officer executing this Warrant shall be liable personally on this Warrant or be subject to any personal liability or accountability by reason of the issuance of this Warrant.

It is hereby recited, certified and declared that the indebtedness evidenced and ordered paid by this Warrant is lawfully due without condition, abatement or offset of any description, that this Warrant has been registered in the manner provided by law, that this Warrant represents a valid claim against the Warrant Fund, that all acts, conditions and things required by the Constitution and laws of the State of Alabama to happen, exist and be performed precedent to and in the execution, registration and issuance of this Warrant, the adoption of the resolution approving the Agreement, and the execution and delivery of the Agreement, have happened, do exist and have been performed in due time, form and manner as so required by law and that the principal amount of this Warrant, together with all other indebtedness of City, are within every debt and other limit prescribed by the Constitution and laws of the State of Alabama.

IN WITNESS WHEREOF, City, acting by and through City Council of City, as the governing body thereof, has caused this Warrant to be executed in its name and on its behalf by the Mayor of City, has caused its corporate seal to be affixed hereto and the same attested by City Clerk of City, and has caused this Warrant to be dated the date and year first above written.

CITY OF VESTAVIA HILLS, ALABAMA

By _____
Mayor

SEAL

Attest: _____
City Clerk

REGISTRATION CERTIFICATE

Date of Closing: _____, 2014

The undersigned hereby certifies that this Warrant has been duly registered as a conditional claim against City of Vestavia Hills, in the State of Alabama, and the Warrant Fund referred to herein, on the Date of Closing referenced above.

Finance Director of City of Vestavia Hills,
Alabama

VALIDATION CERTIFICATE

Validated and confirmed by judgment of the Circuit Court of Jefferson County, State of Alabama entered on the _____ day of _____, 2014.

/s/ _____
Clerk of Circuit Court of Jefferson County,
State of Alabama

Assignment

For value received, _____ hereby sell(s), assign(s) and transfer(s) unto _____, this Warrant and hereby irrevocably constitute(s) and appoint(s) _____ its attorney to transfer this Warrant on the books of the within named City with full power of substitution in the premises.

Dated: _____

NOTE: The name signed to this assignment must correspond with the name of the payee written on the face of the within warrant in all respects, without alteration, enlargement or change whatsoever.

Signature Guaranteed:

(Bank or Trust Company)

By _____
(Authorized Officer)

RESOLUTION NUMBER 4626

A RESOLUTION ACCEPTING BIDS FOR A PROPOSED PEDESTRIAN BRIDGE AND IMPROVEMENTS AT MCCALLUM PARK

WHEREAS, on July 22, 2014 the City of Vestavia Hills publicly read aloud bids submitted for bid packages for construction of a pedestrian bridge and certain other improvement alternates at McCallum Park; and

WHEREAS, the Public Services Director has reviewed the bids and recommended the following bid package and alternates to be accepted:

- (a) Base bid package submitted by Sprouse Construction for pedestrian bridge at a cost not to exceed \$248,960; and
- (b) Alternates 1, 2 3, and 4 to be awarded resulting in alternate bid amount of \$59,500 including base bid (Alternate 1 - \$24,000; Alternate 2 – \$2,500; Alternate 3 - \$8,000; and Alternate 4 - \$25,000); and

WHEREAS, in a memorandum dated August 7, 2014 to the City Manager, the Public Services Director detailed the bid package results and alternates in an official tabulation along with recommendation for acceptance as stated above, a copy of which is marked as “Exhibit A” attached to and incorporated into this Resolution Number 4626 as though written fully therein; and

WHEREAS, the Public Services Director indicated that the total contract cost of the project would not exceed \$308,460; a portion of which would be reimbursed through two grants of \$50,000 each (total \$100,000) and a \$100,000 donation from the Park and Recreation Foundation with the remaining \$108,469 to be expensed to Capital Projects Fund; and

WHEREAS, the City Manager has reviewed the recommendations set forth by the Public Services Director and has recommended acceptance of said base bid and alternates as detailed in “Exhibit A;” and

WHEREAS, the Mayor and City Council feel it is in the best public interest to follow the recommendations of the City Manager and the Public Services Director and accept said bids as detailed above.

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

1. The following bid packages as detailed in Exhibit A attached and recommended by the City Manager and the Public Services Director are hereby accepted as follows:

- a. Base bid package submitted by Sprouse Construction for pedestrian bridge at a cost not to exceed \$248,960; and
 - b. Alternates 1, 2 3, and 4 to be awarded resulting in alternate bid amount of \$59,500 including base bid (Alternate 1 - \$24,000; Alternate 2 – \$2,500; Alternate 3 - \$8,000; and Alternate 4 (\$25,000); and
2. The City Manager is hereby authorized to execute and deliver all documents including, but not limited to contracts (following review and approval by the City Attorney) and requisitions pursuant to said bid detail up to the aforesaid amounts detailed in Exhibit A; and
3. This Resolution Number 4626 shall become effective immediately upon adoption and approval.

DONE, ORDERED, ADOPTED and APPROVED this the 25th day of August, 2014.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

**City of Vestavia Hills Public Services
513 Montgomery Highway
Vestavia Hills, AL 35216
205.978.0150**

Interoffice Memo

August 8, 2014

TO: Jeff Downes
City Manager

FROM: Brian C. Davis *bcd*
Public Services Director

RE: McCallum Park

As part of the Healthy Living Campaign in a partnership with the Vestavia Hills Parks and Recreation Foundation, we received bids for a bridge crossing at McCallum Park and trail expansion.

We received 3 bids for the base bid, which is the bridge across Little Shades Creek, and 6 alternates, which include the following:

- Additional 500 linear feet of trail
- Additional 1 acre of clearing
- Composite wood decking for the bridge
- Low water crossing
- Rock seating area around bridge foundation
- Additional gravel to the parking area

Please see attached bid summary. I am recommending that we accept Sprouse Construction base bid and alternates 1 through 4 at a total cost of \$308,460.00. We have 2 grants of \$50,000 each for a total of \$100,000, and as stated above our partnership with the foundation has a match of an additional \$100,000. The city will need \$108,460 to cover the remaining amount.

Please let me know if you have any questions, and I look forward to discussing with you further.

Attachment: Bid Summary

McCallum Park Pedestrian Bridge and Trails

Bid date: July 22, 2014

Bid Summary

	Battle Miller		Walker Patton		Sprouse	
	bid amount	cumulative	bid amount	cumulative	bid amount	cumulative
Base bid*	\$ 258,800.00	\$ 258,800.00	\$ 329,169.00	\$ 329,169.00	\$ 248,960.00	\$ 248,960.00
Alt 1 -- add 500' trail	\$ 16,000.00	\$ 274,800.00	\$ 15,000.00	\$ 344,169.00	\$ 24,000.00	\$ 272,960.00
Alt 2 -- add 1 acre clearing	\$ 4,000.00	\$ 278,800.00	\$ 7,500.00	\$ 351,669.00	\$ 2,500.00	\$ 275,460.00
Alt 3 -- add Trex decking	\$ 25,000.00	\$ 303,800.00	\$ 9,600.00	\$ 361,269.00	\$ 8,000.00	\$ 283,460.00
Alt 4 -- add low water xing	\$ 20,000.00	\$ 323,800.00	\$ 25,000.00	\$ 386,269.00	\$ 25,000.00	\$ 308,460.00
Alt 5 -- add rock seating	\$ 8,000.00	\$ 331,800.00	\$ 6,250.00	\$ 392,519.00	\$ 10,500.00	\$ 318,960.00
Alt 6 -- add gravel to parking	\$ 5,000.00	\$ 336,800.00	\$ 32,400.00	\$ 424,919.00	\$ 25,000.00	\$ 343,960.00
Total Bid	\$ 336,800.00		\$ 424,919.00		\$ 343,960.00	

<==

* Base bid includes bridge, ramps, concrete sidewalk, 1000 LF of trail, 1 acre clearing, and grass seeding

RESOLUTION NUMBER 4627

A RESOLUTION APPROVING AND ADOPTING THE GENERAL FUND BUDGET, A SPECIAL REVENUE FUND BUDGET AND A CAPITAL PROJECT FUND BUDGET FOR THE CITY OF VESTAVIA HILLS FOR THE PERIOD BEGINNING OCTOBER 1, 2014 UNTIL SEPTEMBER 30, 2015.

WHEREAS, the City Manager has prepared and presented a “general fund budget” which has been reviewed and amended by the City Council for said period reflecting anticipated expenditures in the amount of \$34,662,105 including transfers out, to be effective for the period beginning October 1, 2014, through September 30, 2015; and

WHEREAS, the City Manager has prepared a “special fund budget” for said period reflecting anticipated expenditures in the amount of \$2,877,994 including transfers from the General Fund, to be effective for the period beginning October 1, 2014, through September 30, 2015; and

WHEREAS, the City Manager has prepared a “capital projects fund budget” for said period reflecting expenditures in the amount of \$1,120,579 to be effective for the period beginning October 1, 2014, through September 30, 2015.

WHEREAS, Title 11-43-57, Code of Alabama, 1975, provides as follows:

Annual appropriation of funds for expenditures of all departments and interest on indebtedness: In all cities, the Council shall appropriate the sums necessary for the expenditures of the several City departments and for the interest on its bonded and other indebtedness, not exceeding in the aggregate within ten (10) percent of its estimated expenses, and such City Council shall not appropriate in the aggregate an amount in excess of its annual legally authorized revenue. But, nothing in this section shall prevent such cities from anticipating their revenues for the year for which such appropriation was made, or from contracting for temporary loans as provided in the applicable provision of this title, or from bonding or

refunding their outstanding indebtedness or from appropriating anticipated revenue at any time for the current expenses of the City and interest on the bonded and other indebtedness of the City; and

WHEREAS, the City Council agrees to approve and adopt ninety (90) percent, or \$31,195,894, of the municipal “general fund budget” for the City of Vestavia Hills for fiscal year 2014-2015 upon the terms, conditions, and provisions set forth below; and

WHEREAS, the City Council agrees to approve and adopt ninety (90) percent, or \$2,590,194, of the municipal “special revenue fund budget” for the City of Vestavia Hills for fiscal year 2014-2015 upon the terms, conditions and provisions set forth below; and

WHEREAS, the City Council agrees to approve and adopt ninety (90) percent, or \$1,008,521, of the “capital project fund budget” for the City of Vestavia Hills for fiscal year 2014-2015 upon the terms, conditions and provisions set forth below.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Vestavia Hills, Alabama, as follows:

1. The municipal “general fund budget” for the City of Vestavia Hills, Alabama, prepared by the City Manager and submitted to the City Council is hereby approved and adopted to the extent of expenditures of \$31,195,382, which said amount is not exceeding the aggregate within ten (10) percent of the estimated expenses:

\$34,662,105 multiplied by 90% equals
\$31,195,894; and

2. The municipal “special revenue fund budget” for the City of Vestavia Hills, Alabama, prepared by the City Manager and submitted to the City Council is hereby approved and adopted to the extent of expenditures of \$2,590,194 which said amount is not exceeding the aggregate within ten (10) percent of the estimated expenses:

\$2,877,994 multiplied by 90% equals
\$2,590,194; and

3. The “capital projects fund budget” for the City of Vestavia Hills, Alabama, prepared by the City Manager and submitted to the City Council is hereby approved and adopted to the extent of expenditures of \$1,008,521 which said amount is not exceeding the aggregate within ten (10) percent of the estimated expenses:

\$1,120,579 multiplied by 90% equals
\$1,008,521; and

3. The City Manager is hereby authorized to expend the sum of \$31,195,894 from the General Fund, \$2,590,194 from the Special Revenue Fund and \$1,008,521 from the Capital Projects Fund for municipal expenses for the period beginning October 1, 2014, and ending September 30, 2015.

4. Copies of the budget outlines are attached hereto, marked as Exhibit “A” and incorporated into this Resolution by reference as though set out fully herein.

5. This Resolution shall become effective immediately upon its approval and adoption.

APPROVED and ADOPTED this the 25th day of August, 2014.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CITY OF VESTAVIA HILLS
ANNUAL BUDGET
SUMMARY OF **"ALL FUNDS"** REVENUE & EXPENDITURES
FISCAL YEAR ENDING SEPTEMBER 30, 2015

<u>REVENUE:</u>	<u>GENERAL</u>	<u>SPECIAL</u>	<u>CAPITAL</u>	<u>TOTAL</u>
STATE REVENUE	145,011		290,650	435,661
COUNTY REVENUE	14,084,683			14,084,683
CITY REVENUE	19,824,067			19,824,067
PARKS & RECREATION	383,500			383,500
4 CENT GASOLINE TAX		156,600		156,600
5 CENT GASOLINE TAX		76,020		76,020
7 CENT GASOLINE TAX		887,000		887,000
E-911 FUNDS		731,860		731,860
COURT & CORRECTIONS		343,604		343,604
LIBRARY STATE AID		18,687		18,687
LIBRARY BOOKS & DONATIONS		296,500		296,500
VEHICLE TAGS / ADMINISTRATION		125,100		<u>125,100</u>
TOTAL REVENUE	\$34,437,261	\$2,635,371	\$290,650	\$37,363,282

**CITY OF VESTAVIA HILLS
ANNUAL BUDGET
SUMMARY OF "ALL FUNDS" REVENUE & EXPENDITURES
FISCAL YEAR ENDING SEPTEMBER 30, 2015**

<u>EXPENDITURES:</u>	<u>GENERAL</u>	<u>SPECIAL</u>	<u>CAPITAL</u>	<u>TOTAL</u>
NON DEPARTMENTAL	7,057,673			7,057,673
CITY COUNCIL	71,671			71,671
MAYOR & ADMINISTRATION	1,105,036		6,291	1,111,327
CITY CLERK	327,004		6,471	333,475
MUNICIPAL COMPLEX	258,977			258,977
INFORMATION SERVICES / TECHNOLOGY	686,637		72,875	759,512
POLICE	7,178,398		368,866	7,547,264
FIRE	8,959,744		474,989	9,434,733
BUILDING SAFETY & INSPECTIONS	385,809			385,809
PUBLIC SERVICES	5,834,126		184,796	6,018,922
CITY GARAGE	293,279			293,279
PUBLIC LIBRARY	1,803,820		6,291	1,810,111
4 CENT GASOLINE TAX		156,600		156,600
5 CENT GASOLINE TAX		76,020		76,020
7 CENT GASOLINE TAX		1,016,740		1,016,740
E-911 FUNDS		820,352		820,352
COURT & CORRECTIONS		363,860		363,860
LIBRARY STATE AID		18,687		18,687
LIBRARY BOOKS & DONATIONS		316,842		316,842
VEHICLE TAGS / ADMINISTRATION		108,893		<u>108,893</u>
SUB-TOTAL EXPENDITURES	\$33,962,174	\$2,877,994	\$1,120,579	\$37,960,747
<u>TRANSFER-OUT:</u>				
Special Funds (from General Fund)	29,388			29,388
Capital Reserve Fund (from GF - Sales Tax %)	<u>670,543</u>			<u>670,543</u>
TOTAL - TRANSFER-OUT	\$699,931			\$699,931
TOTAL EXPENDITURES	\$34,662,105	\$2,877,994	\$1,120,579	\$38,660,678

CITY OF VESTAVIA HILLS
 ANNUAL BUDGET
 SUMMARY OF "ALL FUNDS" REVENUE & EXPENDITURES
 FISCAL YEAR ENDING SEPTEMBER 30, 2015

<u>OTHER REVENUE SOURCES:</u>	<u>GENERAL</u>	<u>SPECIAL</u>	<u>CAPITAL</u>	<u>TOTAL</u>
TRANSFER-IN:				
Special Funds (from General Fund)		29,388		29,388
Capital Items (use of projected 2015 Capital Reserve Funds)			670,543	670,543
TOTAL - OTHER REVENUE SOURCES	\$0	\$29,388	\$670,543	\$699,931
REVENUE OVER / (UNDER) EXPENDITURES	(\$224,844)	(\$213,235)	(\$159,386)	(\$597,465)
USE OF RESERVES / FUND BALANCE	\$224,844	\$213,235	\$159,386	\$597,465
REPORT BALANCE	\$0	\$0	\$0	\$0

RESOLUTION NUMBER 4628

A RESOLUTION ELECTING TO PROVIDE A ONE-TIME BONUS TO CITY RETIREES PURSUANT TO ALABAMA ACT # 2014-429

WHEREAS, at the last legislative session of the Alabama Legislature, the State of Alabama enacted Act Number 2014-429 which provided a one-time lump sum payment to retirees of the Retirement System of Alabama (“RSA”) equivalent to \$2 per month for each year of service or \$300, whichever is greater; and

WHEREAS, if approved, the RSA will pay the bonuses to retirees on October 2015 and allow Cities to pay back the employer contribution throughout the next fiscal year; and

WHEREAS, the City Manager has reviewed the bonus calculations and historical information of retiree increases throughout the years and determined that the one-time bonus would sincerely benefit City retirees in assisting them to meet escalating costs in a currently declining economy; and

WHEREAS, the City Manager has reviewed the City’s revenues and expenditures and recommended that the one-time bonus be given in the estimated amount of \$57,646; and

WHEREAS, the Mayor and City Council have reviewed the recommendation of the City Manager and determined it is in the best public interest to approve said recommendation and recognize retirees for the unwavering services that they provided to the City during their years of service.

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

1. The Mayor and City Council hereby authorize the City Manager to fund the 2014 retiree bonus for retirees of the City of Vestavia Hills pursuant to Act No. 2014-429; and

2. The City Manager shall deliver a copy of this Resolution Number 4628 to the State of Alabama prior to the August 31, 2014 deadline; and
3. This Resolution Number 4628 shall become effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 25th day of August, 2014.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk



ALABAMA RETIRED STATE EMPLOYEES' ASSOCIATION | ALABAMA PUBLIC EMPLOYEES' ADVOCACY LEAGUE

July 31, 2014

The Honorable Alberto Zaragoza
City of Vestavia Hills
PO Box 660854
Vestavia Hills, AL 35266-0854

Dear Mayor Zaragoza,

The passage of ACT#2014-429 in the last legislative session gave the City of Vestavia Hills the authorization to give a bonus to their retirees in October 2014. Approval to fund this bonus will provide the retirees from the City of Vestavia Hills with a one-time lump sum payment of \$2.00 per month for each year of service or \$300.00, whichever is greater.

The Retirement Systems of Alabama (RSA) will pay the bonuses up front, allowing cities to pay them back through their monthly employer contribution made to RSA beginning **October 2015** and ending **September 2016**. RSA will also accept payment in full when the resolution authorizing the bonus is submitted. The estimated cost for the City of Vestavia Hills is \$57,646.

This information has been previously provided to the city council, but we want to be sure you are aware that only four weeks remain for you to act on behalf of the retirees.

ARSEA/APEAL respectfully requests the City of Vestavia Hills to fund the 2014 retiree bonus and submit the required resolution before the August 31, 2014 deadline.

Sincerely,

A handwritten signature in black ink that reads "Liane Kelly".

RESOLUTION NUMBER 4629

**A RESOLUTION DETERMINING THAT CERTAIN
PERSONAL PROPERTY IS NOT NEEDED FOR
PUBLIC OR MUNICIPAL PURPOSES AND
DIRECTING THE SALE/DISPOSAL OF SAID
SURPLUS PROPERTY**

WITNESSETH THESE RECITALS

WHEREAS, the City of Vestavia Hills, Alabama, is the owner of personal property detailed in the attached "Exhibit A"; and

WHEREAS, the City has determined that it would be in the best public interest to sell said 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 to sell and/or dispose of the above-referenced surplus personal property in order to obtain the best resale value of said vehicles; and
2. This Resolution Number 4629 shall become effective immediately upon adoption and approval.

DONE, ORDERED, APPROVED and ADOPTED on this the 25th day of August, 2014.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

08/13/14

To: Rebecca Leavings

From: Sgt. Joel Gaston

Re: Surplus City Property

Please request that the City Council deem the following property surplus at the next meeting:

- 1991 Chevy Van vin# 2GAGG39KXM4127338 (assests)
- 1996 Jeep Cherokee vin# 1J4EZ58Y5TC144532 (seizure)
- 2001 Ford Crown Victoria vin# 2FAFP71W71X119884 (seizure)
- 2005 Ford Crown Victoria vin# 2FAFP71WX5X160919 (assests)
- 2006 Lexus IS 250 vin# JTHBK262762003769 (seizure)

Please contact me with any questions or concerns.

Thanks,

Sgt. Gaston ext.#137

RESOLUTION NUMBER 4630

A RESOLUTION ACCEPTING BIDS FOR POLICE UNIFORM POLO SHIRTS

WHEREAS, on August 14, 2014 the City of Vestavia Hills publicly read aloud bids submitted for bid packages for Police Department uniform polo shirts; and

WHEREAS, the Assistant Police Chief has reviewed the bids and recommended the acceptance of the bid package submitted by Municipal and Commercial Uniform (“MAC Uniforms”); and

WHEREAS, the City Manager has reviewed the recommendations set forth by the Assistant Police Chief and has recommended acceptance of said bid package as detailed in “Exhibit A attached and incorporated into this Resolution Number 4630 as though written fully therein;” and

WHEREAS, the Mayor and City Council feel it is in the best public interest to follow the recommendations of the City Manager and the Assistant Police Chief and accept said bids as detailed above.

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

1. The bid package submitted by MAC Uniforms as detailed in Exhibit A attached and recommended by the City Manager and the Assistant Police Chief is hereby accepted; and
2. This Resolution Number 4630 shall become effective immediately upon adoption and approval.

DONE, ORDERED, ADOPTED and APPROVED this the 25th day of August, 2014.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

BID SUMMARY

BID-2014-08

BID: Police Uniform Polo Shirt

BID OPENED: August 14, 2014
2:00 PM

PEOPLE PRESENT FOR BID OPENING

1. Rebecca Leavings, City Clerk
2. Kevin York, Police Department
3. Dan Rary, Police Chief
4. Tricia Minot, McCain Uniforms

BIDDERS:

1. MAC Uniforms - \$42.50 each

RESOLUTION NUMBER 4631

**A RESOLUTION AUTHORIZING THE MAYOR AND CITY MANAGER
TO EXECUTE AND DELIVER AN AGREEMENT WITH RIVERTREE
SYSTEMS, INC., FOR AUDITING SERVICES**

**BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF
VESTAVIA HILLS, ALABAMA, AS FOLLOWS:**

1. The Mayor and City Manager are hereby authorized to execute and deliver an agreement with Rivertree Systems, Inc., for auditing services performed on behalf of the City of Vestavia Hills; and
2. A copy of said agreement is marked as "Exhibit A" and is attached to and incorporated into this Resolution Number 4631 as though written fully therein; and
3. This Resolution Number 4631 shall become effective immediately upon adoption and approval.

ADOPTED and APPROVED, this the 25th day of August, 2014.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

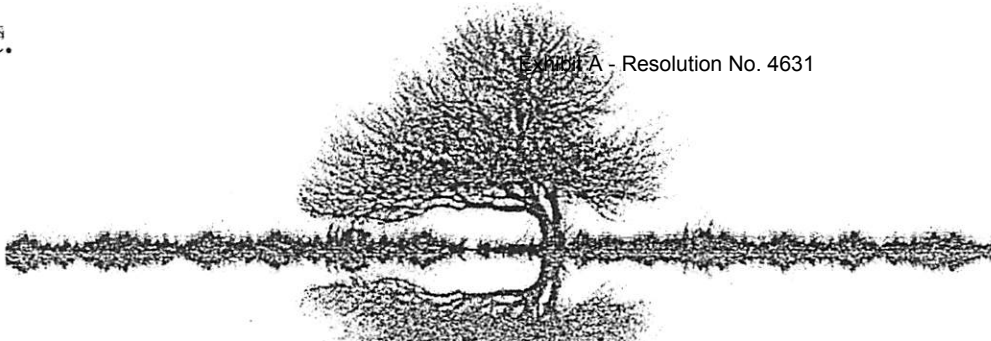
RIVERTREE SYSTEMS, INC.

P. O. Box 361361

Birmingham AL

35236

PELHAM - Resolution No. 4631



AUDITORS FOR THESE ALABAMA CITIES AND COUNTIES:

ALABASTER* AUBURN*BIRMINGHAM*CENTER POINT*GARDENDALE
GULF SHORES*HARTSELLE*HARPERSVILLE*HELENA*HOMEWOOD
HUEYTOWN *IRONDALE * JASPER *MADISON*MONTGOMERY
MONTEVALLO *MOODY*NORTHPORT*ORANGE BEACH * OZARK
PELHAM* PRATTVILLE*TALLADEGA *TRUSSVILLE
TUSCUMBIA*VESTAVIA HILLS
BALDWIN COUNTY*CULLMAN COUNTY*SHELBY COUNTY
MONTGOMERY COUNTY

205-988-0331 x301

Fax: 988-9687

jimthomas308@bellsouth.net

www.rivertreesystems.com

August 5, 2014

Melvin Turner, III
Finance Director- City of Vestavia Hills
City of Vestavia Hills
513 Montgomery Highway Municipal Center
Vestavia Hills, AL 35216

RE: Audit Contract

Mr. Turner:

Rivertree's records show that the current 3 year contract is to expire on September 15, 2014.

Enclosed you will find a nine page contract instead of the past three pages. My attorney suggested that the pages be double spaced and various additional statements to cover the City and Rivertree Systems, Inc.

Some of the additions include that the Examiners are Certified Revenue Examiners, bonded, licensed, and maintains continuous education hours. The contract also addresses the "confidential" issues in auditing. Also a detail of what services Rivertree will provide including weekly or semi-month notices of accounts planned to be reviewed with a yes or no.

The contract still states **ALL escape audit checks** are made to the City of Vestavia Hills. The compensation remains at \$65.00 per hour.

If you have any concerns please call or email.

Sincerely,

James M. Thomas, CRE
President

STATE OF ALABAMA

COUNTY OF JEFFERSON

AGREEMENT FOR EXAMINATION SERVICES

THIS AGREEMENT made and entered into on this the ___ day of _____ 2014

by and between the **CITY OF VESTAVIA HILLS**, hereinafter referred to as the "Client", and **RIVERTREE SYSTEMS, INC.**, an Alabama corporation (hereinafter referred to as "**RIVERTREE**").

1. The Client desires to provide for the collection of all local taxes and fees, regardless of the jurisdiction in which a taxpayer subject to the Client's taxing power maintains its principal office, to provide that all taxpayers are treated equally and to provide that all tax related ordinances are uniformly and consistently applied. In order to accomplish these goals and objectives, the Client desires to retain the services of a company legally qualified as a "private auditing or collecting firm" as defined in the Alabama Taxpayers' Bill of Rights and Uniform Revenue Procedures Act, Code of Alabama (1975) §40-2A-1 et seq. (hereinafter the "Taxpayers' Bill of Rights") to perform audits and examinations of such taxpayers' books and records.

2. RIVERTREE is qualified as a private auditing or collecting firm under the Taxpayers' Bill of Rights and, as such, provides collection, examining and consulting services for local governments throughout the State of Alabama. RIVERTREE has represented to the Client that (i) it is knowledgeable of all laws and regulations applicable to private auditing or collecting firms, (ii) it provides its services in full compliance with all applicable laws and

regulations, and (iii) it obtains all of the legally required certifications, fidelity bonds, and legal letters of authority to act as a private auditing or collecting firm.

3. The Client desires to retain RIVERTREE as a private auditing firm to provide tax auditing and examination services under the terms and conditions, of this Agreement.

NOW, THEREFORE, PREMISES CONSIDERED, RIVERTREE and the Client hereby agree as follows:

1. **RIVERTREE SYSTEMS, Inc.** The Client and RIVERTREE hereby agree that RIVERTREE will provide the following services:
 - a) Identify and prepare a written list of "taxpayer candidates for examination "based on objective criteria to be agreed upon by RIVERTREE and the Client in advance of ~~such work.~~
 - b) Pursuant to Code of Alabama (1975) §40-2A-13(d) upon first contact with the taxpayer, RIVERTREE shall disclose in writing the identity of the Client and all other clients represented by RIVERTREE and shall provide a copy of appropriate written authorization of RIVERTREE's representation from the Client and from any such other client.
 - c) Inspect and examine on behalf of the Client, all books, records and other documents of taxpayers assigned to be examined by the Client to determine to what extent, if any, the taxpayer owes the Client sales and use taxes, occupational taxes, license fees, lease taxes, tobacco taxes, gasoline taxes, and any other city tax, plus interest, penalties and other charges thereon, as directed by Client and in accordance with the ordinances, resolutions and regulations of the Client.
 - d) RIVERTREE acknowledges that Code of Alabama (1975) §40-2A-13(f) provides that when a private examining or collecting firm represents more than one county, city or town on the date it first contacts a taxpayer, the private examining or collecting firm shall examine the taxpayer's books and records for all such counties, cities or towns simultaneously. Therefore, when conducting examinations initiated by other RIVERTREE clients (counties or other cities and towns), RIVERTREE will include Client on the list of entities for which the examination is being conducted. In the event RIVERTREE examines a taxpayer on behalf of other RIVERTREE clients who have not enacted the same taxes as Client, then RIVERTREE's audit of such taxpayer shall include all such taxes of Client.

- e) Perform examinations of taxpayer's records in accordance with "*The Minimum Standard Examination Program*" established by the Alabama Local Tax Institute of Standards and Training (the "Minimum Standards").
- f) Report to the Client that information necessary for the Client to assess the taxpayer's sales and use taxes, license fees, lease taxes, and all other County taxes, plus interest, ~~penalties and other charges thereon for transactions which RIVERTREE reasonably~~ believes may have resulted in an obligation of the taxpayer to pay such taxes to the Client.
- g) Prepare and present to the Client a "Findings Report," which shall include, at a minimum, all information required to prepare a written report under the Minimum Standards and a summary thereof on each examination performed. In the event RIVERTREE's audit indicates that a particular taxpayer has no tax Liability to the Client, RIVERTREE shall provide the Client a written report including the name of the taxpayer audited, the types of tax for which the taxpayer was examined and found to have no liability, and the audit period.
- h) Provide full cooperation to the Client in the preparation of any legal documents, attend any judicial, administrative, departmental, appellate or other legal hearings and be available to testify at hearings that may be required to collect any amounts due to the Client from the taxpayer.
- i) Pursuant to the Code of Alabama (1975) §40-2A-1 3(h) RIVERTREE shall notify the taxpayer if any tax overpayments are discovered and the taxpayer is due any refunds from the Client, or if the taxpayer owes any tax to the Client.
- j) Any additional or incidental services which are allowable by law and are reasonably necessary in order to carry out RIVERTREE's obligations under this Agreement.

RIVERTREE shall collect all taxes with checks payable to the CITY OF VESTAVIA HILLS.

2. **Compensation.** It is understood that each RIVERTREE client will only pay a prorated portion of total audit costs when RIVERTREE is conducting examinations for multiple clients at one time. Client agrees to pay RIVERTREE its prorated portion of each audit's total audit costs which shall consist of **sixty-five dollars (\$65.00) per hour.**

RIVERTREE shall be paid monthly based upon hours worked submitted to the Client by the fifteenth (15th) day of the month for the month next proceeding. The parties

acknowledge that the Code of Alabama (1975) §40-2A-6 specifically prohibits the Client from entering into any contract or arrangement with a private examining or contracting firm for the examination of a taxpayer's books on a contingency fee basis and agree that RIVERTREE's compensation under this Agreement is not in any way contingent upon or otherwise related to the amounts discovered during examinations nor contingent upon or related to amounts finally received by the Client.

3 Representations and Warranties. RIVERTREE represents and warrants as follows:

- a. RIVERTREE is a corporation valid and existing and in good standing under the laws of the State of Alabama.
- b. As of the effective date of the Agreement, RIVERTREE and any employee, agent, or independent auditor/examiner of RIVERTREE providing services under this Agreement, shall have obtained all licenses and bonds necessary or appropriate to perform RIVERTREE's obligations under this Agreement and all such licenses and bonds shall be current and in good standing, and shall be maintained throughout the term of this Agreement.
- c. RIVERTREE and its employees, agents and independent auditors/examiners agree to comply with all current and future laws, rules and regulations applicable to all services provided by RIVERTREE under this Agreement, including, but not limited to, the Local Tax Simplification Act of 1998, the Alabama Local Tax Procedures Act of 1998 and the Taxpayers' Bill of Rights as currently in effect and hereafter amended.
- d. RIVERTREE agrees to comply with all laws and regulations relating to the employees of RIVERTREE, including, without limitation, all tax withholding requirements and worker's compensation laws.

4 Change in Law. The parties agree that in the event of any conflict between the requirements of any applicable law and the terms of this Agreement, then the requirements of such applicable law shall control. If any law applicable to the services provided by RIVERTREE under this Agreement shall be amended, or otherwise changed following the effective date of this Agreement, and the Client, in its sole

discretion, determines that such amendment, modification or change in the law shall impair or frustrate the Client's purposes for entering into this Agreement, then the Client shall have the option to terminate this Agreement as provided in Paragraph 10 below.

5. **Requirements of Examiners.** All examiners employed by RIVERTREE shall meet all requirements of the Taxpayers' Bill of Rights and other current or future applicable law. At a minimum, all such examiners shall (i) be certified public accountants or accountants licensed by the State Board of Public Accountants, or (ii) be certified by the Alabama Local Tax Institute of Standards and Training, and (iii) maintain fidelity bonds in accordance with the Code of Alabama (1975) §40-23-30, as currently in effect and hereafter amended, and (iv) maintain a business license as required by Code of Alabama (1975) §40-12-2, as currently in effect and hereafter amended. If any assessment based on an audit by RIVERTREE is invalidated due to lack of proper certification of RIVERTREE's auditors, RIVERTREE must either provide an audit of the assessed taxpayer conducted by a certified auditor or reimburse Client for all amounts paid to RIVERTREE in connection with the audit. RIVERTREE shall indemnify and hold Client harmless from any loss in revenues arising from or in connection with any invalidated assessment based upon an audit conducted by RIVERTREE if such invalidation is due to lack of proper certification of RIVERTREE 's auditors or due to any other fault of RIVERTREE.

6. **Inspection.** The Client reserves the right at all reasonable times to inspect the documents, information, taxpayer examination system and procedures of RIVERTREE to ensure that RIVERTREE and its employees, agents, and independent auditors/examiners are complying with the terms of this Agreement and all applicable laws. Any such inspection or any lack of inspection by the Client, however, shall not be deemed to waive the requirements

of, or excuse the foregoing from complying with, the terms of this Agreement and all applicable laws.

7. **Confidentiality of Tax Information.** RIVERTREE and its employees, agents, and independent auditors/examiners shall not print, publish or divulge the return of any taxpayer or any part of a return or any information or data supplied by the Client or secured in arriving at the amount of the tax value reported and shall act in conformance with all current and future federal, state and local laws and regulations concerning the confidentiality of tax information, including, but not limited to, the Taxpayers' Bill of Rights (collectively, the "Confidentiality Laws"). All principals, officers, employees and independent auditors/examiners of RIVERTREE involved with the services provided by RIVERTREE under this Agreement, prior to undertaking such services, shall execute an agreement in form and context acceptable to the Client binding such principals, officers, employees and independent auditors/examiners to observe the Confidentiality Laws.

8. **Independent Contractor.** The parties agree that RIVERTREE is and shall at all times be considered an independent contractor and neither it nor its employees or its independent auditors/examiners shall be considered employees of the Client or entitled to any rights or benefits accorded to employees of the Client. RIVERTREE and the Client affirm that this Agreement does not create a partnership or joint venture and that no expressed, implied or apparent rights are intended to inure to any third parties under the terms and conditions herein.

9. **Term.** This Agreement shall be effective as of the date set forth in the preamble and will continue for a period of 3 year(s) from the date unless terminated as herein provided. Pursuant of the Code of Alabama (1975-40-2A-12, this Agreement shall not

be renewed or extended beyond such three (3) year term: provided, however, that parties may negotiate a new contract concerning the subject matter of this Agreement to become effective following expiration of this Agreement.

10. **Default.** If RIVERTREE shall fail in any respect to comply with the terms of this Agreement, the Client shall notify RIVERTREE in writing of the matters with regard to which default is asserted, and RIVERTREE shall have thirty (30) days to cure such default. If RIVERTREE fails to either cure such default within said time, then the Client may terminate this Agreement at any time thereafter by giving written notice to RIVERTREE of its election to terminate.

11. **Termination.** Either party may terminate this Agreement by giving the other party written notice of termination at least sixty (60) days prior to the effective date of termination. Notwithstanding the foregoing, this Agreement shall be terminated automatically, without notice, if RIVERTREE, for any reason loses or foregoes its license required under Code of Alabama (1975) §40-2A-13 or §40-2A-14. RIVERTREE shall provide the Client all documentation, records, reports, and examinations as of the effective date of the termination with a final itemized statement of fees due.

12. **Assignment; Subcontracting of Services.** Client acknowledges and agrees that RIVERTREE may retain auditors or examiners on an independent contractor basis to provide the services described in this Agreement and Client consents to RIVERTREE's retention of such auditors or examiners provided, however, that any such auditor or examiner must meet all criteria applicable to auditors and examiners under law or under this Agreement and provided further that all terms and conditions of this Agreement, including but not limited to indemnities, applicable to services provided by RIVERTREE shall apply to any work

performed by such auditors and examiners. RIVERTREE shall maintain and, upon Client's request, shall provide to Client a list of all auditors and examiners authorized to provide services on behalf of RIVERTREE. Except as provided in this Paragraph 12, RIVERTREE shall not assign any of its rights or obligations under this Agreement or enter into an agreement with any person, entity or subcontractor to perform the obligations of RIVERTREE under this Agreement. Any such assignment or other agreement by RIVERTREE shall be null and void.

13. **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama. If a dispute arises out of or relates to this Agreement or its breach, the parties shall endeavor to settle the dispute first through direct discussions and negotiations. If the dispute cannot be settled through direct discussions or negotiations, the parties shall endeavor to settle the dispute by non-binding mediation. The location of the mediation shall be Homewood, Alabama. Either party may terminate the mediation at any time after the session, but the decision to terminate must be delivered in person to the other party and the mediator. Engaging in mediation is a condition precedent to any other form of binding dispute resolution. If the parties cannot agree on a mutual resolution then any disputes not resolved by mediation shall be decided in the Circuit Court of Montgomery County, Alabama and governed by the laws of the State of Alabama between the Vestavia Hills and RIVERTREE.

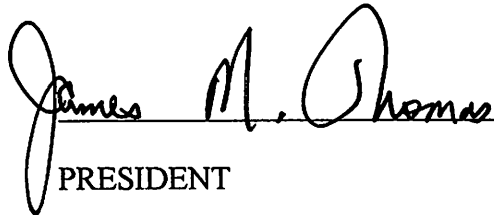
IN WITNESS WHEREOF, the undersigned parties, through their duly authorized officers, have executed this Agreement on the year and day first above written.

CITY OF VESTAVIA HILLS

By: _____

Title: _____

RIVERTREE SYSTEMS, INC.

 _____
PRESIDENT

RESOLUTION NUMBER 4632

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A PROPOSAL FROM SUNTRUST BANK REGARDING LEASING OF VEHICLES AND HEAVY EQUIPMENT

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:

1. The City Manager is hereby authorized to accept a proposal from SunTrust Bank to lease certain vehicles and/or heavy equipment as detailed in the attached "Exhibit A" regarding interest rates and payback terms; and
2. This Resolution Number 4632 shall become effective immediately upon adoption and approval.

DONE and APPROVED this the 25th day of August, 2014.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CITY OF VESTAVIA HILLS
VEHICLES and HEAVY EQUIPMENT
"LEASE/PURCHASE PROPOSALS"
FISCAL 2013-2014

#	1	2	3	4	5	6	7	8
Bidders	<u>BB&T Bank</u>	<u>BBVA/ Compass Bk</u>	<u>Cadence Bank</u>	<u>1st Commercial Bk</u>	<u>Hancock Bank</u>	<u>IBERIABANK</u>	<u>NBC</u>	<u>Pinnacle Bank</u>
Vehicles	\$415,800	\$415,800	\$415,800	\$415,800	\$415,800	\$415,800	\$415,800	\$415,800
Heavy Equipment	\$572,000	\$572,000	\$572,000	\$572,000	\$572,000	\$572,000	\$572,000	\$572,000
TOTAL LEASE/LOAN AMOUNT	\$987,800	\$987,800	\$987,800	\$987,800	\$987,800	\$987,800	\$987,800	\$987,800
Rate - 3 yrs - BQ	1.18%	1.85%	1.65%	2.44%	1.14%	2.00%	n/a	2.13%
Rate - 3 yrs - Non BQ	1.43%	2.90%	2.50%	3.48%	1.34%	2.50%	3.40%	3.50%
Rate - 7 years - BQ	1.81%	2.61%	2.15%	3.15%	1.71%	2.88%	n/a	3.65%
Rate - 7 years - Non BQ	2.32%	4.08%	3.30%	4.50%	1.91%	3.38%	4.60%	5.50%
#	9	10	11	12	13	Rate Rankings Best to Least (Top 5)		
Bidders	<u>Regions Bank</u>	<u>Renasant Bank</u>	<u>Southlake Capital</u>	<u>SouthPoint Bank</u>	<u>SunTrust Leasing</u>	<u>SunTrust Bank</u>		1
Vehicles	\$415,800	\$415,800	\$415,800	\$415,800	\$415,800	<u>Hancock Bank</u>		2
Heavy Equipment	\$572,000	\$572,000	\$572,000	\$572,000	\$572,000	<u>BB&T Bank</u>		3
TOTAL LEASE AMOUNT	\$987,800	\$987,800	\$987,800	\$987,800	\$987,800	<u>Renasant Bank</u>		4
Rate - 3 yrs - BQ	1.46%	1.85%	2.42%	2.70%	1.17%	<u>Regions Bank</u>		5
Rate - 3 yrs - Non BQ	1.82%	1.92%	2.89%	4.50%	1.17%			
Rate - 7 years - BQ	2.34%	1.96%	3.14%	3.00%	1.86%			
Rate - 7 years - Non BQ	3.07%	2.03%	3.58%	5.00%	1.86%			
Didn't Submit Proposal:		Note:						
14	BancorpSouth	BQ = Bank Qualified						
15	ServisFirst Bank							
16	SouthCity Bank							
17	Synovus Securities, Inc.							
18	MMD Financial, LLC							

RESOLUTION NUMBER 4633

A RESOLUTION AUTHORIZING THE CITY MANAGER TO PERFORM ACTIONS AS NECESSARY IN ORDER TO SECURE A PERFORMANCE BOND REQUIRED BY ALDOT

WHEREAS, The Alabama Department of Transportation (ALDOT) has required that the City of Vestavia Hills provide a performance bond relative to its projects on State roads; and

WHEREAS, the City of Vestavia Hills desires to conduct two projects on US 31, the I-65 “Gateway” interchange project and the new City Hall, for which the requirement to secure such a penal bond is required; and

WHEREAS, surety company, The Guarantee Company of North America USA, through broker J. Smith Lanier & Company, has agreed to provide a penal bond to ALDOT on behalf of the City of Vestavia Hills in the required amount of \$100,000; and

WHEREAS, the City of Vestavia Hills has been furnished a copy of the Indemnity Agreement which is required by the surety company (a copy of which is attached hereto as Exhibit ‘A’) and the City of Vestavia Hills has determined that the terms of the agreement are acceptable;

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

1. The City Manager is hereby authorized to execute the indemnity agreement and perform other actions necessary to secure the required penal bond;
2. This Resolution Number 4633 shall become effective immediately upon adoption and approval.

DONE, ORDERED, ADOPTED and APPROVED this the 25th day of August, 2014.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

Rebecca Leavings

From: Sanders, Andrew J. <sandersan@dot.state.al.us>
Sent: Thursday, August 21, 2014 4:09 PM
To: Christopher Brady
Cc: Rebecca Leavings; Moore, Jameria
Subject: RE: Vestavia Hills bonding, ROW landscaping and other improvements

Mr. Brady,

The Division has reviewed the associated bond amount for these two projects and approves of the \$100,000 performance bond for work in ALDOT ROW. Thanks.

Andy Sanders

3rd Division Permit Coordinator/RoadMAP Specialist
205-327-4925
sandersan@dot.state.al.us

From: Christopher Brady [<mailto:cbrady@vhal.org>]
Sent: Thursday, August 21, 2014 4:01 PM
To: Sanders, Andrew J.
Cc: Rebecca Leavings
Subject: Vestavia Hills bonding, ROW landscaping and other improvements

Andy:

This is to confirm our anticipation of costs associated with the I-65/Hwy 31 interchange landscaping improvements within ALDOT ROW will be approximately \$100,000. The City Hall access drive modifications will be minor and can be considered less than \$10,000.

Please let me know if you have any questions or if I can provide additional information.

Thanks,

Christopher Brady, PE, CFM
City Engineer, City of Vestavia Hills
Associate Director, Department of Public Services
513 Montgomery Highway
Vestavia Hills, Alabama 35216
phone: 205-978-0150
direct: 205-978-0198
fax: 205-978-0199
email: cbrady@vhal.org

Please note previous email extension -- "ci.vestavi hills.al.us" -- is no longer valid.



Short Form Indemnity Agreement

THIS AGREEMENT is made by the undersigned indemnitor(s), on behalf of indemnitor(s) and on behalf of its/their respective subsidiaries, whether direct or indirect, all of which are individually and collectively referred to as the "Undersigned," in favor of and for the continuing benefit of any one or more of the companies named above, as the case may be, all of which are individually and collectively referred to as the "Surety," for the purpose of indemnifying the Company from all loss, cost and expenses in connection with any Bonds of any Principal defined below for which the Company now is or becomes Surety.

In consideration of the execution or the procurement of any such Bonds for Principal and as an inducement to such execution or continuation of suretyship by Surety, the Undersigned jointly and severally agree as follows:

DEFINITIONS: Where they appear in this Agreement, the following terms shall be considered as defined in this paragraph:

Principal: The person(s) and entity(ies) for whom or which any Bond issued or committed to by Surety or any one or combination thereof, or their successors in interest, whether alone or in joint venture with others named herein or not named herein, and any person or entity that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with any Undersigned.

Bond: Any surety bond, undertaking, or other express or implied obligation of guaranty of suretyship executed or committed to by Surety on, before or after this date, and any riders, endorsements, extensions, continuations, renewals, substitutions, increases or decreases in penal sum, reinstatements or replacements thereof by Surety.

Surety: Any one or combination of the following and their successors and assigns: The Guarantee Company of North America USA or The Guarantee Company of North America, or any person or company joining with any of the aforesaid in executing any Bond, executing any Bond at their request or providing reinsurance to them with respect to any Bond.

INDEMNITY TO SURETY: The Undersigned jointly and severally agree: (i) to pay to Surety upon demand any premium due for any Bond, computed in accordance with the rates currently charged by Surety, including renewal premiums, until proof satisfactory to Surety is furnished of its discharge from liability under any Bond; (ii) to defend, indemnify, and save harmless Surety from and against any and all demands, liabilities, costs, penalties, obligations, interest, damages and expenses of whatever nature or kind, including but not limited to attorneys' fees (including those of both outside and in-house attorneys) and costs and fees incurred in investigation of claims or potential claims, adjustment of claims, procuring or attempting to procure the discharge of Bond, or attempting to recover losses or expenses from the Undersigned or third parties, whether Surety shall have paid out any such sums; and (iii) to pay immediately to Surety, upon the Undersigned's receipt of the Surety's demand, an amount sufficient to discharge any claim, demand, liability, cost, suit, or charge asserted against or incurred by Surety by reason of having executed any Bond, it being understood and agreed the amount demanded by Surety may be used by Surety to pay such claim, demand, liability, cost, suit, or charge or be held by Surety as collateral security against loss or potential loss on any Bond. The Surety may, from time to time, in its sole discretion, make or guarantee advances or loans to or for the account of the Principal to be used in the performance of Principal's obligations covered by a Bond without seeing to the application of such advances or loans. The Undersigned shall be obligated to indemnify the Surety in accordance with the terms of this Agreement for the amount of all such advances or loans, including interest at the legal rate and any expenses and attorneys' fees of the Surety in connection with such advances or loans. Separate suits may be brought under this Agreement as causes of action accrue, and the dependency or termination of such suit shall not bar any subsequent action by Surety. An itemized statement of loss and expense incurred by Surety, signed by a duly authorized representative of Surety, shall be prima facie evidence of the fact and extent of the liability of the Undersigned to Surety in any claim or suit by Surety against the Undersigned.

GENERAL PROVISIONS:

1. Assent by Surety to changes in any Bond or refusal so to assent shall not release or affect the obligations of the Undersigned to Surety.
2. Surety shall have the right to decline to execute any Bond.
3. The Undersigned will, upon request of Surety, procure the discharge of Surety from any Bond and all liability by reason thereof. If such discharge is unattainable, the Undersigned will, if requested by Surety, either deposit acceptable collateral with Surety sufficient to cover all exposure under such Bond(s) or make provisions acceptable to Surety for the funding of the bonded obligation(s).
4. The Undersigned warrant that each of them is specifically and beneficially interested in obtaining each Bond.

Short Form Indemnity Agreement - Rev. 4/1/2013

The Guarantee Company of North America USA

One Towne Square, Suite 1470

Southfield, Michigan 48076

Tel 248-281-0281 • Fax 248-750-0431 • 1-866-328-0567

gcna.com

Excellence, Expertise, Experience ... Every time

5. In case the execution hereof by any of the Undersigned may be defective or invalid for any reason, such defect or invalidity shall not in any manner affect the validity of this obligation or the liability hereunder of any other Undersigned. Invalidity of any provision of this Agreement by reason of the laws of any state or country or for any reason shall not render its provisions invalid.
6. This Agreement may be terminated by the Undersigned, or any one or more of the parties so designated, upon written notice sent by registered mail to the Office of the Surety, 25800 Northwestern Highway, Suite 720, Southfield, Michigan, 48075, of not less than twenty (20) days. In no event, however, shall any such termination notice operate to modify, bar, discharge, limit, affect or impair the liability of any party hereto, with respect to, upon or by reason of any and all Bonds executed prior to the date of the Surety's receipt and notice of such termination.
7. The Undersigned hereby authorize the Surety to obtain a credit report at the time of this Agreement is secured, in any review or renewal, at the time of any potential or actual claim, or for any other legitimate purpose as determined by the Surety in its reasonable discretion.
8. This Agreement shall constitute a Security Agreement and a Financing Statement for the benefit of Surety in accordance with the Uniform Commercial Code and any similar statute and may be so used by the Surety without in any way abrogating, restricting or limiting the rights of Surety. Surety may add such schedules to this Agreement describing specific terms of security covered hereunder as shall be necessary. For the purpose of recording this Agreement, a photocopy of this Agreement acknowledged before a Notary Public as being a true copy hereof shall be regarded as an original. The foregoing rights of Surety to use this Agreement as a Security Agreement and a Financing Statement and to add Schedules to this Agreement shall be binding as of the effective date of this Agreement, but Surety's right to exercise the rights granted to it under this paragraph shall be conditioned upon the Surety's information or belief that the Undersigned either has breached or is likely to breach any provision of this Agreement.
9. It is further understood and agreed that the Undersigned, and their respective successors and assigns, are jointly and severally bound by the foregoing conditions of this Agreement. The Undersigned understand and agree that other than for the entity issuing a Bond, no other entity included within definition of "Surety" in this Agreement assumes any obligation whatsoever with respect to either this Agreement or such Bond.
10. This General Agreement of Indemnity shall apply to bonds, undertakings and other writings obligatory in the nature of a bond, written by the Surety on behalf of any employee, agent, indemnitor, or any of them their subsidiaries, subsidiaries of subsidiaries, divisions or affiliates, open or silent, jointly, severally, or in any combination with each other; now in existence or hereafter created or acquired) PROVIDED such bonds, undertakings or other writings are required in the normal course of their employment or agency. A written request for the issuance of such bonds, undertakings or other writings signed by _____ shall be prima facie evidence that such bonds, undertakings or other writings are required in the normal course of such employment or agency.

IN TESTIMONY WHEREOF, the Undersigned have set their hand(s) and affixed their seal(s) this _____ day of

_____.

Company Name: _____

By: _____
(Print or Type Name)

Witness/Attest

Street or P.O. Box City State

Federal Tax ID Number: _____

If an additional signature page is attached please acknowledge by initialing this line _____



Company Name: _____

Witness/Attest

By: _____
(Print or Type Name)

Street or P.O. Box City State

Federal Tax ID Number: _____

Indemnitor Name: _____

Witness/Attest

By: _____
(Print or Type Name)

Street or P.O. Box City State

Social Security Number: _____

Indemnitor Name: _____

Witness/Attest

By: _____
(Print or Type Name)

Street or P.O. Box City State

Social Security Number: _____

Indemnitor Name: _____

Witness/Attest

By: _____
(Print or Type Name)

Street or P.O. Box City State

Social Security Number: _____

Indemnitor Name: _____

Witness/Attest

By: _____
(Print or Type Name)

Street or P.O. Box City State

Social Security Number: _____



Indemnitor Name: _____

Witness/Attest

By: _____
(Print or Type Name)

Street or P.O. Box City State

Social Security Number: _____

Indemnitor Name: _____

Witness/Attest

By: _____
(Print or Type Name)

Street or P.O. Box City State

Social Security Number: _____

Indemnitor Name: _____

Witness/Attest

By: _____
(Print or Type Name)

Street or P.O. Box City State

Social Security Number: _____

Indemnitor Name: _____

Witness/Attest

By: _____
(Print or Type Name)

Street or P.O. Box City State

Social Security Number: _____

Indemnitor Name: _____

Witness/Attest

By: _____
(Print or Type Name)

Street or P.O. Box City State

Social Security Number: _____



RESOLUTION NUMBER 4634

**AUTHORIZING AND APPROVING AN INCREASE
IN SALARY AND WAGES FOR EMPLOYEES**

**THIS RESOLUTION WAS ADOPTED AND APPROVED BY THE CITY
COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA ON AUGUST 25,
2014.**

WITNESSETH THESE RECITALS

WHEREAS, the City Manager has prepared portions of the above-referenced budgets for the said fiscal year 2014-2015 for a two-percent (2%) across-the-board increase of wages and salaries for all employees; and

WHEREAS, the Council, at its regular scheduled meeting of August 25, 2014, voted to approve a two-percent (2%) across the board increase in wages and salaries for all employees.

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

1. The City Council hereby approves a two-percent (2%) across-the-board increase in wages and salaries for all employees; and
2. Said increase is effective beginning October 1, 2014.

APPROVED and ADOPTED this the 25th day of August, 2014.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

RESOLUTION NUMBER 4635

A RESOLUTION AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER AN AGREEMENT FOR INSURANCE BROKERAGE SERVICES

WHEREAS, the City of Vestavia Hills desires to establish consistency in insurance brokerage services through a multi-year agreement; and

WHEREAS, in July 2014 the City issued a request for qualifications for brokerage services for property and casualty lines of coverage, a copy of which is marked as “Exhibit A” and is attached to and incorporated into this Resolution Number 4635 as though written fully therein; and

WHEREAS, the City Manager reviewed said proposals and determined that the proposal submitted by J.R. Prewitt & Associates presented the lowest fee and services suitable to the needs of the City; and

WHEREAS, a copy of the Agreement, which is a one-year term, automatically renewable for two additional one-year terms with an option to continue, is marked as “Exhibit B” and is attached to and incorporated into this Resolution Number 4635 as though written fully therein; and

WHEREAS, a copy of the proposal submitted by J.R. Prewitt & Associates is marked as “Exhibit C” and is attached to and incorporated into this Resolution Number 4635 as though written fully therein; and

WHEREAS, certain activities necessary for securing insurance quotations must be performed prior to the renewal date, which is October 1, 2014 for most policies included in the referenced Agreement; and

WHEREAS, the Mayor and City Council have reviewed the attached documents and the information provided by the City Manager’s recommendation and find that it is in the best public interest to accept the proposal submitted by J.R. Prewitt and Associates.

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

1. The Mayor and City Manager are hereby authorized to execute the Agreement for brokerage services which is attached to this Resolution as Exhibit ‘B’; and

2. The City Manager may give authorization to J.R. Prewitt & Associates to act as Agent of Record to perform the activities necessary for securing insurance quotations prior to October 1, 2014; and
3. This Resolution Number 4635 shall become effective immediately upon adoption and approval.

DONE, ORDERED, ADOPTED and APPROVED this the 25th day of August, 2014.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk



City of Vestavia Hills
Request for Qualifications
FY2015 – 2018 Procurement and Placement of Insurance Services

It is the intent of the City of Vestavia Hills to select an insurance broker to provide insurance placement and value added risk management services to the City of Vestavia Hills for fiscal years 2015 through 2018 (10/1/2014 – 9/30/2017). Selection will be through a review of qualifications based on each responding brokerage’s ability to assist in a number of items in addition to its ability to competitively provide the coverages and services listed in this RFQ. Proposals must be submitted by close of business (5pm CDT) 8/1/2014. Brokers should submit (2) hard copies of their proposal as well as an electronic copy, which may be saved to a storage device or emailed to mhipp@vhal.org. Hard copies should be mailed or delivered to the following address: City of Vestavia Hills, ATTN: City Manager’s Office, 513 Montgomery Highway, Vestavia Hills, AL 35216.

Brokers should provide their proposed annual service fee for each of the three years of the agreement, which should be listed as a global fee but may also provide a breakdown for each particular service proposed to the City (e.g. insurance placement service, loss control service, etc.). The broker should also provide relevant experience, and provide a list of qualifications for providing brokerage for the listed lines of coverage. Services to be included are certificate of insurance production, procurement of notary and public officials bonds, and contract review. Brokers are encouraged to list any other value-added services or information to demonstrate why their firm is best suited to the needs of the City of Vestavia Hills. These value added services may include, but are not limited to, provision of property valuation assistance, loss control services, claims assistance through shared software platforms and/or web-based services, and any other risk management services that would bring value to the City in return for the service fee.

Before the candidate firm is selected, it must meet the City’s standard vendor qualifications by submitting a New Vendor Form, W-9, and E-Verify MOU. It is preferred that all billing is through the brokerage, i.e. invoices are generated by and paid to the brokerage firm rather than the various insurance carriers. Brokers should indicate whether they will be able to perform all billing; in the event the broker will not, it is the candidate broker’s responsibility to obtain the vendor information and provide it to the City. Brokers who fail or who propose carriers who fail to meet the vendor qualifications will not be selected.

The City of Vestavia Hills, Alabama, Current Lines of Coverage Applicable to this RFQ:

Line of Coverage	Carrier	Self-Insured Retention	Limit of Liability	Premium
Public Entity Liability (<i>Commercial General, Law Enforcement, Auto Liability</i>)	States Risk Retention Group*	\$100,000	\$5,000,000/Occurrence \$8,000,000/Aggregate	\$111,372
Public Entity Management Practices Liability (<i>Public Officials, Employment Practices</i>)	States Risk Retention Group*	\$100,000	\$5,000,000/Occurrence \$8,000,000/Aggregate	
Crime	Hartford Fire Insurance	\$10,000	\$700,000 \$50,000 Counterfeit	\$1,515 (10/1/15) Renewal 10/1/2015.
Property	Chubb	\$50,000	\$49,116,812 Agreed Value	\$36,513
Inland Marine (<i>Auto Property</i>)	Atlantic Specialty/One Beacon	\$100,000	\$6,034,346 ACV	\$12,823
Broker’s Fee	J. Smith Lanier			\$16,600

EVALUATION CRITERIA

Proposing firms should supply sufficient information to address the criteria listed below.

Proposer Basic Qualifications

1. Name of firm, name of parent company, years in business, years of relevant business experience.
2. Location of proposing team's office, employees at that office, number of servicing offices, regions, departments, affiliates, etc.
3. List of all personnel (note if *not* full-time) who would be involved in the City of Vestavia Hills account. Include name, job title, full business contact information, responsibilities, insurance experience and credentials. Clearly note in particular who would be the point-of-contact for the following: billing, bonds, certificates and proof of insurance, notice of claim.
4. Financial ratings of firm, disclosure or statement regarding history of defaults, contract terminations, and bankruptcies.
5. Alabama Department of Insurance license number.
6. Responsiveness to City of Vestavia Hills vendor requirements.
7. References: at least three, experience with municipalities/government agencies preferred.
8. Whether firm will perform all billing or whether carriers/third parties will also bill.
9. Organization and/or account structure.
10. Sample agreement.

Insurance and Service Quotations

Upon selection of the successful broker, the City shall immediately begin working with the broker to place coverage for each line of business included below. The successful broker shall include the carrier name and financial ratings, coverage amount, limits, and net premium (less any broker commissions or retainage) considering self-insured retentions of \$100K and \$150K and aggregates if applicable for 10/1/2014-10/1/2015 (FY2015). It is the City's intention to renew its policies annually with an annual renewal date of October 1.

*Note: The City prefers the broad form self-insured option provided by States RRG where that carrier is listed.

1. Public Entity Liability (CGL, LEL).
2. Public Entity Management Practices (POL, EPL).
3. Crime.
4. Property.
5. Inland Marine (property coverage for losses to high value vehicles and equipment) .
6. Bonds, certificates/proof of insurance, and contract review to be included at no additional charge.
7. Exceptions to RFQ must be noted.
8. Additional products and/or services to be included, indicate fees if any.
9. Broker's fee to be listed separately from premium and confirmed for each of the three years applicable for the term of this agreement.

Additional Information

Responding firms are invited to submit additional information which they feel will be helpful in differentiating themselves from other firms, particularly considering they may offer the same types of services. Listed below are suggestions for additional information, but responses are not limited to these items.

1. Describe differentiating qualities of your firm.
2. Percentages of commercial (and/or governmental and non-profit) vs. residential coverage.
3. Preferred carriers.
4. Sample management reports that will be provided to the City.
5. Samples, websites, or visuals of communications, claims management, etc. services that will be available to the City.

(Continued)

*The City of Vestavia Hills reserves the right to waive technicalities or other items associated with this selection process in the best interest of public resources or the business interests of the City. Furthermore, while the brokerage fee is one of the evaluating criteria, it is only one such point of review for the City in determining the ultimate successful proposer.

Thank you for your interest in providing brokerage services for the City of Vestavia Hills. If you have any questions in regards to this RFQ, you may contact Jeffrey Downes, City Manager at jdownes@vhal.org, or his assistant Melissa Hipp at mhipp@vhal.org or 205.978.0152.

Following is an Appendix containing the City's current policies and the New Vendor documents.

APPDENDIX

- A. Public Entity Liability and Public Entity Management Practices Liability Policy
- B. Crime Policy
- C. Property Policy
- D. Auto Policy
- E. City of Vestavia Hills New Vendor Documents



VESTAVIA HILLS

BROKERAGE SERVICE FEE AGREEMENT

THIS AGREEMENT, effective as of _____, is by and between the City of Vestavia Hills ("Client"), a municipal corporation in the State of Alabama, and _____, ("Broker") located at _____, for insurance brokerage services according to its proposal dated _____, ("Proposal") which is attached hereto and made part of this agreement.

1. SCOPE OF SERVICES

The scope of services shall be according to the Proposal and the requirements contained in the Request for Qualifications (RFQ) to which the Proposal was a response. The Proposal and RFQ are attached hereto and made part of this document.

2. BASIS OF COMPENSATION

In consideration of the services provided by Broker, Client will pay Broker an annual Broker's fee of \$_____. The City's premiums will be net of any commission. Any commissions that are not able to be netted out by the carriers will be disclosed upfront and reconciled by a reduction in the Broker's fee by that amount.

In the event the Client elects to secure additional services, the Broker may charge an additional fee as negotiated by the Client and Broker.

The Broker's fee will be billable in _____ periods or annually, at the option of the City. The Broker's fee for the period selected by the City shall be deemed to be fully earned and payable to the Broker at the beginning of the period.

3. TERM OF AGREEMENT

The term of this Agreement is one year, to renew automatically for two additional years unless Cause is found for the Client to terminate the Agreement. While it is the intention of the City (Client) to maintain a secure and healthy long-term relationship with its Broker(s), the City also has the duty to perform due diligence in the use of public funds. Therefore, at the close of the three year period, in any subsequent renewal year, Broker may anticipate participation in the broker selection process for the following multi-year period. Client will give notice to the Broker of at least sixty (60) calendar days prior to the issuance of a request for qualifications (RFQ) for brokerage services subject to this Agreement.

The initial term of this Agreement shall begin 12:00 a.m. CST September 30, 2014 and shall continue in full force until 12:00 a.m. September 30, 2015 to renew automatically except as provided for in this Agreement.

4. TERMINATION OF AGREEMENT

This Agreement will renew annually after the initial term, unless either party gives written notice to the other party of non-renewal at least sixty (60) calendar days prior to the end of the initial term or any renewal term. Termination of the Agreement shall be for Cause. The Client may terminate this Agreement during any renewal term, after the initial term, upon sixty (60) days' written notice to Broker. In the event of any non-renewal or termination of this Agreement, Client has no further obligation to Broker for the remaining terms of this Agreement or extensions thereof.

5. ASSIGNMENT

Neither Client nor Broker shall assign, solicit, or transfer their rights or obligations under this Agreement without prior written consent of the other, and such consent shall not be unreasonably withheld.

6. PROFESSIONAL LIABILITY

Broker shall maintain professional liability coverage for the duration of the agreement and shall provide Client proof of coverage. The limits shall be at minimum \$1,000,000 per occurrence and \$4,000,000 aggregate.

7. CONFIDENTIALITY

Broker acknowledges that information disclosed by the Client to Broker in the course of performing services may be of a sensitive or confidential nature. Broker will not disclose Client information or permit employees or agents to disclose Client information to any person outside its company not having an administrative or technical need to know the information in connection with the performance of duties under this Agreement. This paragraph, however, shall not limit Broker's ability to satisfy any legally required disclosure obligation.

8. CONFLICTS OF INTEREST

Broker shall report immediately to Client any circumstance in which Broker is in a conflict-of-interest and cannot provide the services in accordance with the terms of this Agreement. Promptly thereafter, Broker and Client shall meet to discuss in good faith what steps need to be undertaken with respect to the services and the provision thereof by Broker.

9. PREMIUM/HANDLING OF FUNDS

Client shall provide immediately available funds for payment of premium by the payment dates specified in the insurance policies, invoice, or other payment documents. Failure to pay premium on time may prevent coverage from incepting or result in cancellation of coverage by insurers.

Broker will handle any premiums paid by Client through Broker and any funds which Broker receives from insurers or intermediaries for payment or return to Client in accordance with the requirements or restrictions of applicable state and federal laws and regulations.

In the ordinary course of business, Broker will receive and retain interest on premiums paid by Client from the date funds are received until the Broker pays them to the insurers or intermediaries, or until Broker returns them to Client after Broker receives such funds.

10. AGENCY BILLING and INVOICING

Broker agrees at no additional fee to perform agency billing, i.e. Broker will bill the Client on behalf of the various insurance carriers represented by the Broker. All invoices from the Broker will be itemized with detail provided, and broker fee shall be billed separately from premiums. Supporting documentation as appropriate shall also be provided with invoices.

11. NO AGENCY CREATED

Nothing in this Agreement is intended to create any agency relationship between Broker and Client. No authority is granted to either party to obligate or bind the other party to any contract, agreement, or obligation of any kind, or make representations or warranties, or to act on behalf or in any manner, without the express written authorization of the party to be bound.

12. DOCUMENTATION TO CLIENT

Broker will provide Client with full documentation of policies issued. Both a print and electronic copy of the binder and policy shall be provided from the Broker to the Client immediately following issuance or renewal of a policy. Broker shall also provide a register of policies stating policy numbers, periods, limits, retentions or deductibles, etc.

13. SURPLUS LINES TAXES AND OTHER FEES

In the event that Broker or Broker affiliate procures coverages for Client from a surplus lines insurance company, Client will be responsible for payment of surplus lines taxes on such coverage. Client will also be responsible for payment of surplus lines taxes on such coverage. Client will also be responsible for payment of fees or surcharges required by law. In all such cases, Broker will endeavor to identify such taxes and fees to Client, but the liability for payment of these taxes, fees, and surcharges is assumed by Client.

14. REPORTING CHANGES IN EXPOSURE

Client shall promptly notify Broker with respect to all material changes in exposure and all changes in loss-related information. Broker shall promptly notify the affected insurance companies of such changes.

15. SEVERABILITY

If any part, term, or provision of this Agreement shall be found by a court to be legally invalid or unenforceable, then such provision or portion thereof shall be performed in accordance with applicable laws. The invalidity or unenforceability of any provision or portion of this Agreement shall not affect the validity of the other provisions or portions of this Agreement.

16. AGREEMENT CONSTRUED UNDER STATE LAWS

This Agreement is to be executed and performed in the State of Alabama and shall be construed in accordance with the laws of such State. The language in all parts of the Agreement shall be in all cases construed simply according to its fair meaning.

17. CHANGES TO BE IN WRITING

This Agreement may be amended only by a written agreement executed by both Broker and Client.

18. WAIVERS

The failure of Broker or Client to insist on strict compliance with this Agreement, or to exercise any right(s) hereunder shall not be construed as a waiver of any of the rights or privileges contained herein.

19. ENTIRE AGREEMENT

This Agreement contains the entire understanding of the parties with respect to its subject matter. This Agreement supersedes all prior agreements, arrangements, and understandings between the parties, whether oral or written, with respect to its subject matter.

20. RECORD RETENTION

Broker will retain its records of all matters to this Agreement in accordance with its record retention policy (a copy of which will be made available to Client upon request), and all applicable laws and regulations.

21. IMMIGRATION LAW COMPLIANCE

By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.

CITY OF VESTAVIA HILLS

BROKERAGE AGENCY

Signature Date

Title

Signature Date

Title

Type or Print Name of Authorized Agent

Signature Date

Title

City of Vestavia Hills

August 1, 2014

J.R Prewitt & Associates

2146 Highland Avenue S

Birmingham, AL 35205

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J.R Prewitt & Associates Insurance

About US

With more than 40 years of experience in the insurance industry, J.R. Prewitt & Associates has grown to one of the largest firms in the Birmingham metropolitan area. It services more than 4,000 clients and represents over two dozen insurance carriers.

Since 1974, J.R. Prewitt and Associates has prided itself in being one of the few family-owned agencies, offering a variety of services from life and health, to homeowners and automobile, to professional liability, workers compensation or bonds. Clients range from individuals to professionals such as municipalities, lawyers, accountants, architects and engineers and on to large multi-state operations.

We are committed to understanding the customer's needs and delivering customized services in order to obtain the highest level of client satisfaction. J.R. Prewitt & Associates is able to accomplish this by having a highly personable sales force who are experts in their individual fields.

Our firm currently employs 36 people.

Agency owners are long time Vestavia Hills Residents.

Location

2146 Highland Ave S. Birmingham AL 35205

Our Team

Producer/ Agent

Vice-President
28 years of Experience

John R Prewitt
Direct Phone 205-397-5107
Direct Fax 205-397-5159
jrprewitt@jrprewitt.com

Commercial Operations Manager

Responsible for service issues
34 years of Experience

Linda Tilley
Direct Phone 205-397-5118
Direct Fax 205-397-5168
ltalley@jrprewitt.com

Account Executive

*Responsible for handling service and
Endorsement requests*
8 Years of Experience

Rhona Rivero
Direct Phone 205-397-5109
Direct Fax 205-397-5159
rrivero@jrprewitt.com

Insurance Assistant

Bonds
24 Years of Experience

Janice Williams
Direct Phone 205-397-5131
Direct Fax 205-397-5181
jwilliams@jrprewitt.com

Administrative Assistant

Responsible for Certificates of Insurance
33 Years of Experience

Paula Spivey
Direct Phone 205-397-5102
Direct Fax 205-397-5152
pspivey@jrprewitt.com

Claims Coordinator

*Responsible for reporting claims
And following status until closure*
24 Years of Experience

Cathi Berry
Direct Phone 205-397-5135
Direct Fax 205-397-5185
cberry@jrprewitt.com

J.R Prewitt & Associates Insurance

Financial Rating

We are an independently owned company and do not have a public financial rating. We have had no history of default, contract termination or bankruptcies.

Alabama Department of Insurance License

STATE OF ALABAMA
 License No: 0079602 DEPARTMENT OF INSURANCE FEIN: 63-0676171
J. R. PREWITT & ASSOCIATES, INC

has fulfilled all of the conditions of eligibility imposed by the State of Alabama, Title 27, Code of Alabama and is hereby licensed/registered by this state, in the capacity stated below, and granted the privilege to act with the authority of this license. It shall be valid until expired, cancelled, surrendered or revoked.

LICENSE TYPE	LINES OF AUTHORITY	LOA EFFECTIVE DATE	EFFECTIVE DATE	EXPIRATION DATE
Pmduccr	Life	01/01/1996	01/01/2013	12/31/2014
	Accident & Health or Sickness	01/01/1996		
	Property	01/01/1996		
	Casualty	01/01/1996		
Surplus Line Broker			01/01/2013	12/31/2013

This license shall remain in effect until the expiration date unless cancelled, surrendered or revoked. Individuals who are licensed as Insurance Producers and Service Representatives must complete continuing education and pay all applicable renewal fees as required by Alabama administrative code prior to the expiration date.

References

City of Graysville	Mayor. Mary Sue Morgan
City of Mountain Brook	Steve Boone / Sam Gaston
City of Trussville	Lynn Porter

Further references furnished on request.

Organization and / or Account structure

Account will be serviced locally by the team members outlined on the previous page.

Annual Service Fee	\$7,500
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Services Included:

- Placement of Crime, Property & Inland Marine policies.
- Assist the City Manager in the negotiations for the States Risk Retention Group renewal.
- Evaluate current property schedule for correct replacement cost valuations.
- Certificate of Insurance production.
- Procurement of all Bonds.
- Contract Review.
- Claims assistance & monitoring through our dedicated claims analyst.
- Coordination of Loss Control services and requirements through the various dedicated loss control representatives.

Why J.R Prewitt & Associates

Understanding that the City would like to continue its relationship with the State's Risk Retention Group and the City Manager's close relationship with their staff, we believe that the renewal process will be very straightforward. We will assist with the negotiations on those policies as well as procure additional proposals from alternate carriers on the other lines of business.

The agency currently insures over twenty (20) government and/or municipal clients. We believe the biggest reason for selecting J.R. Prewitt & Associates is not what we will do for the City, but what we have proven we can do for the City. We are currently in our third year of administering your group benefits services which resulted in a \$12,000 per year savings. Two years ago we implemented a new workers compensation program that provided increased services and benefits while reducing the cost to the city by over \$ 100,000 per year.

Thank you very much for this opportunity. Please let us know if we can answer any questions or provide additional information.

J.R Prewitt & Associates Insurance

Preferred Carriers:

Auto Owners

C.N.A

Chubb

FCCI

Frankenmuth

Liberty Mutual

One Beacon

Penn National

State Auto

The Hartford

Travelers

Zurich

ORDINANCE NUMBER 2528

AN ORDINANCE FINDING AND DETERMINING THAT REAL PROPERTY (“THE SCHOOL PARCEL”) BEING VACANT PROPERTY SITUATED AT “THE SCHOOL PARCEL” AT PATCHWORK FARMS, VESTAVIA HILLS, ALABAMA OWNED BY THE VESTAVIA HILLS BOARD OF EDUCATION BUT UNDER CONTRACT TO PURCHASE BY THE CITY OF VESTAVIA HILLS, ALABAMA IS NOT NEEDED FOR PUBLIC OR MUNICIPAL PURPOSES; TO DECIDE WHETHER OR NOT THE EXCHANGE OF PROPERTY WITH NORTHPORT HOLDING LLC, A DELAWARE LIMITED LIABILITY COMPANY (“NORTHPORT”) PURSUANT TO A PROJECT DEVELOPMENT AND EXCHANGE AGREEMENT BETWEEN THE CITY OF VESTAVIA HILLS, ALABAMA AND NORTHPORT, WILL PROMOTE THE ECONOMIC DEVELOPMENT OF THE CITY; WILL SERVE AS A VALID AND SUFFICIENT PUBLIC PURPOSE NOTWITHSTANDING ANY INCIDENTAL BENEFIT ACCRUING TO ANY PRIVATE ENTITY OR ENTITIES; AND WILL BENEFIT THE PUBLIC AND PROMOTE THE PUBLIC WELFARE OF THE CITY OF VESTAVIA HILLS; AND TO AUTHORIZE AND DIRECT THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER THE AGREEMENT.

THIS ORDINANCE NUMBER 2528 is approved and adopted by the City Council of the City of Vestavia Hills, Alabama on this the 25th day of August, 2014.

WITNESSETH THESE RECITALS:

WHEREAS, the Vestavia Hills Board of Education owns a 22+/- acre site known as the “School Parcel at Patchwork Farms” and

WHEREAS, on July 14, 2014, the City Council of the City of Vestavia Hills, adopted and approved Resolution Number 4606 authorizing the Mayor and City Manager to execute and deliver an Agreement of Purchase and Sale (“Agreement) with the Vestavia Hills Board of Education for the purchase and ultimate development of the “School Parcel” at Patchwork Farms located along Caldwell Mill Road in the City of Vestavia Hills, Jefferson County, Alabama constituting of approximately 22.19± acres, which a copy of said Agreement and legal description of property is marked as “Exhibit A” and is attached to and incorporated into this Ordinance Number 2528 as though written fully therein; and

WHEREAS, the City Council hereby acknowledges that the purpose of this purchase is for the ultimate economic development of the Patchwork Farms PUD; and

WHEREAS, Northport, the owner of Lot 1C, Patchwork Farms Lot 1 Resurvey Final Plat as recorded in Map Book 235, Page 45 in the Office of the Judge of Probate of Jefferson

County, Alabama, has cooperated with the City in a property exchange to relocate a proposed skilled-nursing facility from the presently owned property (Lot 1C) to a portion of the “School Parcel” and

WHEREAS, a Project Development and Exchange Agreement between the City of Vestavia Hills, Alabama and Northport Holding, LLC (hereinafter referred to collectively as the “Agreement”) has been presented, a copy of said Agreement is marked as “Exhibit B” and is attached to and incorporated into this Ordinance Number 2528 as though fully written therein; and

WHEREAS, the Mayor and City Council of the City of Vestavia Hills, Alabama find and determine that the Property described in Exhibit B is not needed for municipal or public purposes; and

WHEREAS, the execution and delivery of the Agreement was considered at a public hearing held on Monday, August 25, 2014, at the Vestavia Hills Municipal Center located at 513 Montgomery Highway in the City of Vestavia Hills, Alabama beginning at 5:00 p.m.; and

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

1. The City Council of the City of Vestavia Hills, Alabama finds and determines that the Property more particularly described in Exhibit B is under contract to purchase from the Vestavia Hills Board of Education and, once the sale is closed, that the property is not needed for municipal or public purposes.

2. A public hearing was held by the Vestavia Hills City Council on Monday, August 25, 2014, at the Vestavia Hills Municipal Center located at 513 Montgomery Highway in the City of Vestavia Hills, Alabama beginning at 5:00 p.m to consider the enactment of this Ordinance, the execution and delivery of the Agreement and the matters required to be considered.

3. The City finds and determines that the exchange of the above-described property with Northport pursuant to the terms and conditions in said Agreement, will:

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

(b) Serve as a valid and sufficient public purpose; and

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

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

4. The Mayor and City Manager are hereby authorized and directed to execute and deliver the written Project Development and Exchange Agreement between City of Vestavia Hills and Northport Holding LLC marked as Exhibit B and attached hereto.

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. The provision of the Ordinance shall become effective immediately upon the passage and approval thereof by the City Council of the City of Vestavia Hills, Alabama and the publication and/or posting thereof as required by Alabama law.

DONE, ORDERED, APPROVED and ADOPTED, on this the 25th day of August, 2014.

Mayor Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as Acting City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2528 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 25th day of August, 2014 as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills Library in the Forest, New Merkle House and Vestavia Hills Recreational Center this the _____ day of _____, 2014.

Rebecca Leavings
City Clerk

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE (this "Agreement") is entered into as of July 31, 2014 (the "Effective Date") by and between **THE BOARD OF EDUCATION OF THE CITY OF VESTAVIA HILLS, ALABAMA** ("Seller"), and **CITY OF VESTAVIA HILLS, ALABAMA**, an Alabama municipal corporation ("Purchaser").

WHEREAS, Seller is the owner of a certain parcel of real estate located in Jefferson County, Alabama, which is comprised of approximately 22.19 acres and which is more fully described on Exhibit A attached hereto and made a part hereof (said parcel of land, together with all improvements thereon and all rights, including appurtenances pertaining thereto, is hereinafter referred to as the "Property");

WHEREAS, the Property is a part of the proposed Patchwork Farms mixed use development ("Patchwork Farms"), and in furtherance of the development of Patchwork Farms, Purchaser and Daniel Realty Company, LLC, an Alabama limited liability company ("Daniel"), have entered into that certain Master Development and Brokerage Services Agreement dated April 30, 2014 (the "Patchwork Development Agreement"); and

WHEREAS, in connection with its efforts to develop Patchwork Farms, Seller desires to sell, and Purchaser desires to purchase, the Property.

NOW THEREFORE, the parties hereto agree as follows:

1. **Purchase and Sale**. For and in consideration of One and No/100 Dollars (\$1.00) in hand paid by Purchaser to Seller and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Seller, Seller agrees to sell, and Purchaser agrees to purchase, all (and not less than all) of the Property for the Purchase Price (as defined below) and on the terms and conditions hereinafter set forth.

2. **Purchase Price**. The purchase price for all of the Property shall be Three Million Four Hundred Eighty-Three Thousand Eight Hundred Sixty-Eight and 12/100 Dollars (\$3,483,868.12) (the "Purchase Price"). The Purchase Price shall be paid to Seller in cash at Closing, subject to the adjustments and prorations set forth below.

3. **Closing**.

(a) Subject to the terms and provisions of Section 3(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 Purchaser, 513 Montgomery Highway, Vestavia Hills, Alabama 35216 at 10:00 a.m. Central Standard/Daylight Savings Time on the date selected by Purchaser on or before one hundred eighty (180) days following the Effective Date (the "Closing Date").

(b) Purchaser shall have the right to extend the Closing Date for three (3) additional six (6) month periods each (collectively, the "Extensions") as follows:

(i) Purchaser may extend the Closing Date for an additional 180-day period (thereby extending the Closing Date to the date which is 360 days following the Effective Date (the "First Extended Closing Date")) by (1) providing Seller with written notice of its election to extend the Closing Date on or before the initial Closing Date and (2) remitting to Seller the additional sum of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) (the "First Extension Fee");

(ii) Purchaser may extend the Closing Date, as extended to the First Extended Closing Date, for an additional 180-day period (thereby extending the Closing Date to the date which is 540 days following the Effective Date (the “Second Extended Closing Date”)) by (1) providing Seller with written notice of its election to extend the Closing Date on or before the First Extended Closing Date and (2) remitting to Seller the additional sum of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) (the “Second Extension Fee”); and

(iii) Purchaser may extend the Closing Date, as extended to the Second Extended Closing Date, for an additional 180-day period (thereby extending the Closing Date to the date which is 720 days following the Effective Date) by (1) providing Seller with written notice of its election to extend the Closing Date on or before the Second Extended Closing Date and (2) remitting to Seller the additional sum of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) (the “Third Extension Fee”).

(c) Purchaser shall provide to Seller at least five (5) days prior written notice of the Closing Date selected by Seller for the Closing. To the extent paid by Purchaser to Seller, the First Extension Fee, the Second Extension Fee and the Third Extension Fee (collectively, the “Extension Fees”) shall be applied to the Purchase Price payable by Purchaser to Seller at the Closing.

(d) In the event Purchaser fails to timely exercise any of the Extensions and deposit the applicable Extension Fees with Seller, Purchaser shall be deemed to have irrevocably elected to cancel and terminate this Agreement in which event all Extension Fees, if any, previously deposited by Purchaser with Seller shall be retained by Seller and except for any indemnification and other obligations of Purchaser under this Agreement which expressly survive the termination of this Agreement, neither party shall have any further obligations or liabilities to the other hereunder.

4. Master Development Rights.

Seller shall have the right to approve the master plan (the “Master Plan”) to be developed for Patchwork Farms, which shall include appropriate limits on density, land use and related restrictions, and will be submitted to Purchaser and Seller for approval. The Closing is expressly conditioned upon the following: (i) the Master Plan must be completed and approved by the Purchaser and Seller and (ii) restrictive covenants approved by Seller and consistent with the provisions of the Master Plan must have been recorded encumbering all of the property comprising Patchwork Farms, either through a separate document or an amendment to The Patchwork Farm Commercial Declaration of Covenants, Conditions and Restrictions dated April 4, 2012 and recorded in Bk: LR201212, Page 19387 in the Office of the Judge of Probate of Jefferson County, Alabama (the “Declaration”). With the approval of Seller, the Declaration shall be amended to add the Property to the terms and provisions thereof and shall be the form of the restrictive covenants for the Patchwork Farms (other than the five (5) single-family lots within Patchwork Farms which Purchaser has previously sold to a third party purchaser and which are subject to separate restrictive covenants). Purchaser and Seller agree to cooperate to facilitate the adoption of any amendments or modifications as may be necessary to the current PUD zoning ordinance for Patchwork Farms and the related restrictive covenants required to support the development of the approved Master Plan.

5. Other Opportunities; Right of First Refusal.

(a) Seller may, at any time prior to the Closing, accept a bona fide offer from a third party to purchase the Property, on such terms as it shall consider appropriate in its sole discretion (the transfer contemplated by such an acceptance being herein referred to as a “Proposed Sale”).

(b) If Seller receives a bona fide offer for a Proposed Sale that it intends to accept, Seller shall first give Purchaser written notice (a "Right of First Refusal Notice") of the terms of any Proposed Sale. Purchaser shall have five (5) days after its receipt of the Right of First Refusal Notice to give written notice to Seller of its election to either:

(i) Purchase the Property on the terms of the Proposed Sale, including without limitation a purchase price equal to the purchase price of the Proposed Sale; or

(ii) Not purchase the Property.

(c) Purchaser shall be deemed to have elected its alternative under subsection (c)(ii) above upon its failure to give to Seller written notice of its election under subsection (c)(i) above within such five (5) day period, in which case Seller shall be free to consummate the Proposed Sale free and clear of this Agreement, and upon such closing, this Agreement shall terminate.

(d) Notwithstanding anything herein to the contrary, the right of first refusal granted to Purchaser shall expire on the date this Agreement expires or is terminated.

6. **Notice.** Any notices required of either party under this Agreement shall be delivered in person or by a prepaid nationally recognized courier service, addressed to the other party at the address given in this Agreement, and the same shall be deemed to have been received on the day it is delivered, or on the day of refusal to accept delivery. Notices required under this Agreement shall be sent to the following addresses:

If to Seller:

The Board of Education of the City of Vestavia Hills, Alabama
1204 Montgomery Highway
Vestavia Hills, AL 35216-2810
Attention: Superintendent

If to Purchaser:

The City of Vestavia Hills, Alabama
513 Montgomery Highway
Vestavia Hills, AL 35216
Attention: City Manager

7. **Title; Deed.** At the Closing, Seller agrees to convey the Property to Purchaser by a duly executed and acknowledged statutory warranty deed (the "Deed") which shall be subject to the following (collectively, the "Permitted Exceptions"): (i) ad valorem taxes for the then current year, (ii) easements, covenants and other encumbrances of record, (iii) the current zoning classification, (iv) mineral and mining rights not owned by Seller, and (v) matters that would be disclosed by a current survey of the Property.

8. **Default.**

(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 any Extension Fees paid to Seller shall be

promptly returned to Purchaser, this Agreement shall be deemed canceled and terminated and, except for the indemnification and other obligations of Purchaser which expressly survive the termination of this Agreement, 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 any Extension Fees, if any, paid by Purchaser to Seller shall be retained by Seller as liquidated damages in which event this Agreement shall automatically be deemed terminated and canceled and, except for the indemnification and other obligations of Purchaser which expressly survive the termination of this Agreement, 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 any Extension Fees, if any, paid to Seller by Purchaser as its total damages and relief hereunder in the event Purchaser fails to close the purchase and sale transaction contemplated herein.

9. **Intentionally Deleted.**

10. **Taxes.** The Property is exempt from ad valorem taxes and there shall be no proration of ad valorem taxes for the Property at the Closing.

11. **Condition of Property; Property Purchased "As-Is".** The Property shall be sold and conveyed "as is" and "with all faults", and Seller has not made, does not make, and hereby disclaims any and all express or implied representations and warranties regarding or relating to the condition, suitability for any particular purpose, susceptibility to flooding, value, marketability, zoning of the Property, or with respect to use and occupancy restrictions, compliance with environmental laws and laws and regulations relating to hazardous substances, toxic wastes and underground storage tanks, and all legal requirements affecting or relating to the Property. Purchaser acknowledges that (i) Purchaser is not relying on any warranties or representations with respect to the physical condition of the Property or with respect to the operations of the Property; and (ii) Purchaser is not relying on any information provided by Seller, and that Purchaser has made, or will make prior to the Closing Date, an independent investigation of all matters relating to the Property and the ownership and operation of the Property. The terms and covenants of this Section 11 shall survive the Closing or any termination of this Agreement.

12. **Transfer Costs; Title Insurance.** Each party shall pay its respective attorney's fees. Purchaser shall pay for the cost of obtaining an owner's title insurance policy, the cost of an ALTA survey, if required by Purchaser, and all recording and documentary fees and taxes resulting from the conveyance of the Property.

13. **Assignment.** Purchaser may not assign this Agreement or any of its rights hereunder without the express written consent of Seller. Any assignment in violation of the restriction on assignment in this Section 13 shall be void and of no force and effect. Notwithstanding the forgoing, Purchaser may assign all of its rights hereunder to Daniel or a wholly owned subsidiary of Daniel. In no event shall Purchaser be released from its duties and obligations hereunder unless expressly released in writing by Seller.

14. **Inspection.** Upon execution of this Agreement, Purchaser is hereby granted the right to enter onto the Property from time to time for the purpose of inspecting the Property; provided, however,

that Purchaser shall conduct no invasive testing, investigations, or evaluations on the Property without the prior written consent of Seller. In performing its inspections, Purchaser agrees not to damage the Property and shall indemnify, defend and hold Seller, its successors, assigns, officers, employees and agents, harmless from and against any cost, claim, loss, liability, judgment, lien or other expense, including attorney fees and for bodily injury, personal injury, death or property damage, which shall arise as a consequence of Purchaser's exercise of its rights under this Agreement. This indemnity shall survive the Closing or the termination of this Agreement. In the event Purchaser fails to close the transaction contemplated herein for any reason, upon request by Seller, Purchaser shall furnish, at no cost to Seller, copies of all surveys, soil test results, engineering, environmental and other studies and reports relating to Purchaser's inspections of the Property, which obligation shall survive the termination of this Agreement.

15. **Authority.** Seller represents and warrants, to and for the benefit of Purchaser that Seller has the authority and power to convey the Property in accordance with the terms of this Agreement and the individuals signing this Agreement and all documents executed or to be executed by Seller are and shall be duly authorized to sign the same on Seller's behalf and bind Seller thereto.

16. **Brokerage; Real Estate Commissions.** Purchaser shall pay all real estate commissions, broker's commissions, and other related fees and expenses owing to Daniel under the Patchwork Development Agreement, if any, resulting from the Closing of the transaction contemplated by this Agreement. Seller shall pay to Daniel, at Closing, a closing fee of One Hundred Fifty Thousand and No/100 Dollars (\$150,000) if and only if the Closing occurs between Seller and Purchaser pursuant to the terms of this Agreement. Purchaser and Seller each represent and warrant to the other that, except for Daniel, such party has dealt with no other broker, agent or other person in connection with this transaction and that no broker, agent or other person other than the foregoing brought about this transaction, and Purchaser and Seller agree to indemnify and hold the other party harmless from and against any claim by any other broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with such party with regard to this transaction. The terms and covenants of this Section 16 shall survive the Closing or any termination of this Agreement.

17. **Governing Law.** The terms and conditions of this Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of Alabama.

18. **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the transactions provided for herein, and the parties hereto agree that no other representations have been made by either party.

19. **Time is of the Essence.** Time is of the essence of this Agreement and of the performance of each and every covenant contained herein.

20. **Successors and Assigns.** This agreement shall be binding upon the personal representatives, executors, administrators, heirs and assigns of Seller, and inure to the personal representatives, executors, administrators, heirs and assigns of Purchaser.

21. **Possession.** Possession of the Property shall be given on the Closing Date, free of any tenancy, leases or rights of occupancy other than any such rights arising out of the Permitted Exceptions.

IN WITNESS WHEREOF, the parties have executed or caused this Agreement to be executed by their duly authorized representative as of the Effective Date.

SELLER:

**THE BOARD OF EDUCATION OF THE CITY OF
VESTAVIA HILLS, ALABAMA**

By: Sheila Phillips
Name: SHEILA PHILLIPS
Its: Superintendent

By: Kym Prewitt
Name: Kym Prewitt
Its: Board of Ed. President

PURCHASER:

THE CITY OF VESTAVIA HILLS, ALABAMA

By: Jeffrey Downes
Name: Jeffrey Downes
Its: City Manager

By: Alberto C. Zaragoza, Jr
Name: Alberto C. Zaragoza, Jr
Its: Mayor

EXHIBIT A

(Legal Description of Property)

A parcel of land situated in the NW ¼ of Section 34, Township 18 South, Range 2 West, Jefferson County, Alabama, Birmingham Division, being more particularly described as follows: Begin at the Northwest corner of the SE ¼ of the NW ¼ of Section 34, Township 18 South, Range 2 West, being a found 3" capped pipe; thence in a Southerly direction along the West line of said ¼-¼ section a distance of 324.26 feet to a 2" capped pipe found; thence 53 degrees 35'00" to the left in a Southeasterly direction a distance of 714.00 feet to a 2" pipe found; thence 131 degrees 38'56" to the left in a Northwesterly direction a distance of 199.55 feet to a 2" capped pipe found; thence 87 degrees 53'00" to the right in a Northeasterly direction a distance of 633.40 feet to a GSA capped rebar found on the Westerly right of way line of Old Caldwell Mill Road, being the P.C. (point of curve) of a curve to the left having a radius of 1884.86 feet and a central angle of 6 degrees 26'44"; thence 60 degrees 05'11" to the left (angle measured to tangent) in a Northeasterly direction along the arc of said curve and along the Westerly right of way line of said Old Caldwell Mill Road a distance of 212.04 feet to a GSA capped rebar found being the P.T. (point of tangent); thence tangent to said curve in a Northeasterly direction and along the Westerly right of way line of said Old Caldwell Mill Road a distance of 64.91 feet to a GSA capped rebar found, being the P.C. (point of curve) of a curve to the left having a radius of 188.59 feet and a central angle of 57 degrees 02'48"; thence in a Northeasterly, Northerly and Northwesterly direction along the arc of said curve and along the Westerly right of way line of said Old Caldwell Mill Road a distance of 187.77 feet to a WSE capped rebar set, being the P.T. (point of tangent) of said curve; thence tangent to said curve in a Northwesterly direction and along the Southerly right of way line of said Old Caldwell Mill Road a distance of 146.63 feet to a GSA capped rebar found, being the P.C. (point of curve) of a curve to the left having a radius of 379.44 feet and a central angle of 20 degrees 23'12"; thence in a Northwesterly direction along the arc of said curve and along the Southerly right of way line of said Old Caldwell Mill Road a distance of 135.01 feet to a GSA capped rebar found; being the P.T. (point of tangent); thence tangent to said curve in a Northwesterly direction and along the Southerly right of way line of said Old Caldwell Mill Road a distance of 134.32 feet to a GSA capped rebar found, being the P.C. (point of curve) of a curve to the right having a radius of 2637.29 feet and a central angle of 3 degrees 21'00"; thence in a Northwesterly direction along the arc of said curve and along the Southerly right of way line of said Old Caldwell Mill Road a distance of 154.20 feet to a GSA capped rebar found, being the P.T. (point of tangent); thence tangent to said curve in a Northwesterly direction and along the Southerly right of way line of said Old Caldwell Mill Road a distance of 226.04 feet to a WSE capped rebar set; thence 0 degrees 45'28" to the right in a Northwesterly direction and along the Southerly right of way line of said Old Caldwell Mill Road a distance of 148.81 feet to a GSA capped rebar found; thence 80 degrees 15'29" to the left in a Southwesterly direction (leaving said right of way line) a distance of 689.17 feet to the Point of Beginning.

**PROJECT DEVELOPMENT AND EXCHANGE AGREEMENT
BETWEEN CITY OF VESTAVIA HILLS, ALABAMA
AND NORTHPORT HOLDING, LLC**

THIS PROJECT DEVELOPMENT AND EXCHANGE AGREEMENT (this “Agreement”) is hereby made and entered into as of the ___ day of _____, 2014 by and between **CITY OF VESTAVIA HILLS, ALABAMA**, an Alabama municipal corporation (the “City”), and **NORTHPORT HOLDING, LLC**, a Delaware limited liability company (“Northport”).

RECITALS:

WHEREAS, the City desires to support and encourage economic development within the City in order to develop and maintain a strong local economy, increase employment opportunities, broaden the City’s tax base and increase revenues in order to provide necessary services to the residents of the City, thus improving the quality of life for its residents; and

WHEREAS, the City has developed, and proposes to further develop, into a mixed-use subdivision a tract of land having approximately 60 acres situated along and adjacent to Cahaba River Road and Caldwell Mill Road within the boundary of the City in Jefferson County, Alabama; and

WHEREAS, the City has heretofore entered into an agreement to purchase (the “BOE Agreement”) from the Vestavia Hills Board of Education (the “BOE”) certain real property owned by BOE and situated in Jefferson County, Alabama, which real property includes that certain real property (the “City Property”) which is more particularly shown as “Lot A” on Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, Northport is the owner of that certain real property (the “Northport Property”) situated in Jefferson County, Alabama which is more particularly described in Exhibit B attached hereto and incorporated herein by reference; and

WHEREAS, the City desires to transfer and convey to Northport the City Property, subject to and upon the terms and conditions hereinafter set forth, and Northport desires to transfer and convey the Northport Property to the City, subject to and upon the terms and conditions hereinafter set forth. The City and Northport desire that the City Property and the Northport Property (collectively, the “Property”) be transferred and exchanged as a like-kind exchange which will qualify as an exchange under Section 1031 of the Internal Revenue Code of 1986, as amended; and

WHEREAS, Northport intends to develop the Property to construct a 120-bed skilled nursing facility (the “Project”) pursuant to Certificate of Need No. 2003 –NH (Project No. AL2012-06) issued by the Alabama State Health Planning and Development Board; and

WHEREAS, the City proposes to provide certain economic incentives for the benefit of the Project under a separate Special Economic Development Agreement (the “Economic Development Agreement”) with Northport substantially in the form attached hereto as Exhibit D and incorporated herein by reference under the authority of Amendment No. 772 of the Constitution of Alabama

(1901) (Section 94.01(a)(3) of the Recompiled Constitution of Alabama which authorizes the City to enter into agreements for the purpose of promoting economic development within the City; and

WHEREAS, the City further finds and determines that completion of the Project will be of significant economic benefit to the City and its Board of Education through the generation of new and additional school taxes, sales taxes, business license fees, permit fees and ad-valorem taxes; and

WHEREAS, following careful consideration and review, the City has determined that completion of the Project in accordance with said plans, specifications, and undertakings and with the terms of this Agreement are in the best interest of the City, as the Project will result in, among other things, an expansion and enhancement of the City's economic and tax base, an increase in employment opportunities; and

WHEREAS, the City and the Northport desire to memorialize the terms, conditions, and mutual obligations that comprise this Agreement.

NOW, THEREFORE, in consideration of mutual covenants, promises and agreements hereinafter set forth, the parties do hereby agree as follows:

1. **Exchange of Properties.**

(a) Subject to the satisfaction of the Conditions, as defined in Paragraph 4 below, the City agrees to transfer and convey to Northport at the Closing, as hereinafter defined, the City Property pursuant to a statutory warranty deed (the "Deed") substantially in the form attached hereto as Exhibit C and incorporated herein by reference.

(b) Subject to the satisfaction of the Conditions, Northport agrees to transfer and convey to the City at the Closing the Northport Property pursuant to a Deed substantially in the form attached hereto as Exhibit C.

(c) The exchange contemplated herein shall occur on the Closing Date, as hereinafter defined.

2. **Title Insurance and Survey.**

(a) Within 14 days from the date hereof, the City shall obtain (and provide to Northport) title insurance commitments (together with copies of all documents referenced therein as being title exceptions) for the issuance of owner's title insurance policies by Land Title Company of Alabama, as agent for Chicago Title Insurance Company (the "Title Company"), in the name of Northport with respect to the City Property and in the name of the City with respect to the Northport Property, each in the amount of \$_____, covering title to the City Property and the Northport Property, respectively, at a date not earlier than the date hereof, indicating that fee simple title to the City Property is vested in the BOE and fee simple title to the Northport Property is vested in Northport, each of which shall be free and clear of all liens and encumbrances except as otherwise provided in each such title insurance commitment or as otherwise provided in this Agreement.

(b) Each of the City and Northport covenants and agrees with the other that each of them will (i) satisfy all of the requirements set forth in Schedule B-I of the respective title insurance commitment issued for the benefit of the other party pursuant to Paragraph 2(a) above, and (ii) remove, at such party's sole expense, any of the following title matters or exceptions affecting the real property owned by such party which will be transferred and conveyed to the other party pursuant to the terms and provisions of this Agreement: (1) any mortgages, mechanics' or materialmen's liens or other encumbrances encumbering such real property, (2) any other monetary liens or judgments filed with respect to such real property and (3) any matters of title created by such party at any time after the date of issuance of the title insurance commitment for such real property; provided, however, that the foregoing shall not apply to real estate ad valorem taxes for the current tax year and all subsequent tax years thereafter, the CC&Rs, as hereinafter defined, and any assessments thereunder, the Restrictive Covenants, as hereinafter defined, any matters set forth on the Subdivision Plat, as hereinafter defined, and the terms and provisions of the PUD Plan, as hereinafter defined.

(c) Within fourteen (14) days from the date hereof, the City shall obtain (and provide to Northport) a current boundary survey of the City Property (the "Survey"). In connection with the preparation of the Survey, Northport agrees to provide to the City its site plan for the improvements contemplated to be constructed by Northport on the City Property. The Survey shall (i) set forth the legal description of the City Property, (ii) set forth the gross square footage and gross acreage of the City Property (rounded to the nearest 1/1000th of an acre), and (iii) must be approved by Northport, which approval shall not be unreasonably withheld or delayed. Following the approval by Northport of the Survey, the City shall, at the City's sole cost and expense, obtain from Goodwyn, Mills and Cawood, Inc. ("GMC") a subdivision plat (the "Subdivision Plat") of the City Property which shall be in substantial conformity with the Survey approved by Northport and shall satisfy all applicable subdivision requirements of the Planning and Zoning Commission of Seller (the "Planning Commission"). The form of the Subdivision Plat must be submitted to Northport during the Inspection Period for review and approval, which approval shall not be unreasonably withheld or delayed. If, for any reason, Northport fails to disapprove the form of the Subdivision Plat by providing to the City written notice of disapproval within 14 days following Northport's receipt of the Subdivision Plat, then the form of the Subdivision Plat shall be deemed approved by Northport.

3. Inspection Period.

(a) Subject to each party satisfying the requirements set forth in Paragraph 3(d) below, during the period of time beginning on the date hereof and ending on the Closing Date, as hereinafter defined (the "Inspection Period"), the City grants to Northport, its authorized agents and employees, as well as others authorized by Northport, and Northport grants to the City, its authorized agents and employees, as well as others authorized by the City, at their respective sole cost and expense, to enter upon the City Property and the Northport Property, respectively, and conduct such tests, evaluations, inspections, investigations and reviews (collectively, the "Inspections") as each party may desire. The Inspections may include, without limitation, reviewing and approving the title commitments to each Property, the Survey and the Subdivision Plat, obtaining all necessary consents and approvals for any proposed development on each respective of

proposed development plans for the applicable Property to be acquired by such party, obtaining any and all consents and approvals which may be required from any governmental authorities or agencies to acquire the applicable Property to be acquired by such party hereunder, evaluating and/or conducting all architectural, engineering, topographical, geological, survey, floodway, soil, surface, subsurface, environmental, storm water drainage, traffic, utility availability, zoning and subdivision inquiries, determining and being satisfied with the financial feasibility of acquiring and developing the applicable Property to be acquired by such party, and otherwise conducting and performing all other tests and evaluations affecting the applicable Property to be acquired by such party as such party may require. Each party covenants and agrees to promptly repair any physical damage to the Property owned by the other party caused by, arising out of or resulting from any of the Inspections conducted by such party. To the extent permitted by law, each of the City and Northport does hereby indemnify, agree to defend and hold the other harmless from and against any and all claims, costs, expenses and liabilities, including reasonable attorneys' fees and expenses, suffered, paid or incurred by the other party arising out of or by virtue of (i) any injury or damage to person (including death) or property caused by any act or omission of the City or Northport, respectively, or any of their respective agents, employees, representatives or contractors in conducting or performing any of the Inspections undertaken by such indemnifying party, (ii) the failure to pay all bills, invoices, costs and other charges relating to the Inspections undertaken by such indemnifying party and (iii) the failure to repair and replace any damage to the applicable Property of the other party caused by, resulting from or arising out of any of the Inspections undertaken by such indemnifying party. The indemnification obligations set forth herein shall survive the Closing or the termination and cancellation of this Agreement.

(b) Each party covenants and agrees to provide to the other party within 14 days from the date of this Agreement (and within 14 days after receipt of any of the following documents, instruments and agreements obtained by or provided to either party after the date of this Agreement), without warranty as to the contents thereof, any and all documents, instruments and agreements in such party's possession or control (or obtained or provided to such party at any time after the date of this Agreement) relating to the Property, including, without limitation, surveys, title insurance commitments and policies, environmental studies, soils reports and topographic surveys (collectively, the "Property Information"). Each party acknowledges and agrees that the Property Information provided by the other party or the agents, employees or representatives of the other party shall be and is provided without warranty as to any of the matters set forth therein and each party hereby acknowledges and agrees that no warranties, either express or implied, shall be deemed to have been given or made by the other party or the agents, employees or representatives of the other party as to the content, authenticity, truthfulness, correctness or otherwise with respect to any of the Property Information. In the event the Closing hereunder does not occur for any reason, each party agrees to return to the other party all of the Property Information received from the other party.

During the Inspection Period, the parties agree to establish a schedule for milestones to be satisfied, which schedule shall include without limitation, the status of the preparation of the Preliminary Plans, as hereinafter defined (including, specifically, the utility plans and any and all governmental approvals required in connection with the utility plans), the status of the Infrastructure Work, as hereinafter defined, and the status of the Conditions, as hereinafter defined. Thereafter, during the Inspection Period, the parties agree to either meet or hold telephone conferences at weekly intervals to review the schedule and assist each other in attempts to satisfy all milestones set forth in such schedule.

(c) To the extent the Closing does not occur for any reason, each party agrees to deliver to the other party copies of any and all title insurance commitments, surveys, topographic surveys, reports, investigations, engineering reports, environmental reports, soils reports, and other documentation and information relating to the Property obtained by such party during the Inspection Period.

(d) Prior to entry upon the Property, each party shall deliver to the other party a certificate of insurance confirming that such party maintains commercial general liability insurance with limits of at least One Million Dollars (\$1,000,000.00) for bodily or personal injury or death, and property damage, which shall include, to the extent available, contractual liability insurance with respect to such party's indemnification obligations under this Agreement, naming the other party as an additional insured thereunder, which commercial general liability insurance policy shall remain in full force and effect until the earlier of either the Closing or the termination of this Agreement.

(e) Except for the Infrastructure Work, as defined in the Economic Development Agreement, each party acknowledges and agrees that (i) neither party has made, and neither party makes, any covenant, representation or warranty, either express or implied, regarding the physical condition of the applicable Property owned by such party, the suitability of the applicable Property owned by such party for any particular purpose or use whatsoever, utility availability for any portion of 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 the contemplated use thereof, (ii) each party has been given the absolute and unfettered right during the Inspection Period to conduct such Inspections of the Property to be acquired by such party pursuant to this Agreement which such party, in its sole discretion, may determine necessary in order to satisfy itself of all conditions and other aspects of the Property to be acquired by such party and (iii) each party 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 which it will acquire pursuant to this Agreement as well as to all economic conditions, suitability requirements and all other matters affecting the use, development and ownership of the Property to be acquired by such party pursuant to this Agreement. Except as provided in Paragraph 9 below with respect to the Infrastructure Work, each party acknowledges and agrees that the Property is to be sold and conveyed to, and accepted by, Northport in its present condition, "AS IS, WHERE IS AND WITH ALL FAULTS", and each party hereby assumes the risk that adverse physical characteristics and existing conditions to the portion of the Property to be acquired by each of them pursuant to this Agreement may have not been revealed by the Inspections.

4. Conditions to Closing.

(a) Notwithstanding anything provided in this Agreement to the contrary, the obligations of the parties hereto shall be subject to and conditioned upon the following conditions precedent (collectively, the "Conditions") being satisfied no later than the Closing Date:

(i) The City and Northport shall be satisfied, each in their sole and absolute discretion, with the Inspections undertaken by each of them pursuant to Paragraph 3 above;

(ii) The First Amendment to Planned Unit Development Zoning Application and Development Plan (the “First Amendment”) which modifies and amends the Patchwork Farm Planned Unit Development Zoning Application and Development Plan dated December 3, 2008 as revised on February 26, 2009 (collectively, with the First Amendment, the “PUD Plan”) must have been approved by the Planning Commission and City Council of the City;

(iii) The City shall have purchased and acquired the City Property from the BOE;

(iv) The Subdivision Plat shall have been approved by the City, Northport and the Planning Commission and recorded in the Office of the Judge of Probate of Jefferson County, Alabama (the “Probate Office”);

(v) The City Property shall have been subjected to and encumbered by the CC&Rs, as hereinafter defined, pursuant to an amendment thereto which shall have been recorded in the Probate Office;

(vi) The Restrictive Covenants, as hereinafter defined, shall have been executed by both the City and Northport;

(vii) A judgment (the “Validation Judgment”) shall have been entered by the Circuit Court of Jefferson County, Alabama, which validates and confirms the Economic Development Agreement, and such Validation Judgment shall have become forever conclusive in accordance with, and as provided in, Section 6-6-755 of the Code of Alabama 1975;

(viii) The Preliminary Plans, as hereinafter defined, shall have been approved by Northport;

(ix) All approvals from the ARC (Architectural Review Committee) established under the CC&Rs shall have been approved for the development of the City Property by Northport; and

(x) The Design Review Board of the City has approved the plans for the development of the City Property by Northport.

(b) If, for any reason, all of the Conditions have not been satisfied (or waived in writing by both the City and Northport) by the Closing Date, then this Agreement shall automatically terminate, be deemed cancelled, terminated, null and void and of no further force and effect and neither party shall have any further obligations or liabilities to the other hereunder except for the indemnification obligations set forth in Paragraph 3(a) above.

(c) The City and Northport both covenant and agree to use commercially reasonable efforts and cooperate with each other in satisfying all of the Conditions, including,

specifically, executing any and all documents, instruments and agreements which may be reasonably required by the other party in order to satisfy the Conditions.

5. **Closing.**

(a) Subject to the satisfaction of the Conditions (or the written waiver by both Northport and the City of the Conditions) and the terms and provisions of Paragraph 5(d) below, the consummation of the transactions contemplated herein (the "Closing") shall take place at the offices of the City, 513 Montgomery Highway, Vestavia Hills, Alabama 35216 on or before November 1, 2014 (the "Closing Date"); provided, however, that with the prior written consent and approval of both the City and Northport, the Closing Date may be extended to a date mutually acceptable to both the City and Northport.

(b) At the Closing, (i) Northport shall execute and deliver to the City the Deed to the Northport Property and (ii) the City shall execute and deliver to Northport the Deed to the City Property; provided, however, that the Deed in favor of Northport shall utilize the legal description of the City Property as set forth on the Subdivision Plat.

(c) The parties further agree to execute and deliver at the Closing such other instruments or documents and take any and all further action as may be reasonably requested by the other party and the Title Company to consummate the transactions contemplated by this Agreement.

(d) Notwithstanding anything provided in this Agreement to the contrary, upon the satisfaction of all of the Conditions, (i) the Closing shall occur on, and the Closing Date shall be, the date which is thirty (30) days following the satisfaction of all of the Conditions and (ii) the Inspection Period shall be deemed to have expired on the date on which all of the Conditions have been satisfied.

6. **Prorations, Adjustments and Closing Costs.**

(a) Real estate ad valorem taxes and assessments and assessments, if any, under the CC&Rs shall be prorated for each Property as of the Closing Date.

(b) Each party shall be solely responsible for the payment of its respective attorneys' fees and the recording taxes attributable to recording the Deed to the respective Property acquired by each of them pursuant to this Agreement.

(c) The combined costs of the title insurance premiums for the issuance of standard form owner's title insurance policies for both the City Property and the Northport Property shall be paid one-half (1/2) by each the City and Northport; provided, however, that any re-issue or other credits provided by the Title Company with respect to the issuance of the owner's title policy for the City Property shall be credited to the City and any re-issue or other credits provided by the Title Company with respect to the issuance of the owner's title policy for the Northport Property shall be credited to Northport. Any endorsements or special or additional coverages required by either party shall be paid by the party requesting the same.

(d) The City shall be responsible for the costs and expenses of preparing the Survey, the costs and expenses of preparing and recording the Subdivision Plat, the First Amendment, the amendment to the CC&Rs and the Restrictive Covenants and all costs relating to the satisfaction of all requirements under the Economic Development Agreement with respect to the Incentives.

(e) Each party shall be solely responsible for all costs and expenses relating to any Inspections undertaken by either of them.

7. **Incentives.**

(a) The City acknowledges and agrees that Northport has heretofore incurred various costs and expenses relating to the proposed development of the Northport Property and will incur additional costs and expenses as a result of the exchange of the Property which it would not have incurred if the City had not requested the exchange contemplated by this Agreement. Such additional costs and expenses include, without limitation, costs to redesign the building and other improvements which will constitute the Project to be constructed on the City Property (including, specifically, redesigning the Project as a two-story structure as opposed to the one-story structure originally planned for the Northport Property and redesigning the Project as a result of a decrease in the acreage of the City Property versus the larger acreage of the Northport Property), construction cost increases which have resulted over time as a result of the City's requests that Northport consider the exchange of the Property described in this Agreement (as well as previous requests made by the City that Northport consider other property exchanges prior to the date hereof which were not acceptable to Northport) and Northport's agreement to not commence construction on the Northport Property prior to the date hereof, additional due diligence costs and expenses relating to Inspections of the City Property, and the possibility that all such additional costs may adversely impact the budget for the Project approved by the State Health Planning and Development Agency of the State of Alabama in connection with the Certificate of Need issued to Northport for the Northport Property.

(b) The City Property and the remainder of the real property adjacent to the City (as shown on Exhibit A hereto) lack the necessary infrastructure in roads and utilities for the same to be developed, which, if such infrastructure was in place, would promote the economic development of the City thereby increasing the tax revenues for the City and improving the quality of life of its citizens.

(c) Accordingly, in consideration of the additional costs and expenses incurred or to be incurred by Northport as described in Paragraph 7(a) above and the economic benefits to be derived from the development of the City Property and the remainder of the real property adjacent to the City Property, the City and Northport agree to enter into the Economic Development Agreement at the Closing providing those certain incentives (collectively, the "Incentives") as more particularly described in the Economic Development Agreement.

8. **CC&Rs and Restrictive Covenants.**

(a) Northport acknowledges and agrees that on or before the Closing Date, the City Property will be subject to (i) all of the terms and provisions of the Patchwork Farm Commercial Declaration of Covenants, Conditions and Restrictions dated April 4, 2012 (the “CC&Rs”), as recorded in Bk: LR201212, Page 19387 in the Office of the Judge of Probate of Jefferson County, Alabama, as amended, and (ii) the amendment to the CC&Rs subjecting the City Property to the CC&Rs shall (1) create reciprocal easements over and upon any detention areas situated on the City Property and Lots B and C, as defined in Paragraph 9(a) below, and any underground storm water lines and pipes constructed by the City as part of the Infrastructure Work on the City Property and Lots B and C for the mutual benefit of the City Property and Lots B and C, (2) provide that any detention areas situated on the City Property and Lots B and C shall be maintained solely by the then owner of the City Property and Lots B and C, (3) provide that the owners’ association created under the CC&Rs shall maintain all of the storm water lines and pipes which connect any of such detention areas to each other but that the maintenance costs incurred by the owners’ association in maintaining any such storm water drainage lines and pipes shall be paid for prorata by the owners of the City Property and Lots B and C in accordance with the gross acreage of their respective properties, and (4) create an easement for walking trails and paths and landscaping improvements within the 35-foot setback lines along the westernmost boundary of the City Property.

(b) In addition, at the Closing, Northport and the City will enter into a declaration of restrictive covenants (the “Restrictive Covenants”) which (i) restrict the use of the City Property to a skilled nursing home facility or such other uses as may be approved in writing by the City and the BOE and (ii) prohibit the remainder of the property within the Patchwork Farm development owned by the City (as described in the PUD Plan) from being used as a skilled nursing home facility.

9. Infrastructure Work.

(a) Promptly following the execution of this Agreement, the City shall cause GMC to prepare preliminary grading and utility plans (collectively, the “Preliminary Plans”) for the City Property and the other real property (collectively, “Lots B and C”) designated as Lots B and C on Exhibit A hereto and shall submit the same to Northport for review and approval, which approval shall not be unreasonably withheld or delayed. Upon approval of such Preliminary Plans by Northport (the “Approved Plans”), but in no event more than thirty (30) days from the Closing Date, the City shall undertake or cause to be undertaken the Infrastructure Work as contemplated by and defined in the Economic Development Agreement at its sole cost and expense (the “Infrastructure Work”).

(b) To the extent the Infrastructure Work has not achieved Substantial Completion, as defined in the Economic Development Agreement, by the Closing Date, Northport shall grant to the City at the Closing a temporary construction easement over and upon the City Property for the purposes of allowing the City to construct and complete the Infrastructure Work, which temporary construction easement shall automatically terminate on the earlier of Substantial Completion, as defined in the Economic Development Agreement, of the Infrastructure Work or 200 days following the Closing Date.

(c) The City covenants and agrees to commence (or cause to be commenced) the Infrastructure Work no later than thirty (30) days from the Closing Date and cause the contractor performing the grading work to place primary emphasis on completing the grading work within the building pad site for the City Lot on the earliest date possible.

(d) The City further covenants and agrees that the final seal coat for the Roads (as defined in the Economic Development Agreement) shall be applied no later than one (1) year from the date a certificate of occupancy is issued by the City for the building and other improvements which Northport anticipates constructing on the City Property.

10. **Condemnation.** If, at any time on or before the Closing, any portion of either the City Property or the Northport Property is subject to or threatened by any matter of condemnation, eminent domain, taking or private purchase in lieu thereof, then either party may, upon written notice given to the other, cancel and terminate this Agreement in which event neither party shall have any further obligation or liability to the other hereunder.

11. **Brokers.** Each party represents and warrants to the other that no broker or agent has been involved or engaged in the negotiation or consummation of the transactions contemplated by this Agreement and each party, to the extent permitted by law, hereby indemnifies, agrees to defend and hold the other party harmless from and against any and all claims, demands, actions, causes of action, liabilities and expenses (including reasonable attorneys' fees), that may be suffered, paid or incurred by the other party as a result of such party's breach of the foregoing representation and warranty.

12. **Miscellaneous Provisions.**

(a) Except as provided in this Paragraph 12(a), neither the City nor Northport may transfer, assign, convey or encumber their respective interests under this Agreement without the prior written consent of the other party. Notwithstanding anything provided in this Agreement or the Economic Development Agreement to the contrary, (i) Northport shall have the right, without the consent or approval of the City, to transfer the City Property to its wholly-owned subsidiary, Cahaba River Health Realty, LLC, which will construct the Project and lease it to its commonly controlled affiliate, Cahaba River Health and Rehabilitation, LLC, and (ii) the City shall have the right, without the consent or approval of Northport, to transfer and assign its rights and interests under this Agreement to Daniel Realty Company, LLC or any affiliates thereof (collectively, "Daniel"); provided, however, that to the extent the City assigns to Daniel any of its rights under the BOE Agreement, the City alone shall remain the sole responsible party for the performance of all obligations of the City under the Economic Development Agreement and the performance of the Infrastructure Work and Daniel shall have no liability or obligation to Northport with respect to the City's obligations under the Economic Development Agreement or the performance of the Infrastructure Work.

(b) All of the terms, covenants, provisions, promises, conditions, rights and obligations granted, created or agreed to pursuant to this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

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

(d) This Agreement may be amended and modified only by the written consent of all parties hereto.

(e) If any provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(f) The captions and headings contained in this Agreement are for convenience of reference only and shall not be used in the construction or interpretation of any of the provisions of this Agreement.

(g) All personal pronouns used in this Agreement, whether used in a masculine, feminine or neuter gender, shall include all other genders. The use of the singular tense shall include the plural and the plural shall include the use of the singular.

(h) In the event of any conflict or ambiguity in the terms and conditions of this Agreement, the general rules of construction against one party as a result of that party having drafted this Agreement are hereby waived for all of the parties hereto, and, to the fullest extent allowed by law, no conflicts or ambiguities shall be resolved in favor of or to the advantage of one party as opposed to another. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication so as to make them fully effective. Each of the parties hereto acknowledges that it has had the right to be represented by separate legal counsel in connection with this Agreement. The effective date of this Agreement shall be the date hereof. This Agreement shall be governed by and construed under and in accordance with the laws of the State of Alabama.

(i) All of the terms and provisions of this Agreement shall survive the Closing and the execution and delivery of any of the documents, instruments and agreements attached hereto as exhibits.

(j) In addition to the acts and deeds recited herein and contemplated to be performed, executed and delivered by the parties hereto, each party hereto agrees to perform, execute and deliver or cause to be performed, executed and delivered, but without any obligation to incur any additional liability or expense, any and all further acts, deeds and assurances as may be reasonably necessary to consummate the transactions and obligations contemplated herein.

(k) Notices. All notices required or permitted hereunder shall be in writing and shall be served on all of the parties hereto at the following addresses:

If to City: City of Vestavia Hills, Alabama
513 Montgomery Highway
Vestavia Hills AL 35216
Attention Mr. Butch Zaragoza, Mayor
Fax (205) 978-0189
Email: butchzaragoza@ci.vestaviahills.al.us

and City of Vestavia Hills, Alabama
513 Montgomery Highway
Vestavia Hills AL 35216
Attention Mr. Jeff Downes, City Manager
Fax (205) 978-0189
Email: jdownes@vahal.org

With copies to: Stephen R. Monk
Bradley Arant Boult Cummings LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, Alabama 35203
Fax (205) 488-6429
Email: smonk@babco.com

Patrick H. Boone
215 Richard Arrington Jr., Blvd. N., Suite 705
Birmingham, Alabama 35203
Fax (205) 324-2295
Email: patrickboone@bellsouth.net

If to Northport: Northport Holding, LLC
931 Fairfax Park
Tuscaloosa, AL 35406
Attention: Mr. Claude E. Lee, Vice President
Fax: (205) 391-3607
Email: Claude.lee@northporthealth.com

With a copy to: Jack P. Stephenson, Jr.
Burr & Forman, LLP
3100 Wachovia Tower
420 North 20th Street
Birmingham AL 35203
Fax: (205) 244-5708
Email: jstephen@burr.com

If to Title Company: Land Title Company of Alabama
600 North 20th Street, Suite 100
Birmingham, AL 35203
Attention: Susan R. Gannett
Fax: (205) 226-9280
Email: srg@land-title.net

Any such notices shall be deemed to be sufficiently given or served upon any party hereto when (i) sent by personal delivery to the address set forth above, (ii) deposited in the United States mail by registered or certified mail, return receipt requested, postage prepaid and addressed as provided above, (iii) deposited with a nationally recognized overnight delivery courier service for next business day delivery and addressed as set forth above, (iv) sent by facsimile transmission during regular business hours of any business day, in which case notice shall be deemed given upon confirmation of transmission of such facsimile notice, or (v) sent by electronic mail (email) to the email address set forth above, in which case notice shall be deemed given upon confirmation of transmission of such email notice. The above addresses may be changed by written notice to the other parties given in the manner set forth above.

(l) In the event any party hereto violates any of the terms and provisions of this Agreement or fails to perform its obligations hereunder, then the non-defaulting party shall have the right, at its option, to commence and maintain an action at law or in equity to enforce compliance by the defaulting party of all the terms and provisions of this Agreement. If any such legal action is undertaken, the prevailing party in such action shall be entitled to recover from the non-prevailing party all costs and expenses incurred in such action, including, without limitation, court costs and reasonable attorneys' fees. The failure of any party hereto at any time to enforce and covenant or obligation set forth herein shall in no event be deemed a waiver of the right to thereafter enforce such covenant or obligation.

(m) Time is of the essence in the performance of all obligations of each party to this Agreement.

(n) Each exhibit which is referred and attached to this Agreement is incorporated herein as if set out fully in the body hereof.

[The remainder of this page has been intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF VESTAVIA HILLS, ALABAMA, an
Alabama municipal corporation

By: _____
Printed Name: _____
Its: _____

By: _____
Printed Name: _____
Its: _____

NORTHPORT HOLDING, LLC, a Delaware limited liability company

By: _____
Printed Name: _____
Its: _____

EXHIBIT A

Drawing Illustrating Location of City Property

The Seller Property is part of the real property located at 4320 Caldwell Mill Road in Vestavia Hills, AL 35243 (Parcel ID# 28 00 34 2 000 001.001), consisting of approximately 22.1 acres, and is shown as Lot A below consisting of approximately 6.2 acres

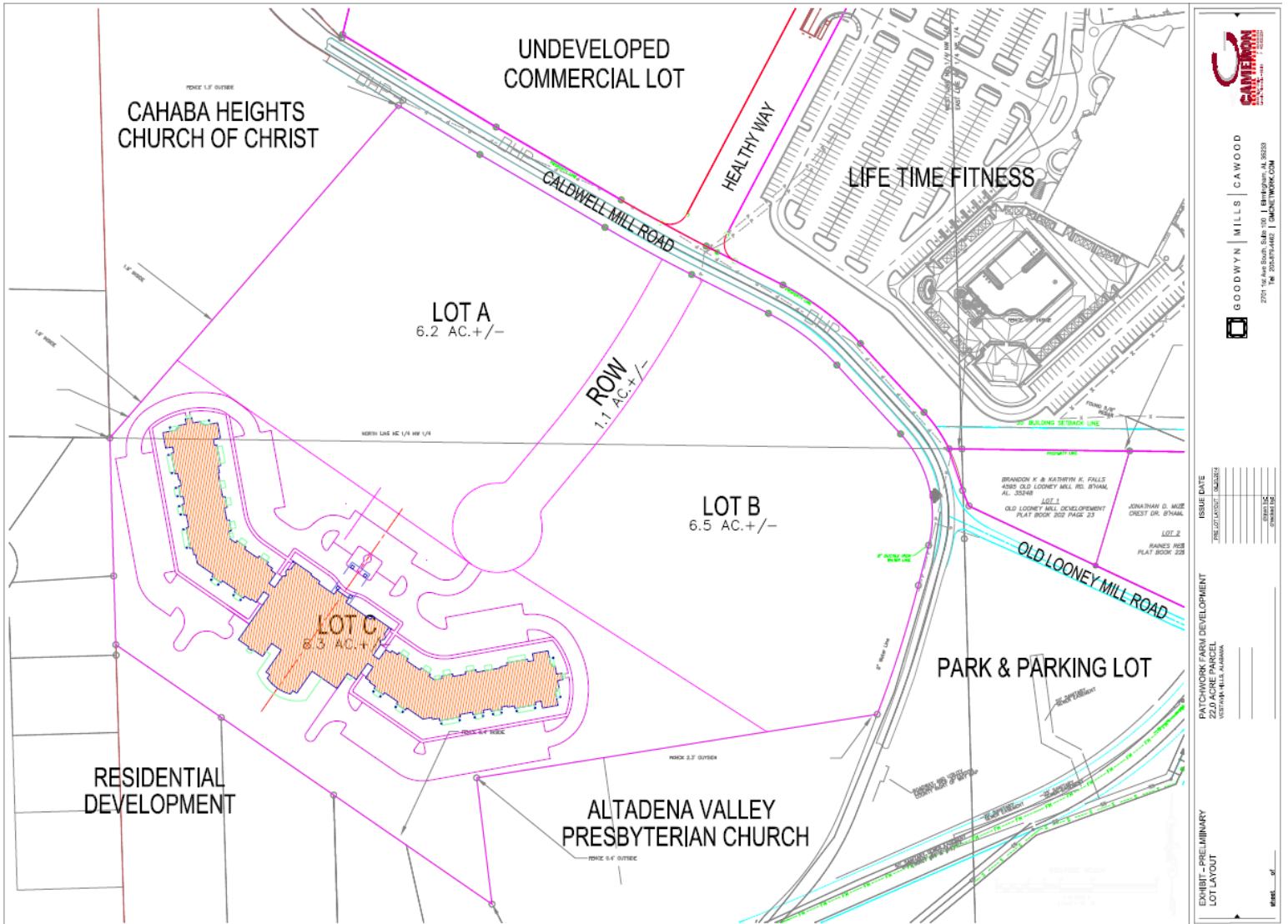


EXHIBIT B

Legal Description of Northport Property

Lot 1C, according to the Patchwork Farms Lot 1 Resurvey Final Plat, as recorded in Map Book 235, Page 45 in the Office of the Judge of Probate of Jefferson County, Alabama.

EXHIBIT C

Form of Statutory Warranty Deed

See Attached.

STATE OF ALABAMA)
 :
COUNTY OF _____)

SEND TAX NOTICE TO:

STATUTORY WARRANTY DEED

THIS STATUTORY WARRANTY DEED is executed and delivered on this ___ day of _____, 2014 by _____, a _____ ("Grantor"), in favor of _____, a _____ ("Grantee").

KNOW ALL MEN BY THESE PRESENTS that, for and in consideration of the sum of Ten Dollars (\$10.00), in hand paid by Grantee to Grantor and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Grantor, Grantor does by these presents, GRANT, BARGAIN, SELL and CONVEY unto Grantee the following described real property (the "Property") situated in Jefferson County, Alabama:

The Property is conveyed subject to the following (collectively, the "Permitted Exceptions"):

1. Ad valorem taxes and assessments for the current tax year and for all subsequent tax years thereafter.
2. All easements, restrictions, rights-of-way, reservations, building setback lines and other matters of record, including, specifically, but without limitation, the Patchwork Farm Commercial Declaration of Covenants, Conditions and Restrictions dated April 4, 2012, as recorded in Bk: LR201212, Page 19387 in the Office of the Judge of Probate of Jefferson County, Alabama, as amended by First Amendment thereto dated as of _____, 2014 and recorded in _____ in said Probate Office.
3. All matters which a current and accurate survey and a physical inspection of the Property would reveal.
4. Any mineral and mineral rights leased, granted or retained by prior owners.

TO HAVE AND TO HOLD unto Grantee, its successors and assigns, forever; subject,

however, to the Permitted Exceptions.

IN WITNESS WHEREOF, Grantor has caused this Statutory Warranty Deed to be executed as of the day and year first above written.

STATE OF ALABAMA)
 :
COUNTY OF JEFFERSON)

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

Given under my hand and official seal, this the ____ day of _____, 2014.

[NOTARIAL SEAL]

Notary Public
My Commission Expires: _____

THIS INSTRUMENT PREPARED BY AND UPON
RECORDING SHOULD BE RETURNED TO:

Stephen R. Monk, Esq.
Bradley Arant Boult Cummings LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, Alabama 35203

EXHIBIT D

Form of Economic Development Agreement

See Attached.

ORDINANCE NUMBER 2529

AN ORDINANCE FINDING AND DETERMINING THAT REAL PROPERTY (“THE SCHOOL PARCEL”) BEING VACANT PROPERTY SITUATED AT “THE SCHOOL PARCEL” AT PATCHWORK FARMS, VESTAVIA HILLS, ALABAMA OWNED BY THE VESTAVIA HILLS BOARD OF EDUCATION BUT UNDER CONTRACT TO PURCHASE BY THE CITY OF VESTAVIA HILLS, ALABAMA IS NOT NEEDED FOR PUBLIC OR MUNICIPAL PURPOSES; TO DECIDE WHETHER OR NOT THE PURCHASE OF A PORTION OF SAID PROPERTY BY CAMERON GENERAL CONTRACTORS, INC., A NEBRASKA CORPORATION (“CAMERON”) PURSUANT TO A REAL ESTATE PURCHASE AGREEMENT BETWEEN THE CITY OF VESTAVIA HILLS, ALABAMA AND CAMERON, WILL PROMOTE THE ECONOMIC DEVELOPMENT OF THE CITY; WILL SERVE AS A VALID AND SUFFICIENT PUBLIC PURPOSE NOTWITHSTANDING ANY INCIDENTAL BENEFIT ACCRUING TO ANY PRIVATE ENTITY OR ENTITIES; AND WILL BENEFIT THE PUBLIC AND PROMOTE THE PUBLIC WELFARE OF THE CITY OF VESTAVIA HILLS; AND TO AUTHORIZE AND DIRECT THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER THE AGREEMENT.

THIS ORDINANCE NUMBER 2529 is approved and adopted by the City Council of the City of Vestavia Hills, Alabama on this the 25th day of August, 2014.

WITNESSETH THESE RECITALS:

WHEREAS, the Vestavia Hills Board of Education owns a 22+/- acre site known as the “School Parcel at Patchwork Farms” and

WHEREAS, on July 31, 2014, the City Council of the City of Vestavia Hills, adopted and approved Resolution Number 4606 authorizing the Mayor and City Manager to execute and deliver an Agreement of Purchase and Sale (“Agreement”) with the Vestavia Hills Board of Education for the purchase and ultimate development of the “School Parcel” at Patchwork Farms located along Caldwell Mill Road in the City of Vestavia Hills, Jefferson County, Alabama constituting of approximately 22.19± acres, which a copy of said Agreement and legal description of property is marked as “Exhibit A” and is attached to and incorporated into this Ordinance Number 2529 as though written fully therein; and

WHEREAS, the City Council hereby acknowledges that the purpose of this purchase is for the ultimate economic development of the Patchwork Farms PUD; and

WHEREAS, a Real Estate Purchase Agreement Between the City of Vestavia Hills, Alabama and Cameron, (hereinafter referred to collectively as the “Agreement”) has been

presented to this Council and a copy of said Agreement is marked as “Exhibit B” and is attached to and incorporated into this Ordinance Number 2529 as though fully written therein; and

WHEREAS, the Mayor and City Council of the City of Vestavia Hills, Alabama find and determine that the Property described in Exhibit B is surplus and is not needed for municipal or public purposes; and

WHEREAS, the execution and delivery of the Agreement was considered at a public hearing held on Monday, August 25, 2014, at the Vestavia Hills Municipal Center located at 513 Montgomery Highway in the City of Vestavia Hills, Alabama beginning at 5:00 p.m.; and

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

1. The City Council of the City of Vestavia Hills, Alabama finds and determines that the Property more particularly described in Exhibit B is under contract to purchase from the Vestavia Hills Board of Education and, once the sale is closed, that the property is surplus and is not needed for municipal or public purposes.

2. A public hearing was held by the Vestavia Hills City Council on Monday, August 25, 2014, at the Vestavia Hills Municipal Center located at 513 Montgomery Highway in the City of Vestavia Hills, Alabama beginning at 5:00 p.m to consider the enactment of this Ordinance, the execution and delivery of the Agreement and the matters required to be considered.

3. The City finds and determines that the sale of the property described in Exhibit B with Cameron pursuant to the terms and conditions in said Agreement, will:

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

(b) Serve as a valid and sufficient public purpose; and

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

(d) Promote commercial development and the stimulation of the local economy; and

(e) Increase employment opportunities and create jobs in the City; and

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

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

4. The Mayor and City Manager are hereby authorized and directed to execute and deliver the written Real Estate Purchase Agreement between City of Vestavia Hills and Cameron marked as Exhibit B and attached hereto.

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. The provision of the Ordinance shall become effective immediately upon the passage and approval thereof by the City Council of the City of Vestavia Hills, Alabama and the publication and/or posting thereof as required by Alabama law.

DONE, ORDERED, APPROVED and ADOPTED, on this the 25th day of August, 2014.

Mayor Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as Acting City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2529 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 25th day of August, 2014 as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills Library in the Forest, New Merkle House and Vestavia Hills Recreational Center this the _____ day of _____, 2014.

Rebecca Leavings
City Clerk

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE (this "Agreement") is entered into as of July 31, 2014 (the "Effective Date") by and between **THE BOARD OF EDUCATION OF THE CITY OF VESTAVIA HILLS, ALABAMA** ("Seller"), and **CITY OF VESTAVIA HILLS, ALABAMA**, an Alabama municipal corporation ("Purchaser").

WHEREAS, Seller is the owner of a certain parcel of real estate located in Jefferson County, Alabama, which is comprised of approximately 22.19 acres and which is more fully described on Exhibit A attached hereto and made a part hereof (said parcel of land, together with all improvements thereon and all rights, including appurtenances pertaining thereto, is hereinafter referred to as the "Property");

WHEREAS, the Property is a part of the proposed Patchwork Farms mixed use development ("Patchwork Farms"), and in furtherance of the development of Patchwork Farms, Purchaser and Daniel Realty Company, LLC, an Alabama limited liability company ("Daniel"), have entered into that certain Master Development and Brokerage Services Agreement dated April 30, 2014 (the "Patchwork Development Agreement"); and

WHEREAS, in connection with its efforts to develop Patchwork Farms, Seller desires to sell, and Purchaser desires to purchase, the Property.

NOW THEREFORE, the parties hereto agree as follows:

1. **Purchase and Sale**. For and in consideration of One and No/100 Dollars (\$1.00) in hand paid by Purchaser to Seller and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Seller, Seller agrees to sell, and Purchaser agrees to purchase, all (and not less than all) of the Property for the Purchase Price (as defined below) and on the terms and conditions hereinafter set forth.

2. **Purchase Price**. The purchase price for all of the Property shall be Three Million Four Hundred Eighty-Three Thousand Eight Hundred Sixty-Eight and 12/100 Dollars (\$3,483,868.12) (the "Purchase Price"). The Purchase Price shall be paid to Seller in cash at Closing, subject to the adjustments and prorations set forth below.

3. **Closing**.

(a) Subject to the terms and provisions of Section 3(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 Purchaser, 513 Montgomery Highway, Vestavia Hills, Alabama 35216 at 10:00 a.m. Central Standard/Daylight Savings Time on the date selected by Purchaser on or before one hundred eighty (180) days following the Effective Date (the "Closing Date").

(b) Purchaser shall have the right to extend the Closing Date for three (3) additional six (6) month periods each (collectively, the "Extensions") as follows:

(i) Purchaser may extend the Closing Date for an additional 180-day period (thereby extending the Closing Date to the date which is 360 days following the Effective Date (the "First Extended Closing Date")) by (1) providing Seller with written notice of its election to extend the Closing Date on or before the initial Closing Date and (2) remitting to Seller the additional sum of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) (the "First Extension Fee");

(ii) Purchaser may extend the Closing Date, as extended to the First Extended Closing Date, for an additional 180-day period (thereby extending the Closing Date to the date which is 540 days following the Effective Date (the "Second Extended Closing Date")) by (1) providing Seller with written notice of its election to extend the Closing Date on or before the First Extended Closing Date and (2) remitting to Seller the additional sum of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) (the "Second Extension Fee"); and

(iii) Purchaser may extend the Closing Date, as extended to the Second Extended Closing Date, for an additional 180-day period (thereby extending the Closing Date to the date which is 720 days following the Effective Date) by (1) providing Seller with written notice of its election to extend the Closing Date on or before the Second Extended Closing Date and (2) remitting to Seller the additional sum of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) (the "Third Extension Fee").

(c) Purchaser shall provide to Seller at least five (5) days prior written notice of the Closing Date selected by Seller for the Closing. To the extent paid by Purchaser to Seller, the First Extension Fee, the Second Extension Fee and the Third Extension Fee (collectively, the "Extension Fees") shall be applied to the Purchase Price payable by Purchaser to Seller at the Closing.

(d) In the event Purchaser fails to timely exercise any of the Extensions and deposit the applicable Extension Fees with Seller, Purchaser shall be deemed to have irrevocably elected to cancel and terminate this Agreement in which event all Extension Fees, if any, previously deposited by Purchaser with Seller shall be retained by Seller and except for any indemnification and other obligations of Purchaser under this Agreement which expressly survive the termination of this Agreement, neither party shall have any further obligations or liabilities to the other hereunder.

4. Master Development Rights.

Seller shall have the right to approve the master plan (the "Master Plan") to be developed for Patchwork Farms, which shall include appropriate limits on density, land use and related restrictions, and will be submitted to Purchaser and Seller for approval. The Closing is expressly conditioned upon the following: (i) the Master Plan must be completed and approved by the Purchaser and Seller and (ii) restrictive covenants approved by Seller and consistent with the provisions of the Master Plan must have been recorded encumbering all of the property comprising Patchwork Farms, either through a separate document or an amendment to The Patchwork Farm Commercial Declaration of Covenants, Conditions and Restrictions dated April 4, 2012 and recorded in Bk: LR201212, Page 19387 in the Office of the Judge of Probate of Jefferson County, Alabama (the "Declaration"). With the approval of Seller, the Declaration shall be amended to add the Property to the terms and provisions thereof and shall be the form of the restrictive covenants for the Patchwork Farms (other than the five (5) single-family lots within Patchwork Farms which Purchaser has previously sold to a third party purchaser and which are subject to separate restrictive covenants). Purchaser and Seller agree to cooperate to facilitate the adoption of any amendments or modifications as may be necessary to the current PUD zoning ordinance for Patchwork Farms and the related restrictive covenants required to support the development of the approved Master Plan.

5. Other Opportunities; Right of First Refusal.

(a) Seller may, at any time prior to the Closing, accept a bona fide offer from a third party to purchase the Property, on such terms as it shall consider appropriate in its sole discretion (the transfer contemplated by such an acceptance being herein referred to as a "Proposed Sale").

(b) If Seller receives a bona fide offer for a Proposed Sale that it intends to accept, Seller shall first give Purchaser written notice (a "Right of First Refusal Notice") of the terms of any Proposed Sale. Purchaser shall have five (5) days after its receipt of the Right of First Refusal Notice to give written notice to Seller of its election to either:

(i) Purchase the Property on the terms of the Proposed Sale, including without limitation a purchase price equal to the purchase price of the Proposed Sale; or

(ii) Not purchase the Property.

(c) Purchaser shall be deemed to have elected its alternative under subsection (c)(ii) above upon its failure to give to Seller written notice of its election under subsection (c)(i) above within such five (5) day period, in which case Seller shall be free to consummate the Proposed Sale free and clear of this Agreement, and upon such closing, this Agreement shall terminate.

(d) Notwithstanding anything herein to the contrary, the right of first refusal granted to Purchaser shall expire on the date this Agreement expires or is terminated.

6. **Notice.** Any notices required of either party under this Agreement shall be delivered in person or by a prepaid nationally recognized courier service, addressed to the other party at the address given in this Agreement, and the same shall be deemed to have been received on the day it is delivered, or on the day of refusal to accept delivery. Notices required under this Agreement shall be sent to the following addresses:

If to Seller:

The Board of Education of the City of Vestavia Hills, Alabama
1204 Montgomery Highway
Vestavia Hills, AL 35216-2810
Attention: Superintendent

If to Purchaser:

The City of Vestavia Hills, Alabama
513 Montgomery Highway
Vestavia Hills, AL 35216
Attention: City Manager

7. **Title; Deed.** At the Closing, Seller agrees to convey the Property to Purchaser by a duly executed and acknowledged statutory warranty deed (the "Deed") which shall be subject to the following (collectively, the "Permitted Exceptions"): (i) ad valorem taxes for the then current year, (ii) easements, covenants and other encumbrances of record, (iii) the current zoning classification, (iv) mineral and mining rights not owned by Seller, and (v) matters that would be disclosed by a current survey of the Property.

8. **Default.**

(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 any Extension Fees paid to Seller shall be

promptly returned to Purchaser, this Agreement shall be deemed canceled and terminated and, except for the indemnification and other obligations of Purchaser which expressly survive the termination of this Agreement, 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 any Extension Fees, if any, paid by Purchaser to Seller shall be retained by Seller as liquidated damages in which event this Agreement shall automatically be deemed terminated and canceled and, except for the indemnification and other obligations of Purchaser which expressly survive the termination of this Agreement, 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 any Extension Fees, if any, paid to Seller by Purchaser as its total damages and relief hereunder in the event Purchaser fails to close the purchase and sale transaction contemplated herein.

9. **Intentionally Deleted.**

10. **Taxes.** The Property is exempt from ad valorem taxes and there shall be no proration of ad valorem taxes for the Property at the Closing.

11. **Condition of Property; Property Purchased "As-Is".** The Property shall be sold and conveyed "as is" and "with all faults", and Seller has not made, does not make, and hereby disclaims any and all express or implied representations and warranties regarding or relating to the condition, suitability for any particular purpose, susceptibility to flooding, value, marketability, zoning of the Property, or with respect to use and occupancy restrictions, compliance with environmental laws and laws and regulations relating to hazardous substances, toxic wastes and underground storage tanks, and all legal requirements affecting or relating to the Property. Purchaser acknowledges that (i) Purchaser is not relying on any warranties or representations with respect to the physical condition of the Property or with respect to the operations of the Property; and (ii) Purchaser is not relying on any information provided by Seller, and that Purchaser has made, or will make prior to the Closing Date, an independent investigation of all matters relating to the Property and the ownership and operation of the Property. The terms and covenants of this Section 11 shall survive the Closing or any termination of this Agreement.

12. **Transfer Costs; Title Insurance.** Each party shall pay its respective attorney's fees. Purchaser shall pay for the cost of obtaining an owner's title insurance policy, the cost of an ALTA survey, if required by Purchaser, and all recording and documentary fees and taxes resulting from the conveyance of the Property.

13. **Assignment.** Purchaser may not assign this Agreement or any of its rights hereunder without the express written consent of Seller. Any assignment in violation of the restriction on assignment in this Section 13 shall be void and of no force and effect. Notwithstanding the forgoing, Purchaser may assign all of its rights hereunder to Daniel or a wholly owned subsidiary of Daniel. In no event shall Purchaser be released from its duties and obligations hereunder unless expressly released in writing by Seller.

14. **Inspection.** Upon execution of this Agreement, Purchaser is hereby granted the right to enter onto the Property from time to time for the purpose of inspecting the Property; provided, however,

that Purchaser shall conduct no invasive testing, investigations, or evaluations on the Property without the prior written consent of Seller. In performing its inspections, Purchaser agrees not to damage the Property and shall indemnify, defend and hold Seller, its successors, assigns, officers, employees and agents, harmless from and against any cost, claim, loss, liability, judgment, lien or other expense, including attorney fees and for bodily injury, personal injury, death or property damage, which shall arise as a consequence of Purchaser's exercise of its rights under this Agreement. This indemnity shall survive the Closing or the termination of this Agreement. In the event Purchaser fails to close the transaction contemplated herein for any reason, upon request by Seller, Purchaser shall furnish, at no cost to Seller, copies of all surveys, soil test results, engineering, environmental and other studies and reports relating to Purchaser's inspections of the Property, which obligation shall survive the termination of this Agreement.

15. **Authority.** Seller represents and warrants, to and for the benefit of Purchaser that Seller has the authority and power to convey the Property in accordance with the terms of this Agreement and the individuals signing this Agreement and all documents executed or to be executed by Seller are and shall be duly authorized to sign the same on Seller's behalf and bind Seller thereto.

16. **Brokerage; Real Estate Commissions.** Purchaser shall pay all real estate commissions, broker's commissions, and other related fees and expenses owing to Daniel under the Patchwork Development Agreement, if any, resulting from the Closing of the transaction contemplated by this Agreement. Seller shall pay to Daniel, at Closing, a closing fee of One Hundred Fifty Thousand and No/100 Dollars (\$150,000) if and only if the Closing occurs between Seller and Purchaser pursuant to the terms of this Agreement. Purchaser and Seller each represent and warrant to the other that, except for Daniel, such party has dealt with no other broker, agent or other person in connection with this transaction and that no broker, agent or other person other than the foregoing brought about this transaction, and Purchaser and Seller agree to indemnify and hold the other party harmless from and against any claim by any other broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with such party with regard to this transaction. The terms and covenants of this Section 16 shall survive the Closing or any termination of this Agreement.

17. **Governing Law.** The terms and conditions of this Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of Alabama.

18. **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the transactions provided for herein, and the parties hereto agree that no other representations have been made by either party.

19. **Time is of the Essence.** Time is of the essence of this Agreement and of the performance of each and every covenant contained herein.

20. **Successors and Assigns.** This agreement shall be binding upon the personal representatives, executors, administrators, heirs and assigns of Seller, and inure to the personal representatives, executors, administrators, heirs and assigns of Purchaser.

21. **Possession.** Possession of the Property shall be given on the Closing Date, free of any tenancy, leases or rights of occupancy other than any such rights arising out of the Permitted Exceptions.

IN WITNESS WHEREOF, the parties have executed or caused this Agreement to be executed by their duly authorized representative as of the Effective Date.

SELLER:

**THE BOARD OF EDUCATION OF THE CITY OF
VESTAVIA HILLS, ALABAMA**

By: Sheila Phillips
Name: SHEILA PHILLIPS
Its: Superintendent

By: Kym Prewitt
Name: Kym Prewitt
Its: Board of Ed. President

PURCHASER:

THE CITY OF VESTAVIA HILLS, ALABAMA

By: Jeffrey Downes
Name: Jeffrey Downes
Its: City Manager

By: Alberto C. Zaragoza, Jr
Name: Alberto C. Zaragoza, Jr
Its: Mayor

EXHIBIT A

(Legal Description of Property)

A parcel of land situated in the NW ¼ of Section 34, Township 18 South, Range 2 West, Jefferson County, Alabama, Birmingham Division, being more particularly described as follows: Begin at the Northwest corner of the SE ¼ of the NW ¼ of Section 34, Township 18 South, Range 2 West, being a found 3" capped pipe; thence in a Southerly direction along the West line of said ¼-¼ section a distance of 324.26 feet to a 2" capped pipe found; thence 53 degrees 35'00" to the left in a Southeasterly direction a distance of 714.00 feet to a 2" pipe found; thence 131 degrees 38'56" to the left in a Northwesterly direction a distance of 199.55 feet to a 2" capped pipe found; thence 87 degrees 53'00" to the right in a Northeasterly direction a distance of 633.40 feet to a GSA capped rebar found on the Westerly right of way line of Old Caldwell Mill Road, being the P.C. (point of curve) of a curve to the left having a radius of 1884.86 feet and a central angle of 6 degrees 26'44"; thence 60 degrees 05'11" to the left (angle measured to tangent) in a Northeasterly direction along the arc of said curve and along the Westerly right of way line of said Old Caldwell Mill Road a distance of 212.04 feet to a GSA capped rebar found being the P.T. (point of tangent); thence tangent to said curve in a Northeasterly direction and along the Westerly right of way line of said Old Caldwell Mill Road a distance of 64.91 feet to a GSA capped rebar found, being the P.C. (point of curve) of a curve to the left having a radius of 188.59 feet and a central angle of 57 degrees 02'48"; thence in a Northeasterly, Northerly and Northwesterly direction along the arc of said curve and along the Westerly right of way line of said Old Caldwell Mill Road a distance of 187.77 feet to a WSE capped rebar set, being the P.T. (point of tangent) of said curve; thence tangent to said curve in a Northwesterly direction and along the Southerly right of way line of said Old Caldwell Mill Road a distance of 146.63 feet to a GSA capped rebar found, being the P.C. (point of curve) of a curve to the left having a radius of 379.44 feet and a central angle of 20 degrees 23'12"; thence in a Northwesterly direction along the arc of said curve and along the Southerly right of way line of said Old Caldwell Mill Road a distance of 135.01 feet to a GSA capped rebar found; being the P.T. (point of tangent); thence tangent to said curve in a Northwesterly direction and along the Southerly right of way line of said Old Caldwell Mill Road a distance of 134.32 feet to a GSA capped rebar found, being the P.C. (point of curve) of a curve to the right having a radius of 2637.29 feet and a central angle of 3 degrees 21'00"; thence in a Northwesterly direction along the arc of said curve and along the Southerly right of way line of said Old Caldwell Mill Road a distance of 154.20 feet to a GSA capped rebar found, being the P.T. (point of tangent); thence tangent to said curve in a Northwesterly direction and along the Southerly right of way line of said Old Caldwell Mill Road a distance of 226.04 feet to a WSE capped rebar set; thence 0 degrees 45'28" to the right in a Northwesterly direction and along the Southerly right of way line of said Old Caldwell Mill Road a distance of 148.81 feet to a GSA capped rebar found; thence 80 degrees 15'29" to the left in a Southwesterly direction (leaving said right of way line) a distance of 689.17 feet to the Point of Beginning.

REAL ESTATE PURCHASE AGREEMENT

This Real Estate Purchase Agreement (hereinafter the “Agreement”) is made and entered into this ____ day of August, 2014 (hereinafter the “Contract Date”) by and between Cameron General Contractors, Inc., a Nebraska corporation (hereinafter the “Buyer”) and the City of Vestavia Hills, Alabama, an Alabama municipal corporation (hereinafter the “Seller”).

RECITALS

- A. Description:** Seller is the lawful owner of, or has the right to purchase, that certain real property located at 4320 Caldwell Mill Road in Vestavia Hills, AL 35243 (Parcel ID# 28 00 34 2 000 001.001), consisting of approximately 22.1 acres, of which Buyer desires to purchase approximately 8.3 acres (hereinafter the “Property”) shown as “Lot C” on the attached Exhibit A, incorporated by reference herein.

- B.** Seller desires to sell and Buyer desires to purchase the Property pursuant to the terms of this Agreement.

SUMMARY

ITEM	AMOUNT/TIME FRAME	ESTIMATED START DATE	ESTIMATED COMPLETION DATE
Purchase Price	\$2,200,000.00	N/A	N/A
Earnest Deposit	\$50,000.00	8/1/2014	8/11/2014
Inspection and Zoning Period	4 Months	8/1/2014	11/30/2014
Inspection Extensions <small>*Fees are non-refundable (except as provided herein) and applicable to the Purchase Price</small>	First Extension@ \$0.00 Second Extension (30 days) @ \$10,000 Third Extension (30 days) @ \$15,000	If Necessary	If Necessary
Closing Date	30 days after expiration of Inspection Period	12/1/2014	12/31/2014

NOW, THEREFORE, in consideration of the mutual promises and covenants exchanged herein, and the sum of ten dollars (\$10.00) and other good and valuable consideration the sufficiency of which is hereby mutually acknowledged, the parties hereto agree as follows:

1. **SALE:** Seller hereby agrees to sell and Buyer hereby agrees to purchase the Property as further provided in this Agreement.
2. **EFFECTIVE DATE:** The Effective Date of this Agreement shall be the Contract Date.
3. **USE:** Buyer intends to develop the Property into a senior independent living facility including 130 dwelling units plus parking at a ratio of 1.25 stalls per dwelling unit with a height of forty-two (42) feet and containing a common dining facility and other common amenities (hereinafter the "Buyer's Use").
4. **PRICE:** Buyer will pay to the Seller the sum of Two Million Two Hundred Thousand Dollars and No/100 (\$2,200,000.00)(the "Purchase Price") in cash at Closing, as adjusted by closing adjustments provided herein and after application of the Earnest Money deposit.
5. **EARNEST MONEY:** Buyer will pay to Charter Title Company of Lincoln, Nebraska (hereinafter the "Escrow Agent") the sum of Fifty Thousand Dollars and No/100 (\$50,000.00) within 10 days from the Contract Date as an Earnest Money deposit (hereinafter the "Earnest Money"). The Earnest Money shall be held in an interest bearing account for Buyer's benefit. If Buyer fails to timely deliver the Earnest Money as required herein, then this Agreement shall automatically terminate, be deemed null and void and of no further force or effect except for any indemnification obligations of Buyer set forth in Paragraph 6(a)(i) below.
6. **CONTINGENCIES:** Buyer shall, in its sole and absolute discretion, determine during the Inspection Period, as hereinafter defined, that the following are satisfied to such a degree or in such a manner as Buyer's Use may be obtained:
 - a. **INSPECTION AND ZONING PERIOD:**
 - (i) Subject to the terms and provisions of Paragraph 27(d) below, during the period of time beginning on the Effective Date and ending at 5:00 p.m. Central Standard/Daylight Savings Time on November 30, 2014, unless extended as hereinafter provided (the "Inspection Period"), Buyer, Buyer's authorized agents and employees, as well as others authorized by Buyer, shall have the right, at Buyer's sole cost and expense, to enter upon the Property and conduct such tests, evaluations, inspections, investigations and reviews of the Property (collectively, the "Inspections") as Buyer may desire. Buyer covenants and agrees to promptly repair any physical damage to the Property caused by, arising out of or resulting from any of the Inspections. Buyer does hereby indemnify, agree to defend and hold Seller harmless from and against any and all claims, costs, expenses and liabilities, including reasonable attorneys' fees

and expenses suffered, paid or incurred by Seller arising out of or by virtue of (1) any injury or damage to person (including death) or property caused by any act or omission of Buyer, its agents, employees, representatives or contractors in conducting or performing any of the Inspections, (2) Buyer's failure to pay all bills, invoices, costs and other charges relating to the Inspections and (3) Buyer's failure to repair and replace any damage to the Property caused by, resulting from or arising out of any of the Inspections. The indemnification obligations of Buyer set forth herein shall survive the Closing or the termination and cancellation of this Agreement.

- (ii) Subject to the terms and provisions of Paragraph 27(d) below, Buyer shall have the right, at its sole discretion, to extend the Inspection Period for an additional thirty (30) days (the "First Extension") if any of the following conditions (collectively, the "Zoning, Survey and Subdivision Conditions") have not been satisfied by the expiration of the initial Inspection Period: (1) the Zoning Condition, as provided in Paragraph 6(c) below, (2) the Survey Condition, as provided in Paragraph 8(a) below, and (3) the Subdivision Condition, as provided in Paragraph 8(b) below. To the extent the Zoning, Survey and Subdivision Conditions have not been satisfied by the expiration of the initial Inspection Period, Buyer may elect to exercise the First Extension by providing written notice to Seller prior to the end of the initial Inspection Period. No additional earnest money deposits or fees shall be due or payable by Buyer to the extend Buyer exercises the First Extension as a result of the Zoning, Survey and Subdivision Conditions not being satisfied by the expiration of the initial Inspection Period.
- (iii) Subject to the terms and provisions of Paragraph 27(d) below, Buyer shall have the right, at its sole discretion, to extend the Inspection Period (either after the expiration of the First Extension (to the extent exercised by Buyer pursuant to the provisions of Paragraph 6(a)(ii) above) or after the expiration of the initial Inspection Period) by two (2) consecutive thirty (30) day periods (the first 30-day extension pursuant to this Paragraph 6(a)(iii) being hereinafter referred to as the "Second Extension"; the second 30-day extension pursuant to this Paragraph 6(a)(iii) being hereinafter referred to as the "Third Extension"; and the Second Extension and Third Extension being hereinafter collectively referred to as the "Inspection and Zoning Period Extensions") by notifying the Seller in writing prior to the end of the Inspection Period, as may have been extended, and paying to the Escrow Agent contemporaneously with the giving of such notice \$10,000 for the Second Extension and \$15,000 for the Third Extension (hereinafter "Inspection Period Extension Fee"). Each Inspection Period

Extension Fee shall be nonrefundable (except to the extent otherwise provided in Paragraph 27(b) below) and applicable to the Purchase Price.

- (iv) Subject to the terms and provisions of Paragraph 27(d) below, if, at any time on or before the expiration of the Inspection Period, as may be extended, Buyer determines, in its sole and absolute discretion, that the results or findings of any of the Inspections or any other matters or things relating to the Property or Buyer's acquisition of the Property for Buyer's Use are unacceptable to Buyer, then Buyer shall have the unqualified right, at its option, to cancel and terminate this Agreement upon written notice to Seller given at any time on or before the expiration of the Inspection Period in which event the Earnest Money shall be promptly returned to Buyer, this Agreement shall be deemed canceled and terminated and, except for the indemnification obligations of Buyer set forth in Paragraph 6(a)(i) above, neither party shall have any further obligation or liability to the other hereunder. If, for any reason, Buyer does not timely exercise its right to cancel and terminate this Agreement on or before the expiration of the Inspection Period, then Buyer shall be deemed to have accepted the condition of the Property and all Inspections of the Property and shall be deemed to have elected to proceed to Closing.
- (v) To the extent the Closing does not occur for any reason, Buyer agrees to deliver to Seller copies of any and all title insurance commitments, surveys, topographic surveys, reports, investigations, engineering reports, environmental reports, soils reports, documentation relating to the zoning and proposed annexation and rezoning of the Property and any other documentation or information relating to the Property obtained by Buyer during the Inspection Period.
- (vi) Prior to entry upon the Property, Buyer shall deliver to Seller a certificate of insurance confirming that Buyer maintains commercial general liability insurance with limits of at least One Million Dollars (\$1,000,000.00) for bodily or personal injury or death, and property damage, which shall include contractual liability insurance with respect to Buyer's indemnification obligations under this Agreement, naming Seller as an additional insured thereunder, which commercial general liability insurance policy shall remain in full force and effect until the earlier of either the Closing or the termination of this Agreement.
- (vii) During the initial Inspection Period, Buyer covenants and agrees to prepare and submit to the ARC (Architectural Review Committee) established under the CC&Rs, as hereinafter defined, plans and specifications for the development of the Property and the construction of the building and other improvements for the Buyer's Use.

- b. **SELLER DISCLOSURES:** Seller covenants and agrees to provide to Buyer within 15 days from the Contract Date (and within 15 days after Seller's receipt of any of the following documents, instruments and agreements obtained at any time after the Contract Date), without warranty as to the contents thereof, any and all documents, instruments and agreements in Seller's possession or control (or obtained or provided to Seller at any time after the Contract Date) relating to the Property, including, without limitation, surveys, title insurance commitments and policies, environmental studies, soils reports and topographic surveys (collectively, the "Property Information"). Buyer acknowledges and agrees that all of the Seller's Property Information provided by Seller, its agents, employees or representatives to Buyer or to any third parties shall be and is provided without warranty as to any of the matters set forth therein and Buyer hereby acknowledges and agrees that no warranties, either express or implied, shall be deemed to have been given or made by Seller, its agents, employees or representatives as to the content, authenticity, truthfulness, correctness or otherwise with respect to any of the Seller's Property Information. In the event the Closing hereunder does not occur for any reason, Buyer agrees to return to Seller all of the Seller's Property Information.
- c. **REZONING:** Seller and Buyer acknowledge and agree that the Property is part of the Patchwork Farms PUD and is subject to the Patchwork Farm Planned Unit Development Zoning Application and Development Plan (the "PUD Plan"), to be amended by First Amendment thereto (the "First Amendment") filed by Seller and the Vestavia Hills Board of Education (the "BOE") with the City of Vestavia Hills, Alabama (the "City"). The approval of the First Amendment (the "Zoning Condition") is a Condition to Closing, as provided in Paragraph 27(a) below. The Zoning Condition shall be deemed to have been satisfied by Seller at such time that Seller provides to Buyer a copy of the Ordinance adopted by the City approving the First Amendment.
7. **CONTINGENCIES EXPENSE AND LIABILITY:** Buyer shall be the sole payor of the above-referenced Inspections, except as modified in the Closing paragraph of this Agreement. Seller shall be responsible for the payment of any costs relating to obtaining any of the Seller's Property Information.
8. **SURVEY AND SUBDIVISION PLAT:**
- a. On or before sixty (60) days from the Contract Date, Seller shall obtain from Goodwyn Mills & Cawood, Inc. ("GMC") a current ALTA boundary survey of the Property (the "Survey") and deliver a copy of the same to Buyer for review and approval. The Survey shall (i) set forth the legal description of the Property, (ii) set forth the gross square footage and gross acreage of the Property (rounded to the nearest one-one thousandth of an acre), (iii) be certified to Seller and Buyer and (iv) must be approved by Buyer, which approval shall not be unreasonably withheld or delayed. In the event Buyer does

not disapprove the Survey in writing within 14 days following delivery of the same to Buyer, then Buyer shall be deemed to have approved the Survey. The approval (or deemed approval) of the Survey by Buyer (the "Survey Condition") is a Condition to Closing, as provided in Paragraph 27(a) below. Seller shall have no obligation to take any affirmative action to eliminate any objections of Buyer to the Survey. All costs associated with the Survey shall be paid by Seller as provided in Paragraph 14 below. Should Buyer disapprove the Survey within 14 days following receipt of the Survey, then Seller and Buyer shall attempt in good faith to reconcile any differences concerning the Survey within the then remaining Inspection Period, as the same may be extended as provided above.

- b. Following Buyer's approval (or deemed approval) of the Survey, Seller shall, at its sole cost and expense, cause a subdivision plat (the "Subdivision Plat") of the Property to be prepared which shall be in substantial conformity with the Survey approved (or deemed approved) by Buyer, which Subdivision Plat shall otherwise satisfy all applicable requirements of the City. The Subdivision Plat shall be submitted by Seller to Buyer and the City for approval and shall be recorded by Seller, at Seller's sole cost and expense, in the Office of the Judge of Probate of Jefferson County, Alabama (the "Probate Office"). The legal description of the Property set forth on the recorded Subdivision Plat shall be used as the legal description of the Property in the Deed, as hereinafter defined. In the event Buyer does not disapprove the Subdivision Plat in writing within seven (7) days following delivery of the same to Buyer, then Buyer shall be deemed to have approved the Subdivision Plat. The approval of the Subdivision Plat by the City and Buyer (the "Subdivision Condition") is a Condition to Closing, as provided in Paragraph 27(a) below. Should Buyer disapprove the Survey within seven (7) days following receipt of the Subdivision Plat, then Seller and Buyer shall attempt in good faith to reconcile any differences concerning the Subdivision Plat within the then remaining Inspection Period, as the same may be extended as provided above.
9. **TITLE:** Seller shall, within thirty (30) days from the Contract Date, provide to Buyer an Owner's Title Insurance Commitment (ALTA Form B) (hereinafter the "Commitment" or "Title Commitment"), including copies of all special exception documents identified in the Title Commitment issued by Land Title Company of Alabama, as agent for First American Title Insurance Company (hereinafter the "Title Company"). Buyer shall provide to Seller, within thirty (30) days of Buyer's receipt, a copy of Buyer's attorney's opinion identifying defects or any conditions unacceptable to Buyer or Buyer's lender, if any, in such title or Survey. Seller shall have a period of ten (10) days after receipt of Buyer's title objection letter in which to elect in writing whether or not to undertake to cure such title objections. Except for the elimination of any existing mortgages, liens or other encumbrances which can be removed by the payment of money (collectively, the "Existing Mortgages") and any other title matters created by Seller at any time on or after the date of this Agreement (other than

the First Amendment, the CC&Rs and the Restrictive Covenants, as hereinafter defined), Seller shall have no obligation to take any affirmative action to eliminate any title objections or exceptions of Buyer. If Seller elects to cure such title objections, Seller shall use good faith efforts to cure such objections to title within thirty (30) days of such election. If Seller elects not to cure such title objections, Buyer shall elect one of the following two options (i) terminate this Agreement and the Buyer shall receive a return of all deposits; or (ii) waive such objection(s) and close on the purchase of the Property.

10. **INTENTIONALLY DELETED:**

11. **CONDITION OF PROPERTY:** Buyer acknowledges and agrees that, except for the Infrastructure Work, as defined in Paragraph 26 below, to be undertaken by Seller after the Closing, (a) Seller has not made and does not make any covenant, representation or 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 Buyer's contemplated use thereof, (b) Buyer has been given the absolute and unfettered right during the Inspection Period to conduct such Inspections of the Property as Buyer, in its sole discretion, may determine necessary in order to satisfy itself of all conditions and other aspects of the Property and (c) Buyer 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. Except for the Infrastructure Work to be completed by Seller after the Closing as provided in Paragraph 26 below, Buyer acknowledges and agrees that the Property is to be sold and conveyed to, and accepted by, Buyer in its present condition, "AS IS, WHERE IS AND WITH ALL FAULTS", and Buyer hereby assumes the risk that adverse physical characteristics and existing conditions may have not been revealed by the Inspections.

12. **SELLER'S COMMITMENT:** Seller agrees that, except for the First Amendment, the CC&Rs and the Restrictive Covenants, it will not create any additional encumbrances, easements, covenants, restrictions, liens, special assessments or other binding instruments against the Property on or after the Contract Date without the express written authorization of the Buyer.

13. **DEFAULT:** If, at any time after the expiration of the Inspection Period, as the same may be extended by Buyer, Buyer fails or refuses to consummate the purchase herein provided for any reason other than a Seller default or failure of marketable title, then the Earnest Deposit and Inspection Period Extension Fees, if any, paid by Buyer to the Escrow Agent, shall be forfeited to Seller as Seller's sole liquidated damages and exclusive remedy. In the event

that Seller fails or refuses to consummate the sale herein provided for any reason other than a Buyer default, then Buyer, in its sole discretion, and as its sole and exclusive remedy, may 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 and Inspection Period Extension Fees, if any, paid by Buyer to the Escrow Agent, shall be refunded promptly to Buyer, this Agreement shall be deemed canceled and terminated and, except for the indemnification obligations of Buyer set forth in Paragraph 6(a)(i) above, neither party shall have any further obligation or liability to the other hereunder; provided, however, that if the default by Seller is a Material Default, as herein defined, then in addition to the Earnest Money and Inspection Period Extension Fees, if any, paid by Buyer to the Escrow Agent being refunded to Buyer, Seller shall reimburse Buyer for all third party out-of-pocket expenses actually incurred by Buyer in connection with its Inspections and due-diligence related activities with respect to the Property but not to exceed \$50,000.00 in the aggregate. As used herein, the term "Material Default" means any default by Seller under this Agreement which was material, intentional and within the sole control of Seller. Buyer hereby expressly waives any right to seek or obtain any other 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 Buyer.

14. **CLOSING:** Subject to the satisfaction of the Conditions, as defined in Paragraph 27(a) (or the written waiver by both Seller and Buyer of the Conditions) and the terms and provisions set forth in Paragraph 27(d) below, the consummation of the transaction provided herein (the "Closing") shall occur on the date (the "Closing Date") which is thirty (30) days following the expiration (or deemed expiration) of the Inspection Period, as the same may be extended by Buyer (each of Seller and Buyer acknowledge and agree that each desires that the Closing shall occur no later than December 31, 2014 subject to Buyer's right to exercise the First Extension and any of the Inspection and Zoning Period Extensions). The Closing shall be on the following terms:
- a. **Location:** Closing shall occur at the offices of Title Company via escrow whereby neither Buyer's nor Seller's counsel need be present but may deliver executed original documents via overnight courier or similar means and delivery funds by wire transfer to the Title Company who will deliver and record documents and distribute funds pursuant to closing instructions.
 - b. **Conveyance:** Seller shall convey the Property, as described on the Survey, to Buyer by Statutory Warranty Deed (the "Deed"), subject to the following (collectively, the "Permitted Exceptions"): (1) current and future years' ad valorem taxes and assessments, if any, applicable to the Property, (2) all easements, restrictions, reservations, rights-of-way and other matters of record, and (3) the PUD Plan, as

amended by the First Amendment, the CC&Rs and the Restrictive Covenants, as hereinafter defined.

- c. **Affidavit of Title:** Seller shall deliver to the Title Company an Owner's Affidavit in form reasonably acceptable to Seller and the Title Company.
- d. **Closing Statement:** Buyer and Seller shall deliver a duly executed closing statement, itemizing all adjustments, credits and prorations between Seller and Buyer.
- e. **Payment:** Buyer shall pay the Purchase Price to the Seller, subject to all adjustments, credits and prorations provided in this Agreement.
- f. **Other:** Buyer and Seller shall deliver such other documents, instruments, certificates, affidavits or agreements as may be reasonably requested by Title Company. However, no party shall be required to execute and deliver any document, instrument, certificate, affidavit or agreement which increases or expands the liability of such party under this Agreement.
- g. **Seller Adjustments:** At the Closing, Seller shall pay the following costs:
 - i. Seller's attorney's fees and expenses;
 - ii. All recording costs and filing fees in connection with the cancellation of any valid title objection which Seller elects to cure, the amendment to the CC&Rs adding the Property to the CC&Rs and the Restrictive Covenants;
 - iii. One-half of the premium for the Owner's Title Policy obtained by Buyer;
 - iv. Broker commissions as provided in Paragraph 22 below;
 - v. Prorated real property taxes, if any, through the date of Closing;
 - vi. Lookback, rollback, or lower use reduced taxes (if applicable);
 - vii. Costs of preparing the Survey;
 - viii. Costs of preparing and filing the Subdivision Plat; and
 - ix. Any other costs and expenses actually incurred by Seller including, without limitation, any payoffs with respect to any loans actually incurred by Seller.

- h. **Buyer Adjustments:** At the Closing, Buyer shall pay the following costs:
- i. State real estate transfer tax and recording cost of the Deed from Seller to Buyer and the temporary access agreement as provided in Paragraph 26 below;
 - ii. Buyer's attorney's fees and expenses;
 - iii. One-half of the premium for the Owner's Title Policy obtained by Buyer;
 - iv. Cost of any Inspections conducted by Buyer or Buyer's Designees;
 - v. Prorated real property taxes, if any, excluding lookback taxes (if applicable) from the date of Closing for the balance of the calendar year the Closing occurs; and
 - vi. Any other costs and expenses actually incurred by Buyer, including, without limitation, the costs associated with any of the Inspections and any loans obtained by Buyer in connection with its purchase of the Property.
15. **CC&RS AND RESTRICTIVE COVENANTS.** Buyer acknowledges and agrees that the Property is, or at the Closing, will be subject to the following:
- a. All of the terms and provisions of the Patchwork Farm Commercial Declaration of Covenants, Conditions and Restrictions dated April 4, 2012 (the "CC&Rs"), as recorded in Bk: LR201212, Page 19387 in the Office of the Judge of Probate of Jefferson County, Alabama, as the same may be amended.
 - b. The amendment to the CC&Rs subjecting the Property to the CC&Rs shall (i) create reciprocal easements over and upon any detention areas situated on the Property and Lots A and B, as defined in Paragraph 26 below, and any underground storm water lines and pipes constructed by the City as part of the Infrastructure Work on the Property and Lots A and B for the mutual benefit of the Property and Lots A and B, (ii) provide that any detention areas situated on the Property and Lots A and B shall be maintained solely by the then owner of the Property and Lots A and B, (iii) provide that the owners' association created under the CC&Rs shall maintain all of the storm water lines and pipes which connect any of such detention areas to each other but that the maintenance costs incurred by the owners' association in maintaining any such storm water drainage lines and pipes shall be paid for prorata by the owners of the Property and Lots A and B in accordance with the gross acreage of their respective properties, and (iv) create an easement for walking trails and paths and landscaping improvements within the 35-foot setback lines along the westernmost boundary of the Property.

- c. Restrictive covenants (which, together with the restrictive covenants referenced in Paragraph 15(d) below, are collectively referred to as the “Restrictive Covenants”) which prohibit the use of the Property as a skilled nursing home facility.
- d. Additional restrictive covenants to be executed by Buyer and Seller at the Closing (i) restricting the use of the Property to an age-restricted community requiring that at least 80% of the occupants of the dwellings within the Property be at least 55 years of age in compliance with The FAIR HOUSING AMENDMENTS ACT of 1988, HOUSING FOR OLDER PERSONS ACT 1995: FINAL RULE (Department of Housing and Urban Development: 24 CFR Part 100), or such other uses as may be approved in writing by the BOE and Seller and (ii) creating a repurchase right in favor of Seller which will allow Seller to repurchase the Property at the Purchase Price less the commissions paid to the Brokers by Seller pursuant to Paragraph 22 below, if (1) Buyer has not commenced construction of the primary building on the Property within 12 months of the Closing, subject to matters of Force Majeure, as defined in Paragraph 26(e) below, or (2) Buyer has not completed construction of the primary building on the Property within 24 months following commencement of construction, subject to matters of Force Majeure. For the purposes hereof, “commenced construction” or commencement of construction” shall mean (x) the approval by the ARC of final plans and specifications for the primary building to be constructed on the Property as required by the CC&Rs, (y) Buyer has obtained a building permit from the City, and (z) the pouring of footings or the foundation for such improvements. For the purposes hereof, “completed construction” shall mean (A) completion of construction of all improvements in substantial accordance with the plans and specifications approved by the ARC under the CC&Rs and (B) the issuance of a final certificate of occupancy for such improvements by the City.
16. **NO WAIVER OR MODIFICATION:** This Agreement may not be modified in any manner whatsoever without such waiver or modification being in writing duly executed by the parties hereto. No failure by either party to require performance by the other party of any of the terms of this Agreement shall in any way affect such party’s right to enforce such terms, nor shall any waiver by such party of any term be a waiver of any other term hereof or any breach hereof.
17. **NOTICES:** Any notice, designation, consent or approval required under this Agreement shall be in writing and mailed by certified mail, return receipt requested, or sent by overnight courier, addressed to the parties or sent by facsimile transmission to the parties at the addresses or number(s) provided below. Any notice forwarded by certified mail in accordance with the terms of this section shall be deemed to have been delivered to the other party three (3) business days following the date of mailing.

BUYER: Attn: Matthew M. Maude
Cameron General Contractors, Inc.
8040 Eiger Drive
Lincoln, NE 68516
Facsimile: (402) 420-2324
Email: mmaude@rlcommunities.com

SELLER: City of Vestavia Hills, Alabama
513 Montgomery Highway
Vestavia Hills AL 35216
Attention Mr. Butch Zaragoza, Mayor
Fax (205) 978-0189
Email: butchzaragoza@ci.vestaviiahills.al.us

and City of Vestavia Hills, Alabama
513 Montgomery Highway
Vestavia Hills AL 35216
Attention Mr. Jeff Downes, City Manager
Fax (205) 978-0189
Email: jdownes@vahal.org

18. **ASSIGNMENT:** Buyer may not transfer, assign or encumber its rights or obligations under this Agreement without the prior written consent of Seller, which approval may be withheld in Seller's sole and absolute discretion; provided, however, that Buyer shall have the right to transfer and assign this Agreement to any entity which is controlled by, or under common control with, Buyer. Seller may transfer and assign its rights and obligations under this Agreement to Daniel Realty Company, LLC or any affiliate thereof which acquires any of Seller's rights to purchase the real property of which the Property constitutes a part.
19. **SELLER'S RIGHT TO EFFECT AN EXCHANGE:** At the election of Seller and upon written notice to Buyer, prior to the date of Closing, Seller may elect to effectuate an exchange for certain selected like-kind real property or properties pursuant to I.R.C. §1031. Buyer agrees to cooperate provided Buyer incurs no additional cost, delay, or liability.
20. **GOVERNING LAW:** This Agreement shall be governed by, and construed in accordance with, internal laws of the State of Alabama.
21. **LEGAL COUNSEL:** The parties to this Agreement acknowledge that they are commercially skilled and experienced, have studied and negotiated the terms of this Agreement, and have further had the opportunity to consult with independent legal counsel. No provision of this

Agreement shall be construed in favor of, or against, either party as this Agreement has been negotiated and adopted fully and freely by both parties.

22. **BROKERS AND CLOSING FEE:** Seller and Buyer represent and warrant each to the other that they have not discussed this Agreement or the subject matter hereof with, and have not engaged in any fashion or any connection with this transaction, the services of any real estate or other broker, agent or salesman so as to create any legal right in any broker, agent or salesman so as to claim a commission or similar fee with respect to the purchase and sale of Property contemplated by this Agreement other than Doug Neil of Daniel Corporation ("Daniel") and Steve Mordecai and Andrew Loveman of Southpace Properties ("Southpace") (collectively, "Broker"). Seller and Buyer acknowledge that (i) Broker has acted as broker in connection the sale of the Property, (ii) Daniel represents Seller as broker, (iii) Southpace represents Buyer as broker and (iv) Broker shall be compensated for its services by Seller to the extent the Closing timely occurs.

At the Closing, Seller shall pay to Broker a closing fee in the aggregate amount of One Hundred Fifty Seven Thousand Five Hundred Dollars and No/100 (\$157,500.00) of the Purchase Price. As between Daniel Corporation and Southpace Properties, the aforesaid closing fee shall be paid between said parties as follows: Daniel - \$53,750 and Southpace – \$103,750.

It is understood and agreed that no commission shall be due hereunder in the event the Closing does not occur for any reason whatsoever. Seller and Buyer each hereby indemnifies the other against and agrees to hold harmless the other from any and all claims for real estate commissions or similar fees arising out of or in any way connected with any claimed agency relationship with the indemnitor and relating to the purchase and sale of the Property contemplated by this Agreement.

23. **BUYER'S RIGHT TO SIGNAGE:** Following the Closing, the Buyer shall have the right to erect signage on the Property showing a graphical representation of the expected project, including a designated phone number for prospective residents' inquiries, at Buyer's sole cost and expense. Provided, however, that any signage erected by Buyer shall conform with applicable City codes and regulations as well as any provisions in applicable CC&Rs or Association rules governing the Property.

Additionally, Seller shall grant to Buyer signage space on any development directory signage ("Directory Signage") provided for all of the real property subject to the CC&Rs (the "Patchwork Farms Development") along Cahaba River Road on real property owned by the Seller and wayfarer (or directional) signage within the rights-of-way of any public roadways within the Patchwork Farms Development to the extent such signage rights are granted to other owners or tenants of the Patchwork Farms Development. Buyer's signage on the

Directory Signage shall be subject to ARC, as defined in the CC&Rs, approval and shall be within the top four (4) positions on such Directory Signage.

24. **ENTIRE AGREEMENT:** This document contains the entire agreement between the Seller and Buyer with respect to the subject matter and terms of this Agreement. The parties mutually covenant and represent that there are no other agreements, promises, assurances, representations, warranties, undertakings, or understandings, either written or oral, between Seller and Buyer concerning the Property other than those set forth in this Agreement. No amendment of this Agreement shall be effective or binding unless it is in writing and has been signed by both Seller and Buyer.
25. **TIME IS OF THE ESSENCE:** Time is of the essence for this Agreement, is made a material consideration thereof, and all elements of this Agreement shall be subject to commercially expedient and diligent completion expectations by the parties.
26. **INFRASTRUCTURE WORK:**
- a. Promptly following the execution of this Agreement, Seller shall cause GMC to prepare preliminary grading and utility plans (collectively, the "Preliminary Plans") for the Property and the other real property (collectively, "Lots A and B") designated as Lots A and B on Exhibit A hereto and shall submit the same to Buyer during the Inspection Period. Following the preparation of the Preliminary Plans, Seller shall undertake (or cause to be undertaken) the following at Seller's sole cost and expense (collectively, the "Infrastructure Work"):
- (i) The rough grading of the Property and Lots A and B in substantial accordance with the Preliminary Plans. In addition, the Property shall be graded at +/-0.2 feet from finished grade and at +/-2% of 95% Standard Proctor soil compaction, as certified by GMC;
- (ii) The construction and installation of water, electrical, sanitary sewer and storm drainage lines, pipe, conduit and other apparatus to the property line of the Property and storm water detention facilities (which may be located on the Property) in order to serve the Property and Lots A and B (in which event additional easements shall be established which benefit and/or burden the Property and/or Lots A and B and require each such property to pay a prorata share of maintenance costs with respect to any such storm water detention facilities) in substantial accordance with Preliminary Plans; and

- (iii) The construction of (1) a public roadway from Caldwell Mill Road along the easternmost boundary of the Property, as shown in Exhibit A hereto and (2) the extension of Healthy Way, a public roadway, from its current point of termination to Caldwell Mill Road (collectively, the "Roads").
- b. The Infrastructure Work shall achieve Substantial Completion, as herein defined, no later than 200 days following the Closing Date (the "Substantial Completion Date"), subject to extensions thereof as a result of any matters of Force Majeure; provided, however, that Seller may elect to postpone application of the final seal coat to the Roads to a date after the Substantial Completion Date. Substantial completion of the Infrastructure Work ("Substantial Completion") shall be conclusively presumed to have occurred upon the issuance of a certificate or letter of substantial completion for all of the Infrastructure Work by GMC.
- c. To the extent the Infrastructure Work has not achieved Substantial Completion by the Closing Date, Buyer shall grant to Seller at the Closing a temporary construction easement over and upon the Property for the purposes of allowing Seller to construct and complete the Infrastructure Work, which temporary construction easement shall automatically terminate on the earlier of Substantial Completion of the Infrastructure Work or 200 days following the Closing Date.
- d. At the Closing, Seller shall grant to Buyer a temporary construction access easement over and upon a portion of Lots A and B in a location mutually acceptable to Seller and Buyer in order to provide construction access to and from Caldwell Mill Road and the Property, which temporary construction access shall automatically terminate upon completion of the Road.
- e. As used herein, the term "Force Majeure" means any delay caused, notwithstanding good faith efforts to avoid such delay, by acts of God, war, terrorism, casualty, shortages of material or labor, strikes, governmental approvals or moratorium, material default under this Agreement by the other party or any other cause beyond the reasonable control of a party but specifically excluding as any matter of Force Majeure the unavailability of or inability to obtain financing or funding; provided, however, that no period of Force Majeure shall be deemed to occur unless a party has, within ten (10) days after the commencement of such period, given written notice to the other party of such commencement of such period; provided, further, that in no event shall any party be entitled to claim, in the aggregate, periods of Force Majeure in excess of three (3) months.

27. **CONDITIONS TO CLOSING:**

- a. Notwithstanding anything provided in this Agreement to the contrary, the obligations of the parties hereto shall be subject to and conditioned upon the following conditions precedent (collectively, the "Conditions") being satisfied no later than the Closing Date:
- (i) Buyer shall be satisfied, in its sole and absolute discretion, with the Inspections and shall have not terminated this Agreement during the Inspection Period, as the same may be extended by Buyer;
 - (ii) The Zoning Condition shall have been satisfied as provided in Paragraph 6(c) above;
 - (iii) The City shall have (1) purchased (or scheduled to close simultaneously with the Closing hereunder) the Property and (2) closed (or scheduled to close simultaneously with the Closing hereunder) the sale of Lot A (as shown on Exhibit A) to Northport Holding, LLC;
 - (iv) The Survey Condition shall have been satisfied as provided in Paragraph 8(a) above;
 - (v) The Subdivision Condition shall have been satisfied as provided in Paragraph 8(b) above;
 - (vi) The Property shall have been subjected to and encumbered by the CC&Rs pursuant to an amendment thereto which shall have been recorded in the Probate Office;
 - (vii) The Restrictive Covenants for the Property shall have been executed by all parties thereto in form for recordation in the Probate Office; and
 - (viii) All approvals from the ARC (Architectural Review Committee) established under the CC&Rs shall have been approved for the development of the Property by Buyer.
- b. If, for any reason, all of the Conditions have not been satisfied (or waived in writing by both Seller and Buyer) by the Closing Date, this Agreement shall automatically terminate, be deemed cancelled, terminated, null and void and of no further force and effect, the Earnest Money and any Inspection Period Extension Fees paid by Buyer shall be refunded to Buyer and neither party shall have any further obligations or liabilities to the other hereunder except for the indemnification obligations set forth in Paragraph 6(a)(i) above.

- c. Seller and Buyer both covenant and agree to use commercially reasonable efforts and cooperate with each other in satisfying all of the Conditions, including, specifically, executing any and all documents, instruments and agreements which may be reasonably required by the other party in order to satisfy the Conditions.
 - d. Notwithstanding anything provided in this Agreement to the contrary, upon the satisfaction of all of the Conditions, then (i) the Closing shall occur on the date which is thirty (30) days following the satisfaction of the Conditions, (ii) the Inspection Period shall be deemed to have expired on the date on which all of the Conditions have been satisfied, and (iii) the First Extension, the Second Extension, and the Third Extension shall automatically expire, be deemed null and void and may not be exercised by Buyer.
28. **ACCEPTANCE:** This Agreement represents an offer to purchase real property made by Buyer to Seller and shall expire if not accepted by Seller on or before _____, 2014 at 5 p.m. Central Daylight Savings Time. The date on which Seller executes and returns a signed original to Buyer shall be the Contract Date. This Agreement may be extended by Buyer by written amendment if executed prior to the above time of expiration.

[The remainder of this page has been left intentionally blank]

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement in the day and year first written above.

BUYER:

CAMERON GENERAL CONTRACTORS, INC.,
a Nebraska corporation

By: _____
Breck C. Collingsworth, CEO

Date: _____

SELLER:

CITY OF VESTAVIA HILLS, ALABAMA, an Alabama municipal corporation

By: _____

Printed Name: _____

Its: _____

By: _____

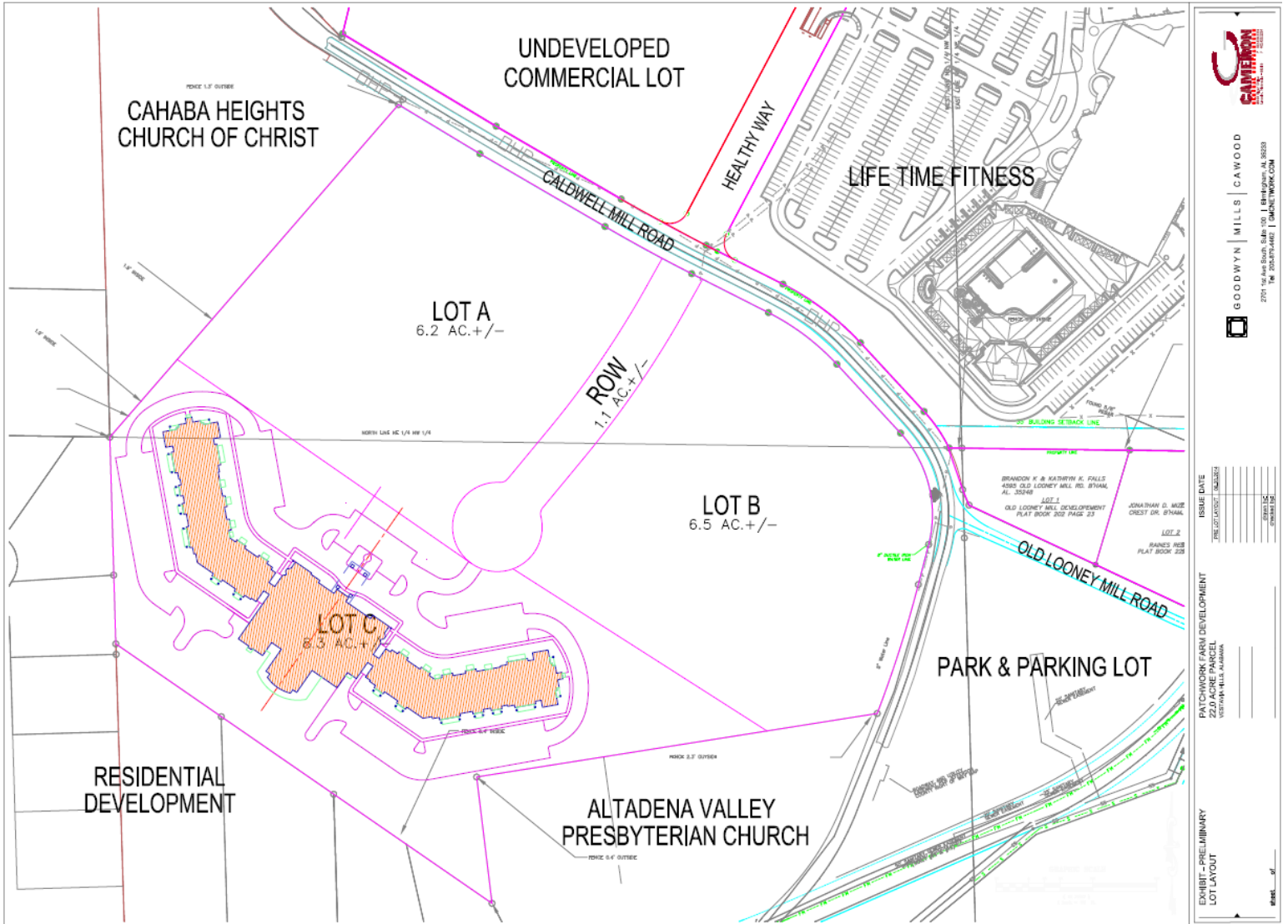
Printed Name: _____

Its: _____

Date: _____

EXHIBIT "A"

The Property is part of the real property located at 4320 Caldwell Mill Road in Vestavia Hills, AL 35243 (Parcel ID# 28 00 34 2 000 001.001), consisting of approximately 22.1 acres of which Buyer desires to purchase the approximately 8.3 acre parcel shown below as Lot C below.



ORDINANCE NUMBER 2530

AN ORDINANCE FINDING AND DETERMINING THAT REAL PROPERTY (“PORTIONS OF PATCHWORK FARMS PUD”) BEING VACANT PROPERTY SITUATED AT CALDWELL MILL ROAD AND CAHABA RIVER ROAD COMMONLY REFERRED TO AS PATCHWORK FARMS, VESTAVIA HILLS, ALABAMA OWNED BY THE CITY OF VESTAVIA HILLS AND THE VESTAVIA HILLS BOARD OF EDUCATION BUT UNDER CONTRACT TO PURCHASE BY THE CITY OF VESTAVIA HILLS, ALABAMA IS SURPLUS AND IS NOT NEEDED FOR PUBLIC OR MUNICIPAL PURPOSES; TO DECIDE WHETHER OR NOT THE PURCHASE OF A PORTION OF SAID PROPERTY BY DANIEL CORPORATION (“DANIEL”) PURSUANT TO A REAL ESTATE PURCHASE AGREEMENT BETWEEN THE CITY OF VESTAVIA HILLS, ALABAMA AND DANIEL, WILL PROMOTE THE ECONOMIC DEVELOPMENT OF THE CITY; WILL SERVE AS A VALID AND SUFFICIENT PUBLIC PURPOSE NOTWITHSTANDING ANY INCIDENTAL BENEFIT ACCRUING TO ANY PRIVATE ENTITY OR ENTITIES; AND WILL BENEFIT THE PUBLIC AND PROMOTE THE PUBLIC WELFARE OF THE CITY OF VESTAVIA HILLS; AND TO AUTHORIZE AND DIRECT THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER THE AGREEMENT.

THIS ORDINANCE NUMBER 2530 is approved and adopted by the City Council of the City of Vestavia Hills, Alabama on this the 25th day of August, 2014.

WITNESSETH THESE RECITALS:

WHEREAS, the City of Vestavia Hills owns approximately 36 +/- acres of vacant property located within the Patchwork PUD and the Vestavia Hills Board of Education owns a 22+/- acre site known as the “School Parcel at Patchwork Farms” and

WHEREAS, on July 31, 2014, the City Council of the City of Vestavia Hills, adopted and approved Resolution Number 4606 authorizing the Mayor and City Manager to execute and deliver an Agreement of Purchase and Sale (“Agreement”) with the Vestavia Hills Board of Education for the purchase and ultimate development of the “School Parcel” at Patchwork Farms located along Caldwell Mill Road in the City of Vestavia Hills, Jefferson County, Alabama constituting of approximately 22.19± acres, which a copy of said Agreement and legal description of property is marked as “Exhibit A” and is attached to and incorporated into this Ordinance Number 2530 as though written fully therein; and

WHEREAS, the City Council hereby acknowledges that the purpose of this purchase is for the ultimate economic development of the Patchwork Farms PUD; and

WHEREAS, a Real Estate Purchase Agreement Between the City of Vestavia Hills, Alabama and Daniel, (hereinafter referred to collectively as the “Agreement”) has been presented to this Council and a copy of said Agreement is marked as “Exhibit B” and is attached to and incorporated into this Ordinance Number 2530 as though fully written therein; and

WHEREAS, the Mayor and City Council of the City of Vestavia Hills, Alabama find and determine that the Property described in Exhibit B is surplus and is not needed for municipal or public purposes; and

WHEREAS, the execution and delivery of the Agreement was considered at a public hearing held on Monday, August 25, 2014, at the Vestavia Hills Municipal Center located at 513 Montgomery Highway in the City of Vestavia Hills, Alabama beginning at 5:00 p.m.; and

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

1. The City Council of the City of Vestavia Hills, Alabama finds and determines that the Property more particularly described in Exhibit B which is owned by the City of Vestavia Hills is surplus and is not needed for municipal or public purposes; and

2. The City Council further finds that the property that is under contract by the City to purchase from the Vestavia Hills Board of Education and, once the sale is closed, that the property is surplus and is not needed for municipal or public purposes; and

3. A public hearing was held by the Vestavia Hills City Council on Monday, August 25, 2014, at the Vestavia Hills Municipal Center located at 513 Montgomery Highway in the City of Vestavia Hills, Alabama beginning at 5:00 p.m to consider the enactment of this Ordinance, the execution and delivery of the Agreement and the matters required to be considered.

4. The City finds and determines that the sale of the property described in Exhibit B with Daniel pursuant to the terms and conditions in said Agreement, will:

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

(b) Serve as a valid and sufficient public purpose; and

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

(d) Promote commercial development and the stimulation of the local economy; and

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

4. The Mayor and City Manager are hereby authorized and directed to execute and deliver the written Real Estate Purchase Agreement between City of Vestavia Hills and Daniel marked as Exhibit B and attached hereto.

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. The provision of the Ordinance shall become effective immediately upon the passage and approval thereof by the City Council of the City of Vestavia Hills, Alabama and the publication and/or posting thereof as required by Alabama law.

DONE, ORDERED, APPROVED and ADOPTED, on this the 25th day of August, 2014.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as Acting City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2530 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 25th day of August, 2014 as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills Library in the Forest, New Merkle House and Vestavia Hills Recreational Center this the _____ day of _____, 2014.

Rebecca Leavings
City Clerk

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE (this "Agreement") is entered into as of July 31, 2014 (the "Effective Date") by and between **THE BOARD OF EDUCATION OF THE CITY OF VESTAVIA HILLS, ALABAMA** ("Seller"), and **CITY OF VESTAVIA HILLS, ALABAMA**, an Alabama municipal corporation ("Purchaser").

WHEREAS, Seller is the owner of a certain parcel of real estate located in Jefferson County, Alabama, which is comprised of approximately 22.19 acres and which is more fully described on Exhibit A attached hereto and made a part hereof (said parcel of land, together with all improvements thereon and all rights, including appurtenances pertaining thereto, is hereinafter referred to as the "Property");

WHEREAS, the Property is a part of the proposed Patchwork Farms mixed use development ("Patchwork Farms"), and in furtherance of the development of Patchwork Farms, Purchaser and Daniel Realty Company, LLC, an Alabama limited liability company ("Daniel"), have entered into that certain Master Development and Brokerage Services Agreement dated April 30, 2014 (the "Patchwork Development Agreement"); and

WHEREAS, in connection with its efforts to develop Patchwork Farms, Seller desires to sell, and Purchaser desires to purchase, the Property.

NOW THEREFORE, the parties hereto agree as follows:

1. **Purchase and Sale**. For and in consideration of One and No/100 Dollars (\$1.00) in hand paid by Purchaser to Seller and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Seller, Seller agrees to sell, and Purchaser agrees to purchase, all (and not less than all) of the Property for the Purchase Price (as defined below) and on the terms and conditions hereinafter set forth.

2. **Purchase Price**. The purchase price for all of the Property shall be Three Million Four Hundred Eighty-Three Thousand Eight Hundred Sixty-Eight and 12/100 Dollars (\$3,483,868.12) (the "Purchase Price"). The Purchase Price shall be paid to Seller in cash at Closing, subject to the adjustments and prorations set forth below.

3. **Closing**.

(a) Subject to the terms and provisions of Section 3(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 Purchaser, 513 Montgomery Highway, Vestavia Hills, Alabama 35216 at 10:00 a.m. Central Standard/Daylight Savings Time on the date selected by Purchaser on or before one hundred eighty (180) days following the Effective Date (the "Closing Date").

(b) Purchaser shall have the right to extend the Closing Date for three (3) additional six (6) month periods each (collectively, the "Extensions") as follows:

(i) Purchaser may extend the Closing Date for an additional 180-day period (thereby extending the Closing Date to the date which is 360 days following the Effective Date (the "First Extended Closing Date")) by (1) providing Seller with written notice of its election to extend the Closing Date on or before the initial Closing Date and (2) remitting to Seller the additional sum of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) (the "First Extension Fee");

(ii) Purchaser may extend the Closing Date, as extended to the First Extended Closing Date, for an additional 180-day period (thereby extending the Closing Date to the date which is 540 days following the Effective Date (the “Second Extended Closing Date”)) by (1) providing Seller with written notice of its election to extend the Closing Date on or before the First Extended Closing Date and (2) remitting to Seller the additional sum of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) (the “Second Extension Fee”); and

(iii) Purchaser may extend the Closing Date, as extended to the Second Extended Closing Date, for an additional 180-day period (thereby extending the Closing Date to the date which is 720 days following the Effective Date) by (1) providing Seller with written notice of its election to extend the Closing Date on or before the Second Extended Closing Date and (2) remitting to Seller the additional sum of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) (the “Third Extension Fee”).

(c) Purchaser shall provide to Seller at least five (5) days prior written notice of the Closing Date selected by Seller for the Closing. To the extent paid by Purchaser to Seller, the First Extension Fee, the Second Extension Fee and the Third Extension Fee (collectively, the “Extension Fees”) shall be applied to the Purchase Price payable by Purchaser to Seller at the Closing.

(d) In the event Purchaser fails to timely exercise any of the Extensions and deposit the applicable Extension Fees with Seller, Purchaser shall be deemed to have irrevocably elected to cancel and terminate this Agreement in which event all Extension Fees, if any, previously deposited by Purchaser with Seller shall be retained by Seller and except for any indemnification and other obligations of Purchaser under this Agreement which expressly survive the termination of this Agreement, neither party shall have any further obligations or liabilities to the other hereunder.

4. Master Development Rights.

Seller shall have the right to approve the master plan (the “Master Plan”) to be developed for Patchwork Farms, which shall include appropriate limits on density, land use and related restrictions, and will be submitted to Purchaser and Seller for approval. The Closing is expressly conditioned upon the following: (i) the Master Plan must be completed and approved by the Purchaser and Seller and (ii) restrictive covenants approved by Seller and consistent with the provisions of the Master Plan must have been recorded encumbering all of the property comprising Patchwork Farms, either through a separate document or an amendment to The Patchwork Farm Commercial Declaration of Covenants, Conditions and Restrictions dated April 4, 2012 and recorded in Bk: LR201212, Page 19387 in the Office of the Judge of Probate of Jefferson County, Alabama (the “Declaration”). With the approval of Seller, the Declaration shall be amended to add the Property to the terms and provisions thereof and shall be the form of the restrictive covenants for the Patchwork Farms (other than the five (5) single-family lots within Patchwork Farms which Purchaser has previously sold to a third party purchaser and which are subject to separate restrictive covenants). Purchaser and Seller agree to cooperate to facilitate the adoption of any amendments or modifications as may be necessary to the current PUD zoning ordinance for Patchwork Farms and the related restrictive covenants required to support the development of the approved Master Plan.

5. Other Opportunities; Right of First Refusal.

(a) Seller may, at any time prior to the Closing, accept a bona fide offer from a third party to purchase the Property, on such terms as it shall consider appropriate in its sole discretion (the transfer contemplated by such an acceptance being herein referred to as a “Proposed Sale”).

(b) If Seller receives a bona fide offer for a Proposed Sale that it intends to accept, Seller shall first give Purchaser written notice (a "Right of First Refusal Notice") of the terms of any Proposed Sale. Purchaser shall have five (5) days after its receipt of the Right of First Refusal Notice to give written notice to Seller of its election to either:

(i) Purchase the Property on the terms of the Proposed Sale, including without limitation a purchase price equal to the purchase price of the Proposed Sale; or

(ii) Not purchase the Property.

(c) Purchaser shall be deemed to have elected its alternative under subsection (c)(ii) above upon its failure to give to Seller written notice of its election under subsection (c)(i) above within such five (5) day period, in which case Seller shall be free to consummate the Proposed Sale free and clear of this Agreement, and upon such closing, this Agreement shall terminate.

(d) Notwithstanding anything herein to the contrary, the right of first refusal granted to Purchaser shall expire on the date this Agreement expires or is terminated.

6. **Notice.** Any notices required of either party under this Agreement shall be delivered in person or by a prepaid nationally recognized courier service, addressed to the other party at the address given in this Agreement, and the same shall be deemed to have been received on the day it is delivered, or on the day of refusal to accept delivery. Notices required under this Agreement shall be sent to the following addresses:

If to Seller:

The Board of Education of the City of Vestavia Hills, Alabama
1204 Montgomery Highway
Vestavia Hills, AL 35216-2810
Attention: Superintendent

If to Purchaser:

The City of Vestavia Hills, Alabama
513 Montgomery Highway
Vestavia Hills, AL 35216
Attention: City Manager

7. **Title; Deed.** At the Closing, Seller agrees to convey the Property to Purchaser by a duly executed and acknowledged statutory warranty deed (the "Deed") which shall be subject to the following (collectively, the "Permitted Exceptions"): (i) ad valorem taxes for the then current year, (ii) easements, covenants and other encumbrances of record, (iii) the current zoning classification, (iv) mineral and mining rights not owned by Seller, and (v) matters that would be disclosed by a current survey of the Property.

8. **Default.**

(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 any Extension Fees paid to Seller shall be

promptly returned to Purchaser, this Agreement shall be deemed canceled and terminated and, except for the indemnification and other obligations of Purchaser which expressly survive the termination of this Agreement, 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 any Extension Fees, if any, paid by Purchaser to Seller shall be retained by Seller as liquidated damages in which event this Agreement shall automatically be deemed terminated and canceled and, except for the indemnification and other obligations of Purchaser which expressly survive the termination of this Agreement, 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 any Extension Fees, if any, paid to Seller by Purchaser as its total damages and relief hereunder in the event Purchaser fails to close the purchase and sale transaction contemplated herein.

9. **Intentionally Deleted.**

10. **Taxes.** The Property is exempt from ad valorem taxes and there shall be no proration of ad valorem taxes for the Property at the Closing.

11. **Condition of Property; Property Purchased "As-Is".** The Property shall be sold and conveyed "as is" and "with all faults", and Seller has not made, does not make, and hereby disclaims any and all express or implied representations and warranties regarding or relating to the condition, suitability for any particular purpose, susceptibility to flooding, value, marketability, zoning of the Property, or with respect to use and occupancy restrictions, compliance with environmental laws and laws and regulations relating to hazardous substances, toxic wastes and underground storage tanks, and all legal requirements affecting or relating to the Property. Purchaser acknowledges that (i) Purchaser is not relying on any warranties or representations with respect to the physical condition of the Property or with respect to the operations of the Property; and (ii) Purchaser is not relying on any information provided by Seller, and that Purchaser has made, or will make prior to the Closing Date, an independent investigation of all matters relating to the Property and the ownership and operation of the Property. The terms and covenants of this Section 11 shall survive the Closing or any termination of this Agreement.

12. **Transfer Costs; Title Insurance.** Each party shall pay its respective attorney's fees. Purchaser shall pay for the cost of obtaining an owner's title insurance policy, the cost of an ALTA survey, if required by Purchaser, and all recording and documentary fees and taxes resulting from the conveyance of the Property.

13. **Assignment.** Purchaser may not assign this Agreement or any of its rights hereunder without the express written consent of Seller. Any assignment in violation of the restriction on assignment in this Section 13 shall be void and of no force and effect. Notwithstanding the forgoing, Purchaser may assign all of its rights hereunder to Daniel or a wholly owned subsidiary of Daniel. In no event shall Purchaser be released from its duties and obligations hereunder unless expressly released in writing by Seller.

14. **Inspection.** Upon execution of this Agreement, Purchaser is hereby granted the right to enter onto the Property from time to time for the purpose of inspecting the Property; provided, however,

that Purchaser shall conduct no invasive testing, investigations, or evaluations on the Property without the prior written consent of Seller. In performing its inspections, Purchaser agrees not to damage the Property and shall indemnify, defend and hold Seller, its successors, assigns, officers, employees and agents, harmless from and against any cost, claim, loss, liability, judgment, lien or other expense, including attorney fees and for bodily injury, personal injury, death or property damage, which shall arise as a consequence of Purchaser's exercise of its rights under this Agreement. This indemnity shall survive the Closing or the termination of this Agreement. In the event Purchaser fails to close the transaction contemplated herein for any reason, upon request by Seller, Purchaser shall furnish, at no cost to Seller, copies of all surveys, soil test results, engineering, environmental and other studies and reports relating to Purchaser's inspections of the Property, which obligation shall survive the termination of this Agreement.

15. **Authority.** Seller represents and warrants, to and for the benefit of Purchaser that Seller has the authority and power to convey the Property in accordance with the terms of this Agreement and the individuals signing this Agreement and all documents executed or to be executed by Seller are and shall be duly authorized to sign the same on Seller's behalf and bind Seller thereto.

16. **Brokerage; Real Estate Commissions.** Purchaser shall pay all real estate commissions, broker's commissions, and other related fees and expenses owing to Daniel under the Patchwork Development Agreement, if any, resulting from the Closing of the transaction contemplated by this Agreement. Seller shall pay to Daniel, at Closing, a closing fee of One Hundred Fifty Thousand and No/100 Dollars (\$150,000) if and only if the Closing occurs between Seller and Purchaser pursuant to the terms of this Agreement. Purchaser and Seller each represent and warrant to the other that, except for Daniel, such party has dealt with no other broker, agent or other person in connection with this transaction and that no broker, agent or other person other than the foregoing brought about this transaction, and Purchaser and Seller agree to indemnify and hold the other party harmless from and against any claim by any other broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with such party with regard to this transaction. The terms and covenants of this Section 16 shall survive the Closing or any termination of this Agreement.

17. **Governing Law.** The terms and conditions of this Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of Alabama.

18. **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the transactions provided for herein, and the parties hereto agree that no other representations have been made by either party.

19. **Time is of the Essence.** Time is of the essence of this Agreement and of the performance of each and every covenant contained herein.

20. **Successors and Assigns.** This agreement shall be binding upon the personal representatives, executors, administrators, heirs and assigns of Seller, and inure to the personal representatives, executors, administrators, heirs and assigns of Purchaser.

21. **Possession.** Possession of the Property shall be given on the Closing Date, free of any tenancy, leases or rights of occupancy other than any such rights arising out of the Permitted Exceptions.

IN WITNESS WHEREOF, the parties have executed or caused this Agreement to be executed by their duly authorized representative as of the Effective Date.

SELLER:

**THE BOARD OF EDUCATION OF THE CITY OF
VESTAVIA HILLS, ALABAMA**

By: Sheila Phillips
Name: SHEILA PHILLIPS
Its: Superintendent

By: Kym Prewitt
Name: Kym Prewitt
Its: Board of Ed. President

PURCHASER:

THE CITY OF VESTAVIA HILLS, ALABAMA

By: Jeffrey Downes
Name: Jeffrey Downes
Its: City Manager

By: Alberto C. Zaragoza, Jr
Name: Alberto C. Zaragoza, Jr
Its: Mayor

EXHIBIT A

(Legal Description of Property)

A parcel of land situated in the NW ¼ of Section 34, Township 18 South, Range 2 West, Jefferson County, Alabama, Birmingham Division, being more particularly described as follows: Begin at the Northwest corner of the SE ¼ of the NW ¼ of Section 34, Township 18 South, Range 2 West, being a found 3" capped pipe; thence in a Southerly direction along the West line of said ¼-¼ section a distance of 324.26 feet to a 2" capped pipe found; thence 53 degrees 35'00" to the left in a Southeasterly direction a distance of 714.00 feet to a 2" pipe found; thence 131 degrees 38'56" to the left in a Northwesterly direction a distance of 199.55 feet to a 2" capped pipe found; thence 87 degrees 53'00" to the right in a Northeasterly direction a distance of 633.40 feet to a GSA capped rebar found on the Westerly right of way line of Old Caldwell Mill Road, being the P.C. (point of curve) of a curve to the left having a radius of 1884.86 feet and a central angle of 6 degrees 26'44"; thence 60 degrees 05'11" to the left (angle measured to tangent) in a Northeasterly direction along the arc of said curve and along the Westerly right of way line of said Old Caldwell Mill Road a distance of 212.04 feet to a GSA capped rebar found being the P.T. (point of tangent); thence tangent to said curve in a Northeasterly direction and along the Westerly right of way line of said Old Caldwell Mill Road a distance of 64.91 feet to a GSA capped rebar found, being the P.C. (point of curve) of a curve to the left having a radius of 188.59 feet and a central angle of 57 degrees 02'48"; thence in a Northeasterly, Northerly and Northwesterly direction along the arc of said curve and along the Westerly right of way line of said Old Caldwell Mill Road a distance of 187.77 feet to a WSE capped rebar set, being the P.T. (point of tangent) of said curve; thence tangent to said curve in a Northwesterly direction and along the Southerly right of way line of said Old Caldwell Mill Road a distance of 146.63 feet to a GSA capped rebar found, being the P.C. (point of curve) of a curve to the left having a radius of 379.44 feet and a central angle of 20 degrees 23'12"; thence in a Northwesterly direction along the arc of said curve and along the Southerly right of way line of said Old Caldwell Mill Road a distance of 135.01 feet to a GSA capped rebar found; being the P.T. (point of tangent); thence tangent to said curve in a Northwesterly direction and along the Southerly right of way line of said Old Caldwell Mill Road a distance of 134.32 feet to a GSA capped rebar found, being the P.C. (point of curve) of a curve to the right having a radius of 2637.29 feet and a central angle of 3 degrees 21'00"; thence in a Northwesterly direction along the arc of said curve and along the Southerly right of way line of said Old Caldwell Mill Road a distance of 154.20 feet to a GSA capped rebar found, being the P.T. (point of tangent); thence tangent to said curve in a Northwesterly direction and along the Southerly right of way line of said Old Caldwell Mill Road a distance of 226.04 feet to a WSE capped rebar set; thence 0 degrees 45'28" to the right in a Northwesterly direction and along the Southerly right of way line of said Old Caldwell Mill Road a distance of 148.81 feet to a GSA capped rebar found; thence 80 degrees 15'29" to the left in a Southwesterly direction (leaving said right of way line) a distance of 689.17 feet to the Point of Beginning.

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made and entered into as of this ___ day of _____, 2014 by and between **CITY OF VESTAVIA HILLS, ALABAMA**, an Alabama municipal corporation ("Seller"), and **DANIEL REALTY COMPANY, LLC**, an Alabama limited liability company ("Purchaser").

RECITALS:

Seller has heretofore entered into an Agreement of Purchase and Sale (the "School Board Agreement") with The Board of Education of the City of Vestavia Hills, Alabama (the "BOE") pursuant to which the BOE has agreed to sell and Seller has agreed to purchase approximately 22.19 acres of real property (the "School Property") owned by the BOE which is more particularly shown in **Exhibit A** attached hereto and incorporated herein by reference. As reflected in **Exhibit A** hereto, the School Property consists of three (3) proposed lots reflected as Lots A, B and C (individually, "Lot A", "Lot B" and "Lot C"), as well as a proposed roadway providing access to Lot A, Lot B and Lot C.

Contemporaneously herewith, Seller has entered into a Project Development and Exchange Agreement (the "Northport Agreement") with Northport Holding, LLC ("Northport") pursuant to which Seller and Northport have agreed to enter into an exchange transaction whereby (a) Seller has agreed to convey to Northport Lot A within the School Property and (b) Northport has agreed to convey to the City Lot 1C, according to the Patchwork Farms Lot 1 Resurvey Final Plat, as recorded in Map Book 235, Page 45 in the Office of the Judge of Probate of Jefferson County, Alabama (the "Existing Northport Lot"). As part of the Exchange Agreement, Seller and Northport will enter into a Special Economic Development Agreement (the "Economic Development Agreement"; and, together with the Northport Agreement, collectively, the "Exchange Agreement") substantially in the form attached as an exhibit to the Northport Agreement.

Contemporaneously herewith, Seller has entered into a Real Estate Purchase Agreement (the "CGC Agreement") with Cameron General Contractors, Inc. ("CGC") pursuant to which Seller has agreed to sell and convey to CSC Lot C within the School Property.

Seller is the owner of Lot 1B, according to the Patchwork Farms Lot 1 Resurvey Final Plat, as recorded in Map Book 235, Page 45 in the Office of the Judge of Probate of Jefferson County, Alabama (the "Remaining Retail Lot") which is situated adjacent to and contiguous with the Existing Northport Lot (which Resurvey Retail Lot and the Existing Northport Lot are hereinafter sometimes collectively referred to as the "Retail Lots").

Seller is also the owner of that certain real property (the "Seller's Property") situated in the City of Vestavia Hills, Jefferson County, Alabama which consists of the Acreage Parcel (the "Acreage Parcel") and Lot 3A ("Lot 3A"), Lot 3B ("Lot 3B"), and Lot 3C ("Residential Lot 3C"), according to the Patchwork Farms Lot 3 Resurvey Final Plat as recorded in Map Book 236, Page 44 in the Office of the Judge of Probate of Jefferson County Alabama, which are also shown on **Exhibit B** attached hereto and incorporated herein by reference.

The School Property, the Retail Lots, the Seller's Property, together with (a) the approximately 16.03 acres, more or less, of real property previously sold by Seller to LTF Real Estate Company, Inc. for a health club and/or office uses and (b) the five (5) residential lots previously sold by Seller to NSH Corp. for detached single-family purposes, constitute all of the real property subject to the PUD Plan, as hereinafter defined, and is commonly known as Patchwork Farms ("Patchwork Farms").

Seller and Purchaser have heretofore entered into a Master Development and Brokerage Services Agreement (the "Master Development Agreement") which, among other things, (a) provided that Purchaser would provide various development management services to Seller in connection with the further development and sale of those portions of Patchwork Farms owned by Seller and (b) contained a right of first offer (the "Right of First Offer") granted by Seller to Purchaser to purchase all of the Patchwork Farms property owned by Seller.

Subject to the satisfaction of the Conditions, as hereinafter defined, and the remaining terms and provisions of this Agreement, Seller desires to sell and Purchaser desires to purchase the following real property (collectively, the "Property"):

- (a) Lot B of the School Property;
- (b) The Retail Lots; and
- (c) Lot 3B (subject to the resubdivision of the same pursuant to Paragraph 4 below).

Exhibit C attached hereto and incorporated herein by reference is a copy of the proposed Conceptual Development Plan for Patchwork Farms set forth in the PUD Plan, as hereinafter defined, and reflects the general location of the Property as of the date of this Agreement.

Following the consummation of the transaction contemplated by this Agreement, Seller shall retain ownership of Lot 3A and the Acreage Parcel (subject to the resubdivision of the same pursuant to Paragraph 4 below) and Residential Lot 3C, all of which will constitute the Nature Park Parcel (the "Nature Park Parcel"), as defined in the PUD Plan (as defined in Paragraph 8(a)(ii) below).

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties agree as follows:

1. **Sale and Purchase.** Seller agrees to sell and convey to Purchaser, and Purchaser agrees to purchase and acquire from Seller, the Property for the Purchase Price, as hereinafter defined, subject to and upon the terms and conditions hereinafter set forth.

2. **Earnest Money.**

(a) Contemporaneously herewith, Purchaser has deposited with Land Title Company of Alabama, as agent for First American Title Insurance Company (the "Title Company"), the sum of One Hundred and No/100 Dollars (\$100.00)(the "Earnest Money"). The Earnest Money shall be held in trust by the Title Company in a non-interest bearing account, subject to the terms and provisions set forth in the Agreement. The Earnest Money shall be paid to Seller or Purchaser, as applicable, as hereinafter provided.

(b) The Title Company shall hold possession of, keep, deliver and dispose of the Earnest Money subject to the terms and conditions of this Agreement and shall otherwise deal with the parties hereto fairly and impartially according to the intent of the parties as herein expressed; provided, however, that the Title Company is to be considered as a depository only, shall not be deemed to be a party to this Agreement except for the purposes of holding the Earnest Money and issuing the Title Commitment and the Title Policy, as such terms are hereinafter defined, and shall not be responsible or liable in any manner whatsoever for the sufficiency, manner of execution or validity of any written instructions, certificates or any other documents received by it, nor as to the identity, authority or rights of any persons (other than the Title Company) executing this Agreement. The Title Company shall be entitled to rely at all times on instructions given by Seller and/or Purchaser, as the case may be and as required hereunder, without any necessity of verifying the authority therefore.

(c) In taking or omitting to take any action whatsoever hereunder with respect to the disbursement of the Earnest Money, the Title Company shall be protected in relying upon any notice, paper or other document believed by it to be genuine, or upon evidence deemed by it to be sufficient, and in no event shall the Title Company be liable hereunder for any act performed or omitted to be performed by it hereunder in the absence of gross negligence or bad faith. The Title Company may consult with counsel in connection with its duties hereunder and shall be fully protected in any act taken, suffered or permitted by it in good faith and without gross negligence in accordance with the advice of such counsel.

3. **Purchase Price.**

(a) Subject to the provisions of Paragraph 3(b) below, the purchase price (the "Purchase Price") for the Property to be paid by Purchaser to Seller on the Closing Date, as hereinafter defined, shall be an amount equal to Four Million Three Hundred Forty Thousand One Hundred Eighty-Three and 82/100 Dollars (\$4,340,183.82). The Purchase Price shall be paid by Purchaser to Seller on the Closing Date by wire transfer of immediately available federal funds to an account (or accounts) designated by Seller, subject to such credits, prorrations and adjustments as provided in this Agreement.

(b) Pursuant to the terms and provisions of the Exchange Agreement and the CGC Agreement (collectively, the "Existing Agreements"), Seller is obligated to perform the "Infrastructure Work", as defined in each of the Existing Agreements (the "Infrastructure Work"), as additional consideration to Northport and CGC to consummate the transactions contemplated by the Exchange Agreement and the CGC Agreement, respectively. Within forty-

five (45) days from the date of this Agreement, Seller and Purchaser shall mutually determine the estimated costs of the Infrastructure Work. To the extent Seller and Purchaser agree during the Inspection Period that Purchaser shall undertake the Inspection Work, then (i) Purchaser shall assume all of Seller's obligations under the Existing Agreements to perform the Infrastructure Work and (ii) the Purchase Price shall be reduced by the amount mutually agreed to by Seller and Purchaser as the estimated costs to perform the Infrastructure Work. To the extent Purchaser, with Seller's consent, elects to assume Seller's obligations to perform the Infrastructure Work, then the provision of Paragraph 13 below shall be applicable.

4. **Subdivision Matters.**

(a) During the Inspection Period, Purchaser shall determine the extent of any wetland areas situated on or within Lot 3B. To the extent Purchaser determines that wetland areas are located on Lot 3B which would adversely affect Purchaser's proposed development of up to 270 multi-family residential units on Lot 3B, then Seller agrees to cause Lot 3A and Lot 3B to be resubdivided to add additional property to Lot 3B pursuant to a subdivision plat (the "Subdivision Plat") to be prepared by Goodwyn, Mills and Cawood, Inc. ("GMC"). The Subdivision Plat must be approved by both Seller and Purchaser and must reflect that the Nature Park Parcel (which, for purposes of the PUD Plan, shall be deemed to include the Acreage Parcel) consists of at least eight (8.00) acres. Once the Subdivision Plat is approved by Seller and Purchaser, Seller agrees to submit the same to the Planning and Zoning Commission of Seller (the "Planning Commission") for approval. All costs and expenses of preparing and recording the Subdivision Plat in the Office of the Judge of Probate of Jefferson County, Alabama (the "Probate Office"), shall be paid for by Seller.

(b) Upon approval of the Subdivision Plat by Seller, Purchaser and the Planning Commission and the recordation of the same in the Probate Office, the newly-created lot set forth on the Subdivision Plat (which will then include portions of Lot 3A and all of Lot 3B) shall be substituted as the legal description for Lot 3B.

5. **Title Matters.** Within 14 days from the date of this Agreement, Purchaser shall order a title insurance commitment (the "Title Commitment") for the issuance by the Title Company of an owner's title insurance policy (the "Title Policy"), in the amount of the Purchase Price covering title to the Property. Except for the elimination of any existing mortgages, liens or other encumbrances encumbering the Property which were created by Seller which can be removed by the payment of money and any subsequent title matters affecting the Property created by Seller after the issuance of the Title Commitment (collectively, the "Existing Mortgages and Subsequently-Created Title Exceptions"), Seller shall have no obligation to take any affirmative action to eliminate any title objections or exceptions of Purchaser. The costs of any title search fees, copying costs, the issuance of the Title Commitment, and the premium for the Title Policy shall be paid for by Seller. Any additional title insurance coverage (including any mortgagee's title policies) and any title endorsements or special coverages required by Purchaser shall be paid for solely by Purchaser.

6. **Inspection Period.**

(a) Subject to Purchaser's satisfaction of the requirements set forth in Paragraph 6(e) below, during the period of time beginning on the date hereof and ending at 5:00 p.m. Central Standard/Daylight Savings Time on the Closing Date (the "Inspection Period"), Purchaser, Purchaser's authorized agents and employees, as well as others authorized by Purchaser, shall have the right, at Purchaser's sole cost and expense, to enter upon the Property and conduct such tests, evaluations, inspections, investigations and reviews of the Property (collectively, the "Inspections") as Purchaser may desire. The Inspections may include, without limitation, obtaining all necessary consents and approvals of proposed development plans for the Property, reviewing and approving the Title Commitment and the Subdivision Plat, obtaining any and all consents and approvals which Purchaser may elect to obtain pursuant to the CC&Rs, as hereinafter defined, evaluating and/or conducting all architectural, engineering, topographical, geological, survey, wetlands, floodway, soil, surface, subsurface, environmental, storm water drainage, traffic, utility availability, zoning and subdivision inquiries and otherwise conducting and performing all other tests and evaluations affecting the Property as Purchaser may require. Purchaser covenants and agrees to promptly repair any physical damage to the Property caused by, arising out of or resulting from any of the Inspections. Purchaser does hereby indemnify, agree to defend and hold Seller harmless from and against any and all claims, costs, expenses and liabilities, including reasonable attorneys' fees and expenses suffered, paid or incurred by Seller arising out of or by virtue of (i) any injury or damage to person (including death) or property caused by any act or omission of Purchaser, its agents, employees, representatives or contractors in conducting or performing any of the Inspections, (ii) Purchaser's failure to pay all bills, invoices, costs and other charges relating to the Inspections and (iii) Purchaser's failure to repair and replace any damage to the Property caused by, resulting from or arising out of any of the Inspections. The indemnification obligations of Purchaser set forth herein shall survive the Closing or the termination and cancellation of this Agreement.

(b) If, at any time on or before the expiration of the Inspection Period, Purchaser determines, in its sole and absolute discretion, that the results or findings of any of the Inspections or any other matters or things relating to the Property or Purchaser's acquisition of the Property for Purchaser's intended use are unacceptable to Purchaser, then Purchaser shall have the unqualified right, at its option, to cancel and terminate this Agreement upon written notice to Seller given at any time on or before the expiration of the Inspection Period in which event the Earnest Money shall be promptly returned to Purchaser, this Agreement shall be deemed canceled and terminated and, except for the indemnification obligations of Purchaser set forth in Paragraph 6(a) above, neither party shall have any further obligation or liability to the other hereunder. If, for any reason, Purchaser does not timely exercise its right to cancel and terminate this Agreement on or before the expiration of the Inspection Period, then Purchaser shall be deemed to have accepted the condition of the Property and all Inspections of the Property and shall be deemed to have elected to proceed to Closing.

(c) Seller covenants and agrees to provide to Purchaser within 14 days from the date of this Agreement (and within 14 days after receipt of any of the following documents, instruments and agreements obtained by Seller after the date of this Agreement), without warranty as to the contents thereof, any and all documents, instruments and agreements

in Seller's possession or control (or about at any time after the date of this Agreement) relating to the Property, including, without limitation, surveys, title insurance commitments and policies, environmental studies, soils reports and topographic surveys, and documentation relating to the current zoning of the Property (the "Seller's Property Information"). Purchaser acknowledges and agrees that all of the Seller's Property Information provided by Seller, its agents, employees or representatives to Purchaser or to any third parties shall be and is provided without warranty as to any of the matters set forth therein and Purchaser hereby acknowledges and agrees that no warranties, either express or implied, shall be deemed to have been given or made by Seller, its agents, employees or representatives as to the content, authenticity, truthfulness, correctness or otherwise with respect to any of the Seller's Property Information. In the event the Closing hereunder does not occur for any reason, Purchaser agrees to return to Seller all of the Seller's Property Information.

(d) To the extent the Closing does not occur for any reason, Purchaser agrees to deliver to Seller copies of any and all title insurance commitments, surveys, topographic surveys, reports, investigations, engineering reports, environmental reports, soils reports, documentation relating to the zoning and proposed annexation and rezoning of the Property and any other documentation or information relating to the Property obtained by Purchaser during the Inspection Period.

(e) Prior to entry upon the Property, Purchaser shall deliver to Seller a certificate of insurance confirming that Purchaser maintains commercial general liability insurance with limits of at least One Million Dollars (\$1,000,000.00) for bodily or personal injury or death, and property damage, which shall include contractual liability insurance with respect to Purchaser's indemnification obligations under this Agreement, naming Seller as an additional insured thereunder, which commercial general liability insurance policy shall remain in full force and effect until the earlier of either the Closing or the termination of this Agreement.

7. **Condition of Property.** Except as otherwise provided in Paragraph 13 below, Purchaser acknowledges and agrees that (a) Seller has not made and does not make any covenant, representation or 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. Except as provided in Paragraph 13 below, 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.

8. **Conditions to Closing.**

(a) Notwithstanding anything provided in this Agreement to the contrary, the obligations of the parties hereto shall be subject to and conditioned upon the following conditions precedent (collectively, the “Conditions”) being satisfied no later than the Closing Date:

(i) Purchaser shall be satisfied, in its sole and absolute discretion, with the Inspections undertaken by Purchaser with respect to the Property pursuant to Paragraph 6 above;

(ii) The First Amendment to Planned Unit Development Zoning Application Development Plan (the “First Amendment”) which modifies and amends the Patchwork Farm Planned Unit Development Zoning Application and Development Plan dated December 3, 2008, as revised on February 26, 2009 (collectively, with the First Amendment, the “PUD Plan”) must have been approved by the Planning Commission and the City Council of Seller;

(iii) The subdivision plat for the School Property shall have been approved by the Planning Commission and recorded in the Probate Office;

(iv) Seller shall have purchased and acquired from the BOE all of the School Property in accordance with the terms and provisions of the School Board Agreement;

(v) The transaction contemplated by the Exchange Agreement between Seller and Northport shall have been consummated and Seller shall have transferred and conveyed to Northport Lot A of the School Property and Northport shall have transferred and conveyed to Seller the Existing Northport Lot;

(vi) The transaction contemplated by the CGC Agreement shall have been consummated and the City shall have sold and conveyed Lot C to CGC;

(vii) The Subdivision Plat shall have been approved by Seller, Purchaser and the Planning Commission and recorded in the Probate Office;

(viii) All of the Property shall have been subjected to and encumbered by the CC&Rs, as hereinafter defined, pursuant to an amendment thereto which shall have been recorded in the Probate Office, the form of which shall be provided to Purchaser during the Inspection Period and must be approved by Purchaser no later than the Closing Date;

(ix) The Northport Restrictive Covenants, as hereinafter defined, shall have been executed and recorded in the Probate Office, the form of which shall be provided to Purchaser during the Inspection Period and must be approved by Purchaser no later than the Closing Date; and

(x) Jefferson County, Alabama shall have executed a termination agreement in form reasonably acceptable to Purchaser pursuant to which Jefferson County, Alabama will release all easement rights in and to any sanitary sewer easements or rights of entry presently encumbering portions of Lot 3B.

(b) If, for any reason, all of the Conditions have not been satisfied by the Closing Date (unless both Seller and Purchaser waive in writing all Conditions that have not been satisfied by the Closing Date), then this Agreement shall automatically terminate, be deemed cancelled, null and void and of no further force or effect and neither party shall have any further obligations or liabilities to the other hereunder except for the indemnification obligations of Purchaser set forth in Paragraph 6(a) above.

(c) Seller and Purchaser both covenant and agree to use commercially reasonable efforts and cooperate with each other in satisfying all of the Conditions, including, specifically, executing any and all documents, instruments and agreements which may be reasonably required by the other party in order to satisfy the Conditions.

9. Closing.

(a) Subject to the satisfaction of the Conditions (or the written waiver by both Purchaser and Seller of the Conditions) and the terms and provisions of Paragraph 9(d) below, the consummation of the transactions contemplated herein (the "Closing") shall take place at the offices of Seller, 513 Montgomery Highway, Vestavia Hills, Alabama 35216 on or before November 1, 2014 (the "Closing Date"); provided, however, that with the prior written consent and approval of both Seller and Purchaser, the Closing Date may be extended to a date mutually acceptable to both Seller and Purchaser.

(b) Notwithstanding anything provided in this Agreement to the contrary, upon the satisfaction of all of the Conditions, (i) the Closing shall occur on, and the Closing Date shall be, the date which is thirty (30) days following the satisfaction of all of the Conditions and (ii) the Inspection Period shall be deemed to have expired on the date on which all of the Conditions have been satisfied.

(c) At the Closing, Seller shall deliver to Purchaser the following:

(i) A statutory warranty deed (the "Deed") conveying good and marketable fee simple title to the Property to Purchaser free and clear of all liens and encumbrances except for the following (collectively, the "Permitted Exceptions"): (1) current and future years' ad valorem taxes and assessments, (2) all matters which would be disclosed or set forth on a current survey of the Property, (3) all easements, restrictions, reservations, rights-of-way and other

matters of record, (4) the CC&Rs, as hereinafter defined, (5) the Declaration of Restrictive Covenants dated as of April 16, 2012 (the "Restrictive Covenants"), recorded in Bk: LR201212, Page 22953 in the Probate Office and (6) a Declaration of Restrictive Covenants (the "Northport Restrictive Covenants") prohibiting the operation of a skilled nursing home facility on any portion of the Property for as long as Lot A is principally used as a skilled nursing home facility, the form of which shall be submitted to Purchaser for approval prior to the expiration of the Inspection Period. Notwithstanding anything provided herein to the contrary, the revised legal description of Lot 3B, as set forth on the Subdivision Plat, shall be utilized in the Deed for such portion of the Property;

(ii) An owner's affidavit in the form attached hereto as **Exhibit D** and incorporated herein by reference;

(iii) Such authorization as the Title Company may deem reasonably necessary to evidence the authorization of Seller to deliver the Deed and the other Closing documents;

(iv) A non-foreign transferor affidavit in compliance with the provisions of the Foreign Investment in Real Property Tax Act of 1980, as amended; and

(v) A real estate broker affidavit in form reasonable acceptable to the Title Company.

(d) At the Closing, Purchaser shall deliver to Seller (i) by wire transfer to an account (or accounts) designated by Seller, currently available federal funds in an amount equal to the Purchase Price (less the Earnest Money) subject to such credits, proration and adjustments as are provided herein, (ii) such other documents as may be reasonably required to properly consummate the purchase and sale transaction contemplated herein or which may be required by the Title Company, and (iii) to the extent Purchaser and Seller have agreed that Purchaser will assume Seller's obligations to perform the Infrastructure Work, an assumption agreement pursuant to which Purchaser will assume all of Seller's obligations under the Existing Agreements to perform the Infrastructure Work which will include the provisions of Paragraph 13(c) and 13(d) below. At the Closing, the Title Company shall deliver the Earnest Money to Seller.

(e) The Property (other than the Existing Northport Lot) is currently exempt from ad valorem taxes and, accordingly, there shall be no proration of ad valorem taxes at the Closing except for ad valorem taxes for the current year for the Existing Northport Lot, which ad valorem taxes shall be prorated as of the Closing Date on the basis of the most recent tax bill for the Existing Northport Lot with all municipal ad valorem taxes deemed paid in advance and all state and county ad valorem taxes deemed paid in arrears for proration purposes.

(f) Except as otherwise provided herein to the contrary, Purchaser and Seller shall be responsible for their own respective attorneys' fees. The costs of the Title

Policy and any other title coverages and endorsements shall be paid by as provided in Paragraph 4 above. Seller shall pay for the costs of preparing and recording the Subdivision Plat, the First Amendment and the amendment to the CC&Rs. Purchaser shall pay all costs and expenses relating to the Inspections and the recording fees and taxes for recording the Deed.

(g) Seller and Purchaser acknowledge and agree that pursuant to the terms and provisions of the Development Management Agreement, no brokerage fees or commissions shall be due and payable in connection with the sale of the Property by Seller to Purchaser.

10. **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 and any Closing Extension Fees paid to Seller shall be promptly returned to Purchaser, this Agreement shall be deemed canceled and terminated and, except for the indemnification obligations of Purchaser set forth in Paragraph 6(a) 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; provided, however, that nothing contained in this Paragraph 10(a) shall be deemed to alter, limit or reduce the obligations of Seller set forth in Paragraph 13 below.

(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 immediately delivered to Seller as liquidated damages in which event this Agreement shall automatically be deemed terminated and canceled and, except for the indemnification obligations of Purchaser set forth in Paragraph 6(a) 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; provided, however, that nothing contained in this Paragraph 10(b) shall be deemed to alter, limit or reduce the (i) indemnification obligations of Purchaser set forth in Paragraph 6(a) above or (ii) the obligations of Purchaser set forth in Paragraphs 13 below.

11. **Possession.** Possession of the Property shall be given on the Closing Date, free of any tenancy, leases or rights of occupancy other than any such rights arising out of the Permitted Exceptions.

12. **CC&Rs and Restrictive Covenants.**

(a) Purchaser acknowledges and agrees that the Property is (or will be) subject to all of the terms and provisions of (i) the Patchwork Farm Commercial Declaration of Covenants, Conditions and Restrictions dated April 4, 2012 (the "CC&Rs"), as recorded in Bk: LR201212, Page 19387 in the Probate Office, (ii) the Restrictive Covenants and (iii) the Northport Restrictive Covenants.

(b) Purchaser acknowledges and agrees that the CC&Rs require that all uses of the Property must be approved by the ARC, as defined in the CC&Rs. Purchaser further acknowledges and agrees that the CC&Rs (or the Architectural Standards, as defined in the CC&Rs) shall be modified and amended to require that as part of any approval process relating to the development of the Retail Lots, the proposed developer must submit to the ARC and Seller fiscal impact models which include projected annual sales tax revenues to be generated to the City, which fiscal impact models, as well as all uses, including the representative tenant-mix and type of businesses, contemplated within the Retail Lots, must be approved by the ARC and Seller.

(c) To the extent the Closing under this Agreement occurs, Seller agrees to appoint (i) one (1) individual designated by Purchaser as a member of the ARC, as defined in the CC&Rs, and (ii) one (1) individual designated by Purchaser as a member of the Board of Directors of the Patchwork Farm Commercial Association, Inc. (the "Association"). Except for the above appointments, Seller shall retain all rights as "Developer" under the CC&Rs until the earlier of (1) such date as Seller desires to assign its "Developer" rights under the CC&Rs to Purchaser or (2) at such time as the initial build-out of the retail component of Patchwork Farms on the Retail Lots has occurred and the sales tax revenues projected in the fiscal impact models for such development approved by Seller and the ARC have been achieved for at least two consecutive years. Upon the occurrence of the first of the foregoing, Seller agrees to transfer and assign to Purchaser, and Purchaser agrees to accept and assume, all of Seller's right, title and interest as "Developer" under the CC&Rs.

(d) Contemporaneously with the transfer and assignment by Seller to Purchaser of all of Seller's right, title and interest as "Developer" under the CC&Rs, Seller agrees to convey by quitclaim deed to the Association the Acreage Parcel and the Nature Park Parcel, which areas will become Common Areas under the CC&Rs.

13. **Infrastructure Work and Other Improvements.**

(a) Pursuant to the terms and provisions of the Master Development Agreement, Seller and Purchaser have previously determined what will constitute the Infrastructure Work under the Existing Agreements and do hereby agree to continue to work

together during the Inspection Period to produce the Preliminary Plans, as defined in the Existing Agreements, for review by Northport and CGC.

(b) To the extent Seller and Purchaser do **NOT** mutually agree pursuant to Paragraph 3(b) above that Purchaser will assume Seller's obligations under the Existing Agreements to undertake and complete the Infrastructure Work required to be performed by Seller under the Existing Agreements, then:

(i) Seller covenants and agrees to cause all of the Infrastructure Work to achieve Substantial Completion, as herein defined, no later than 200 days following the Closing Date (the "Substantial Completion Date"), subject to extensions thereof as a result of any matters of Force Majeure, as hereinafter defined; provided, however, that Seller may elect to postpone application of the final seal coat to the Roads, as defined in the Existing Agreements, to a date after the Substantial Completion Date. Substantial completion of the Infrastructure Work ("Substantial Completion") shall be conclusively presumed to have occurred upon the issuance of a certificate or letter of substantial completion for all of the Infrastructure Work by GMC; and

(ii) To the extent the Infrastructure Work has not achieved Substantial Completion by the Closing Date, Purchaser shall grant to Seller at the Closing a temporary construction easement over and upon those portions of the School Property owned by Purchaser for the purposes of allowing Seller to construct and complete the Infrastructure Work, which temporary construction easement shall automatically terminate on the earlier of Substantial Completion of the Infrastructure Work or 200 days following the Closing Date.

(c) To the extent Seller and Purchaser mutually agree pursuant to Paragraph 3(b) above that Purchaser will assume Seller's obligations under the Existing Agreements to undertake and complete the Infrastructure Work required to be performed by Seller under the Existing Agreements, then:

(i) Purchaser covenants and agrees to cause all of the Infrastructure Work to achieve Substantial Completion by the Substantial Completion Date, subject to extensions thereof as a result of any matters of Force Majeure;

(ii) To the extent the Infrastructure Work has not achieved Substantial Completion by the Closing Date, Purchaser agrees to be bound by all of terms and provisions of the Existing Agreements regarding (1) the grant of temporary construction easements to CGC over and upon Lot B and the Road, as defined in the CGC Agreement, in accordance with the terms and provisions of the CGC Agreement and (2) the right of Northport and/or CGC to undertake and complete the Infrastructure Work to the extent the same is not completed by the Substantial Completion Date; and

(iii) Purchaser shall and does hereby indemnify, agree to defend and hold Seller harmless from and against any and all claims, costs, demands, actions, losses, liabilities, damages and expenses, including reasonable attorney's fees and expenses, suffered, paid or incurred by Seller arising out of or by virtue of Purchaser's failure to timely complete all of the Infrastructure Work in strict accordance with the terms and provisions of the Existing Agreements.

(d) As used in this Agreement, the term "Force Majeure" means any delay caused, notwithstanding good faith efforts to avoid such delay, by acts of God, war, terrorism, casualty, shortages of material or labor, strikes, governmental approvals or moratorium, material default under this Agreement by either party or any other cause beyond the reasonable control of either party but specifically excluding as any matter of Force Majeure the unavailability of or inability to obtain financing or funding; provided, however, that no period of Force Majeure shall be deemed to occur unless a party has, within ten (10) days after the commencement of such period, given written notice to the other party of such commencement of such period; provided, further, that in no event shall a party be entitled to claim, in the aggregate, periods of Force Majeure in excess of three (3) months.

(e) To the extent the Closing hereunder occurs, Seller and Purchaser agree to coordinate efforts in developing a plan for the improvement of the Nature Park Parcel and Acreage Parcel with walkways, paths, landscaping and other improvements (subject to the limitations set forth in the PUD Plan concerning the extent of such improvements) as well as determining funding sources for such improvements to the Nature Park Parcel and Acreage Parcel. Following the Closing, Seller agrees to grant to Purchaser access easements (subject to the limitations set forth in the PUD Plan) providing pedestrian access easements through portions of the Nature Park Parcel in such locations as may be mutually acceptable to Seller and Purchaser and in accordance with easement agreements in form mutually acceptable to Seller and Purchaser. In addition, to the extent the Closing hereunder occurs, Seller agrees to grant to Purchaser a permanent signage easement over and upon portions of the Acreage Parcel for monument signage, utilities and landscaping (collectively, the "Acreage Parcel Signage Improvements") and a temporary access and construction easement over and upon the Acreage Parcel in order to construct and install the Acreage Parcel Signage Improvements at such time as Seller has approved the plans and specifications for the Acreage Parcel Signage Improvements, which such easement agreement shall be in form mutually acceptable to Seller and Purchaser.

(f) Notwithstanding anything provided to the contrary in this Agreement or the Existing Agreements, to the extent any governmental agencies or authorities require any improvements of any nature be made to Caldwell Mill Road or Acton Road in connection with the development of the School Property or the completion of the Infrastructure Work, then the City covenants and agrees that it will, at its sole cost and expense, cause all such improvements to be timely undertaken and completed in accordance with all requirements of such governmental agencies or authorities. In no event shall Purchaser have any obligation to undertake or complete any such required improvements.

(g) In the event either Seller or Purchaser breaches or defaults in the performance of any of their respective covenants and agreements set forth in this Paragraph 13,

the non-defaulting party shall have the right to enforce the obligations of such defaulting party by any action or remedy available to such party, either at law or in equity, and the non-defaulting party shall also be entitled to recover from the defaulting party reasonable attorneys' fees and expenses incurred by the non-defaulting party in enforcing the terms and provisions of this Paragraph 13.

14. **Miscellaneous.**

(a) Notices. All notices required or permitted hereunder shall be in writing and shall be served on all of the parties hereto at the following addresses:

If to Seller: City of Vestavia Hills, Alabama
513 Montgomery Highway
Vestavia Hills AL 35216
Attention Mr. Butch Zaragoza, Mayor
Fax (205) 978-0189
Email: butchzaragoza@ci.vestaviiahills.al.us

and City of Vestavia Hills, Alabama
513 Montgomery Highway
Vestavia Hills AL 35216
Attention Mr. Jeff Downes, City Manager
Fax (205) 978-0189
Email: jdownes@vahal.org

With copies to: Stephen R. Monk
Bradley Arant Boult Cummings LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, Alabama 35203
Fax (205) 488-6429
Email: smonk@babbc.com

Patrick H. Boone
215 Richard Arrington Jr., Blvd. N., Suite 705
Birmingham, Alabama 35203
Fax (205) 324-2295
Email: patrickboone@bellsouth.net

If to Purchaser: Daniel Realty Company, LLC
3660 Grandview Parkway
Suite 100
Birmingham, Alabama 35243
Attn: Doug Neil, Vice President
Fax: (205) 443-4615
Email: dneil@danielcorp.com

With copies to: Daniel Realty Company, LLC
3660 Grandview Parkway
Suite 100
Birmingham, Alabama 35243
Attn: Eric Johnson, Vice President
Fax: (205) 443-6144
Email: ejohnson@danielcorp.com

If to Escrow Agent: Land Title Company of Alabama
600 North 20th Street, Suite 100
Birmingham, AL 35203
Attention: Susan R. Gannett
Fax: (205) 226-9280
Email: serg@land-title.net

Any such notices shall be deemed to be sufficiently given or served upon any party hereto when (i) sent by personal delivery to the address set forth above, (ii) deposited in the United States mail by registered or certified mail, return receipt requested, postage prepaid and addressed as provided above, (iii) deposited with a nationally recognized overnight delivery courier service for next business day delivery and addressed as set forth above, (iv) sent by facsimile transmission during regular business hours of any business day, in which case notice shall be deemed given upon confirmation of transmission of such facsimile notice, or (v) sent by electronic mail (email) to the email address set forth above, in which case notice shall be deemed given upon confirmation of transmission of such email notice. The above addresses may be changed by written notice to the other parties given in the manner set forth above.

(b) Assignment of Agreement. Purchaser may not transfer, assign or encumber its rights or obligations under this Agreement without the prior written consent of Seller, which approval may be withheld in Seller's sole and absolute discretion; provided, however, that Purchaser shall have the right to transfer and assign this Agreement to any entity which is wholly-owned and controlled by Purchaser; provided further, however, that any such permitted transfer or assignment by Purchaser shall not relieve or release the Purchaser named in this Agreement from its obligations under Paragraphs 6(a) and 13 above.

(c) Applicable Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Alabama.

(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.

(e) Captions. The captions or headings used herein are included for convenience and general reference only and shall not be construed to describe, define or limit the scope, intent or construction of this Agreement.

(f) Exhibits. Each exhibit which is referred and attached to this Agreement is incorporated herein as if set out fully in the body hereof.

(g) Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

(h) Time. Time is of the essence in the performance of all obligations of each party to this Agreement.

(i) Brokerage Commissions. Seller and Purchaser represent and warrant to each other that they have not dealt with any broker or sales agent in connection with this transaction. Seller and Purchaser each hereby agree to indemnify, defend and hold the other harmless from and against any and all claims, suits, liabilities, judgments and expenses, including reasonable attorneys' fees and expenses, suffered, paid or incurred by the other party as a result of any claim or claims for brokerage commissions, finder's fees or other compensation asserted by any person, firm or corporation in connection with the execution of this Agreement and the consummation of the transactions contemplated by this Agreement.

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

(k) Partial Invalidity. If any provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each provision shall be valid and enforceable to the fullest extent permitted by law.

(l) Attorneys' Fees. Notwithstanding anything provided to the contrary in Paragraphs 10(a) or 10(b) above, should either party hereto employ attorneys to enforce any of the provisions hereof, then the party losing in any final judgment agrees to pay to the prevailing party all reasonable costs, charges and expenses, including attorneys' fees and expenses, expended or incurred in connection therewith.

(m) Survival. All of the terms and provisions of this Agreement shall survive the Closing.

(n) Rules of Construction. The parties hereto and their respective counsel have participated in the drafting and redrafting of this Agreement and the general rules of construction which would construe any provision of this Agreement in favor or to the advantage of one party as opposed to the other as a result of one party drafting this Agreement as opposed to the other or in resolving any conflict or ambiguity in favor of one party as opposed to the other on the basis of which party drafted this Agreement are hereby expressly waived by both parties hereto.

(o) Development Plan Approval. Purchaser acknowledges and agrees that (i) the Property is (or will be) subject to the terms, covenants, conditions, restrictions, easements, charges, assessments, liens and repurchase options set forth in the CC&Rs, (ii) the CC&Rs constitute one of the Permitted Exceptions, (iii) all development plans for the Property must be approved as provided in the CC&Rs and (iv) the Property is subject to Assessments, as defined in the CC&Rs.

(p) Condemnation. If any authority having the right of eminent domain shall commence negotiations with Seller or shall commence legal action against Seller for the taking or acquiring of all or any part of the Property, either temporarily or permanently, in any condemnation proceeding or by exercise of the right of eminent domain, Seller shall immediately give written notice of the same to Purchaser. Upon the occurrence of any of the foregoing events, Purchaser shall have the right, at its option, to terminate this Agreement by giving written notice thereof to Seller on or before 14 days following the giving of such written notice by Seller to Purchaser. If Purchaser timely elects to terminate this Agreement, then neither Purchaser nor Seller shall have any further obligations or liabilities to the other hereunder and the Earnest Money shall be returned to Purchaser. If Purchaser does not so terminate this Agreement, then (i) the Purchase Price for the Property shall be reduced by the total of any awards, settlement proceeds or other proceeds received by the Seller at or prior to the Closing with respect to any taking and (ii) at the Closing, Seller shall assign to Purchaser all rights of Seller in and to any awards, settlement proceeds or other proceeds payable after Closing by reason of any such taking.

(q) Waiver of Right of First Offer. Purchaser does hereby waive its Right of First Offer with respect to (i) Lot A, to the extent the closing under the Exchange Agreement occurs, and (ii) Lot C, to the extent the closing under the CGC Agreement occurs.

[The remainder of this page has been left intentionally blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above shown.

SELLER:

CITY OF VESTAVIA HILLS, ALABAMA, an
Alabama municipal corporation

By: _____
Printed Name: _____
Its: _____

By: _____
Printed Name: _____
Its: _____

PURCHASER:

DANIEL REALTY COMPANY, LLC, an
Alabama limited liability company

By: Daniel Realty Corporation, an Alabama
corporation, Its Manager

By: _____
Printed Name: _____
Its: _____

CONSENT OF TITLE COMPANY

Land Title Company of Alabama, an Alabama corporation, as agent for First American Title Insurance Company, has joined in the execution of this Agreement in order to acknowledge receipt of the Earnest Money and the consent to the terms and provisions of Paragraph 2 above.

Dated as of the ___ day of _____, 2014.

LAND TITLE COMPANY OF ALABAMA, an
Alabama corporation

By: _____
Printed Name: _____
Its: _____

EXHIBIT A

Site Plan Depicting School Property

The School Property is the real property located at 4320 Caldwell Mill Road in Vestavia Hills, AL 35243 (Parcel ID# 28 00 34 2 000 001.001), consisting of approximately 22.1 acres, which will be subdivided into Lot A, Lot B and Lot C as shown below.

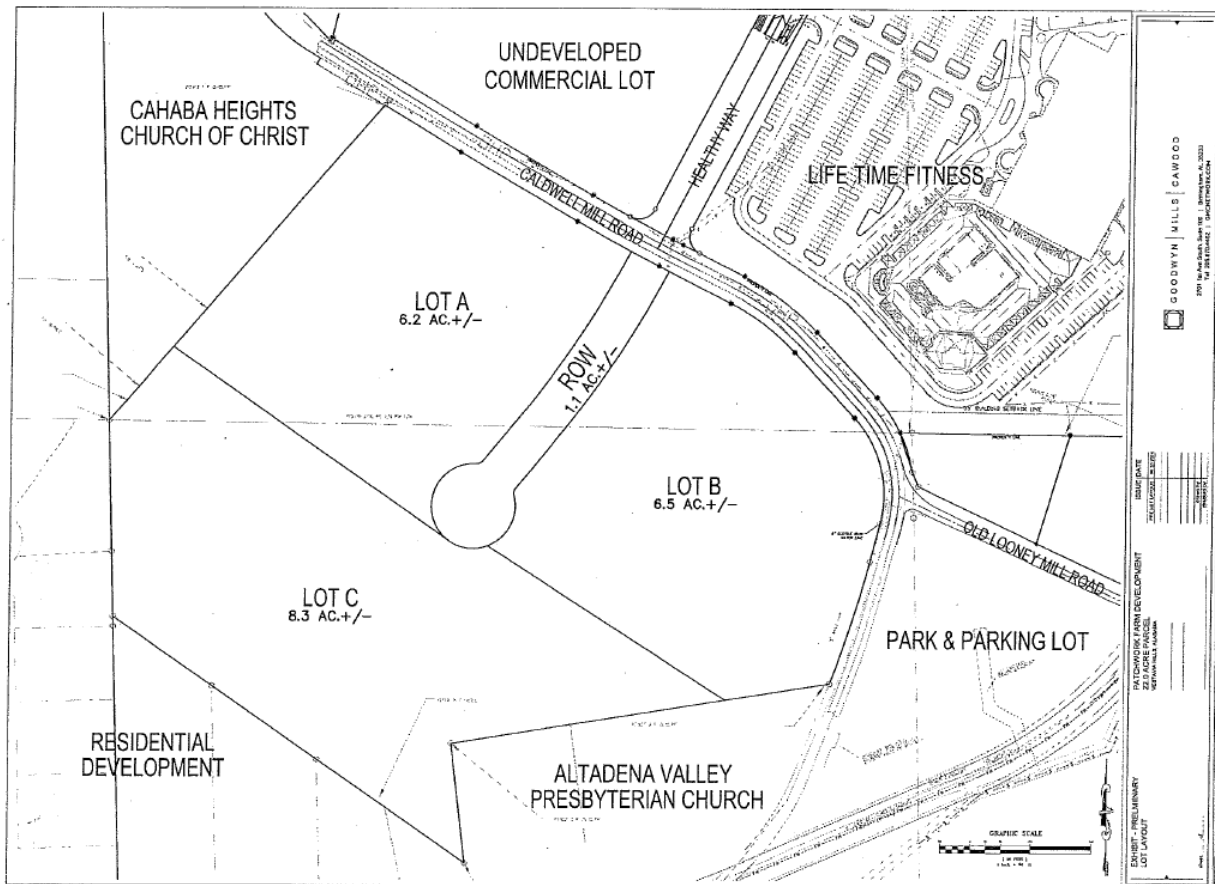
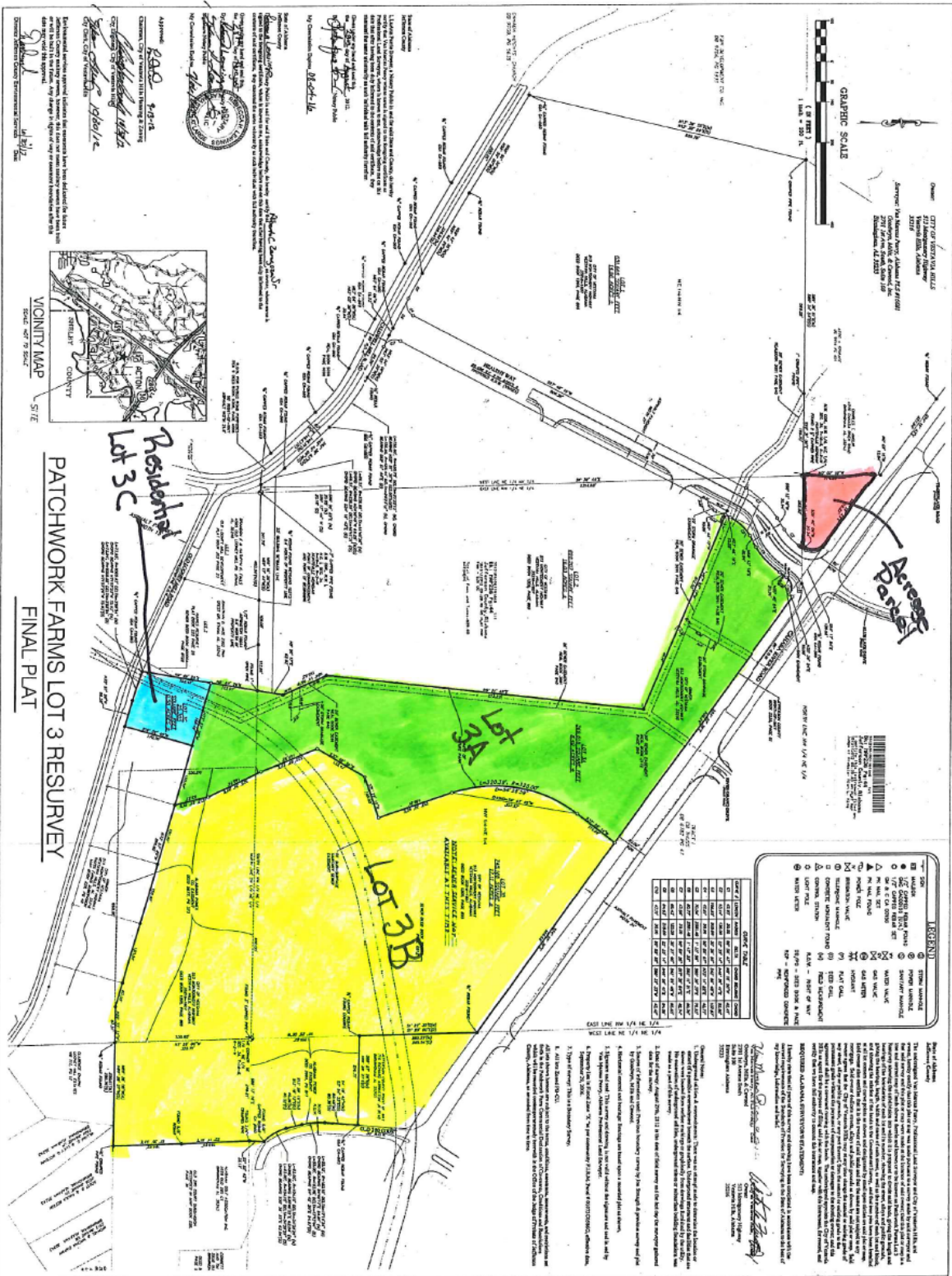


EXHIBIT B

Site Plan Depicting Seller's Property

See Attached.



LOT 3 RESURVEY

Co.1

1 of 1

PATCHWORK FARMS SUBDIVISION
FOR THE CITY OF VESTAVIA HILLS
VESTAVIA HILLS, ALABAMA

CBHM12012

FINAL PLAT

ISSUE DATE

Issued: 6/15/21

Drawn by: YSP

Checked by: YSP

GOODWYN | MILLS | CAWOOD

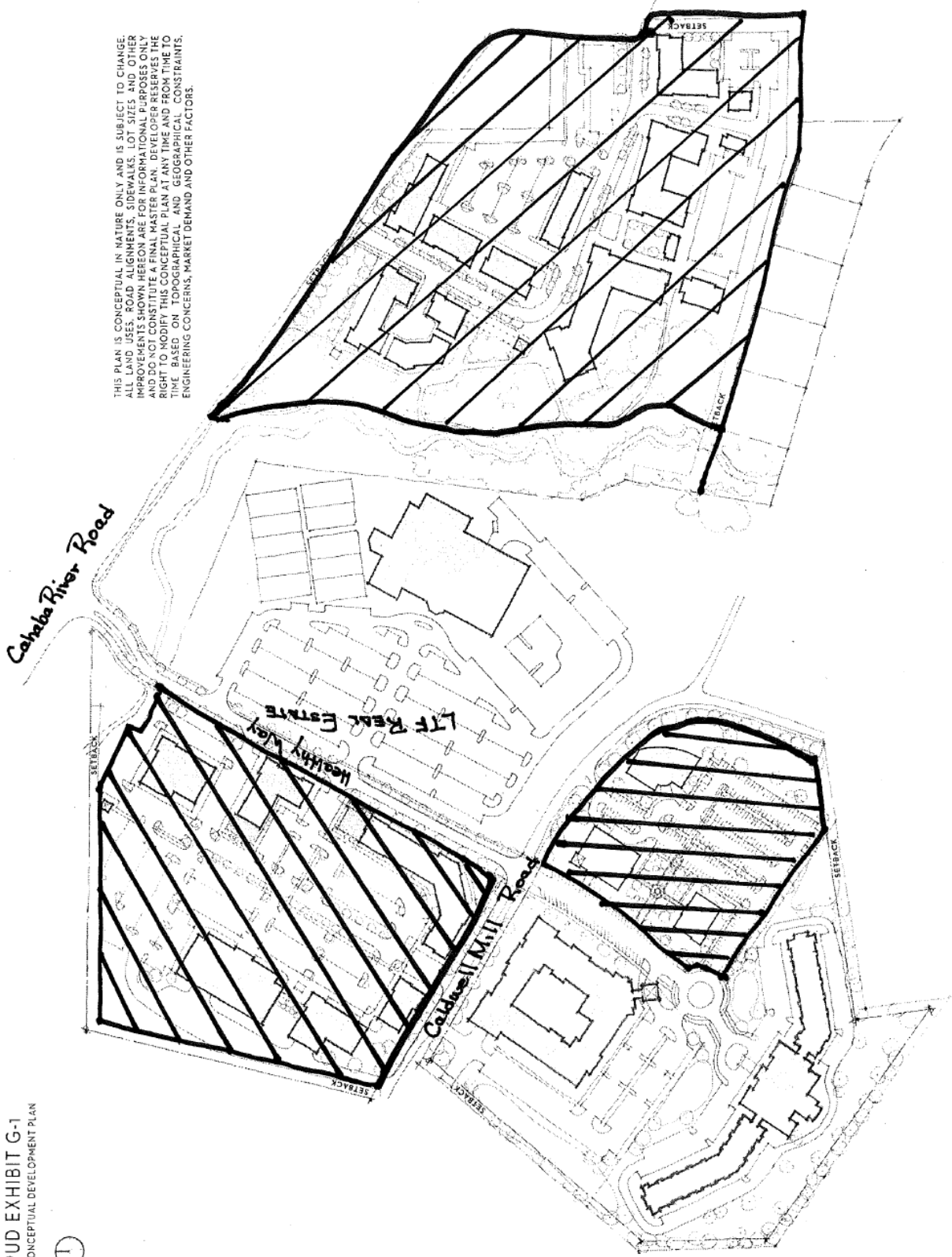
2701 1st Ave South, Suite 100 | Birmingham, AL 35233
Tel 205.899.4462 | GHCNETWORK.COM

EXHIBIT C

**Conceptual Development Plan of Patchwork Farm
Indicating General Location of Property**

See Attached.

THIS PLAN IS CONCEPTUAL IN NATURE ONLY AND IS SUBJECT TO CHANGE ALL LAND USES, ROAD ALIGNMENTS, SIDEWALKS, LOT SIZES AND OTHER IMPROVEMENTS SHOWN HEREON ARE FOR INFORMATIONAL PURPOSES ONLY AND DO NOT CONSTITUTE A FINAL MASTER PLAN. DEVELOPER RESERVES THE RIGHT TO MODIFY THIS CONCEPTUAL PLAN AT ANY TIME AND FROM TIME TO TIME, BASED ON TOPOGRAPHICAL AND GEOGRAPHICAL CONSTRAINTS, ENGINEERING CONCERNS, MARKET DEMAND AND OTHER FACTORS.



PUD EXHIBIT G-1
CONCEPTUAL DEVELOPMENT PLAN



EXHIBIT D

Form of Owner's Affidavit

See Attached.

STATE OF ALABAMA)
 :
COUNTY OF JEFFERSON)

OWNER'S AFFIDAVIT

Personally appeared before me, the undersigned officer duly authorized to administer oaths, _____, _____ of the CITY OF VESTAVIA HILLS, ALABAMA, an Alabama municipal corporation, who being duly sworn according to law, deposes and says on oath as follows:

1. That the City of Vestavia Hills, Alabama (the "City") is the owner of that certain real property (the "Property") described in **Exhibit A** attached hereto and by this reference incorporated herein.

2. That no improvements or repairs have been made to the Property by, for, or at the instance of, the City during the last six (6) months, the bills for which remain unpaid, and that there are no unpaid bills incurred by, for, or at the instance of, the undersigned for labor and materials used in making improvements or repairs on the Property, or for services of architects, surveyors, or engineers in connection therewith.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the City has caused this instrument to be duly executed this
____ day of _____, 201__.

CITY OF VESTAVIA HILLS, ALABAMA, an
Alabama municipal corporation

By: _____
Printed Name: _____
Its: _____

By: _____
Printed Name: _____
Its: _____

RESOLUTION NUMBER 4636

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AND DELIVER AN AGREEMENT WITH BUILDING AND EARTH SCIENCES TO PERFORM CONSTRUCTION MATERIALS TESTING FOR CONSTRUCTION OF A PARKING LOT ADJACENT TO THE VESTAVIA HILLS LIBRARY IN THE FOREST AND TO AUTHORIZE ADDITIONAL DESIGN FUNDING FOR SAID PROJECT

WHEREAS, on June 23, 2014, the City Council adopted and approved Resolution Number 4601 to accept bids for construction of a parking lot located adjacent to the Vestavia Hills Library in the Forest; and

WHEREAS, on January 13, 2014, the City Council adopted and approved Resolution Number 4539 to authorize the City Manager to execute and deliver an agreement with Walter Schoel Engineering Company, Inc., for design and survey information for above-described parking lot in an amount not to exceed \$29,000; and

WHEREAS, on January 14, 2014, the City Manager executed and delivered an agreement with Walter Schoel Engineering Company, Inc., to provide design and survey information for the above-detailed parking lot in an amount estimated at \$29,000. A copy of said Agreement is marked as “Exhibit A” and is attached to and incorporated into this Resolution Number 4636 as though written fully therein; and

WHEREAS, the City Engineer, in a memorandum dated August 21, 2014, had indicated that unanticipated geotechnical services provided resulted in an overrun of the original estimate by \$4,250. A copy of said memorandum is marked as Exhibit B attached to and incorporated into this Resolution Number 4636 as though written fully therein; and

WHEREAS, the City Engineer, in the above-described memorandum indicated that construction materials testing for construction of the parking lot is required to test compaction of materials during construction and presented a proposal submitted by Building and Earth Sciences to perform said tests at an amount estimated at \$18,000. A copy of said Agreement is marked as Exhibit C and attached to and incorporated into this Resolution Number 4636 as though written fully therein; and

WHEREAS, the City Manager has reviewed said overrun and proposal and recommended acceptance as described in the City Engineer’s memorandum; and

WHEREAS, the Mayor and Council have determined it is in the best public interest to accept the City Manager's recommendation.

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

1. The City Manager is hereby authorized to execute and deliver the agreement with Building and Earth Sciences marked Exhibit C and attached hereto; and
2. The City Manager is authorized to expend an additional \$4,250 for the design services provided by Walter Schoel Engineering, Inc.; and
3. This Resolution Number 4636 shall become effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 8th day of September, 2014.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

Encumber
contract to
"Library Warrant
Funds" to be
utilized for parking
project.

JTO/1-15-14

AGREEMENT FOR CONSULTING SERVICES

BETWEEN

CITY OF VESTAVIA HILLS

AND

WALTER SCHOEL ENGINEERING COMPANY, INC.

FOR

VESTAVIA HILLS LIBRARY PARKING ADDITION

VESTAVIA HILLS, ALABAMA

December 4, 2013

This **AGREEMENT**, entered into by and between **City of Vestavia Hills**, hereinafter referred to as the **Client**, and **Walter Schoel Engineering Company, Inc.**, hereinafter referred to as the **Consultant**, is for Consulting Services associated with Vestavia Hills Library Parking Addition, located in Vestavia Hills, Alabama.

SCOPE OF WORK

1. BOUNDARY & TOPOGRAPHIC SURVEY

A field-shot topographic survey of the site to be developed will be prepared. The detailed scope is as follows:

- Shoot topo to the center of all adjacent streets.
- Shoot topo on a 50-foot or equivalent grid including grade breaks on USGS Datum.
- Locate above site improvements including but not limited to the buildings, sidewalks, curb cuts, paved areas, etc.
- Locate visible utilities (water valves and meters, gas valves and meters, sanitary and storm sewers, electrical and telephone appurtenances, etc.).
- Shoot flow line elevations of visible sanitary and storm sewers, including the next upstream and downstream offsite structures
- Research underground utilities with each respective utility company and identify on plat.
- Process field survey data and prepare a Topographic Survey Map for use in design.

Lump Sum Fee \$4,500

2. RESURVEY OF SITE

The Consultant would prepare a resurvey of the site to combine the multiple lots into a single lot. The detailed scope is as follows:

- Coordinate with the City of Vestavia Hills on dates and submittals
- Prepare resurvey plat
- Set any new corner irons, if required
- Prepare vacation documents
- Assist in obtaining required signatures
- Submit to the City of Birmingham
- Attend approval meetings, as required
- Assist in having the plat recorded

Proposed Fee \$ 1,900

4. SCHEMATIC DESIGN AND PLANNING

The Consultant will also prepare preliminary engineering plans for the Client's review. The detailed scope is as follows:

- Consult with the Client, design team, and neighbors as required
- Coordinate with utilities, as necessary
- Drainage and detention study
- Preparation of schematic design plans, including:
 - o Layout Plan
 - o Grading and Drainage Plan
 - o Utility Plan
 - o Stormwater Management Plan

Lump Sum Fee \$ 3,100

5. FINAL CONSTRUCTION DOCUMENTS

The Consultant would perform final design and prepare construction documents. The Final Construction documents would be developed from the Schematic Design Plans. The detailed scope is as follows:

- Preparation of Final Construction Plans, Including:
 - o Cover Sheet
 - o Topographic Map
 - o Site Layout Plan
 - o Grading and Drainage Plan
 - o Erosion & Sediment Control Plan
 - o Site Utility Plan, if necessary
 - o Storm Profile Sheet
 - o Detail Plan(s) (standard details, roadway sections, paving sections, etc.)
- Preparation of Front End & Technical Specifications
- Assistance with submittals and approvals

Lump Sum Fee \$ 7,900

6. BIDDING ASSISTANCE & CONSTRUCTION ADMINISTRATION

The Consultant will assist the Client during the bidding process and will perform Construction Review to evaluate the Contractor's general conformance with plans and specifications. The Consultant will review Shop Drawings, and work with the Contractor and Client in solving any minor construction related problems that may arise. The detailed scope is as follows:

- Review of shop drawings
- Construction observation to be performed on an as-needed basis and at the direction of the Client
- Minor Construction-related revisions – Revisions required as a result of field conditions or as agreed upon by the Client

Hourly Estimate \$3,000

The above is only an estimate and is subject to change. The Client would be charged based on the hourly rates shown below in the "Schedule of Unit Rates". If the Consultant is nearing the end of the above-budget, the Client will be notified prior to billing.

7. LANDSCAPE DESIGN

The Consultant will provide landscape design services to support the parking addition. The landscape architect's proposal is attached for reference.

To be billed at 1.1 times the Landscape Architect's Fee

FEE SUMMARY

1. Boundary & Topo	\$ 4,500
2. Resurvey	\$ 1,900
3. Schematic Design and Planning	\$ 3,100
4. Final Construction Documents	\$ 7,900
5. <u>Construction Administration</u>	<u>\$ 3,000</u>
Subtotal (WSE)	\$ 20,400
Reimbursables (Estimated 6%)	\$ 1,224
<u>Reimbursable Consultant plus 10%</u>	<u>\$ 6,243</u>
TOTAL (BASE)	\$ 27,867
 Optional Add for Screen Wall	 \$ 1,100

NOT INCLUDED IN SCOPE OF WORK

1. As-built drawings of any type
2. ALTA Survey
3. Easement Vacations
4. Construction Stake-out or stake-out of geotech borings
5. Environmental assessments (T & E Species, Wetland Delineations, Phase 1, Phase 2, etc.)
6. Cultural Resources/Historic Properties Studies
7. Off-Site Utility Upgrades (including Public Sewer Extensions or Water main extensions)
8. Utility Relocations or extensions
9. Wall Design (to be design-build by contractor) – other than screen wall
10. LEED Services
11. ADEM Permitting

PAYMENT TERMS

The Consultant will bill the Client monthly based on work completed during the billing period. Work completed will be based upon a percentage of completion for Lump Sum Fees, and will be based on time and materials at the attached schedule of unit rates for Hourly Estimates and Not to Exceed agreements. Payments are due within thirty (30) days of invoice date. The Client's obligation to pay for services is in no way dependent upon the Client's ability to obtain financing, obtain approval from any governmental or regulatory agencies, real estate closing, receipt of payment from other parties or upon successful completion of the project. If payment is not received within thirty (30) days from date of invoice, the amounts may include a late charge of 1½ % per month, calculated from said thirtieth (30th) day. Should Consultant incur attorney's fees for collection of payment, the amount owed to Consultant shall include any and all said fees. Failure to make payment within sixty (60) days shall constitute a waiver of the right to dispute the accuracy and appropriateness of the invoice. In addition, Consultant reserves the right to suspend services under this Agreement until such time as payment is made in full for all amounts due for services rendered and expenses incurred has been received.

SCHEDULE OF UNIT RATES – EFFECTIVE THROUGH 12/31/2013

Senior Principal	\$ 225.00 per hour
Principal	\$ 170.00 per hour
Chief Land Surveyor	\$ 150.00 per hour
Senior Project Manager	\$ 140.00 per hour
Project Manager 2	\$ 125.00 per hour
Project Manager 1	\$ 110.00 per hour
Senior Professional	\$ 120.00 per hour
Project Professional	\$ 105.00 per hour
Staff Professional	\$ 90.00 per hour
Senior Designer / Survey Draftsman / Specialist	\$ 90.00 per hour
Designer / Survey Draftsman / Specialist 2	\$ 80.00 per hour

Designer / Survey Draftsman / Specialist 1	\$ 70.00 per hour
Field Survey Party	\$ 150.00 per hour
Laser Scanning Field Crew	\$ 400.00 per hour
Laser Scanning Specialist	\$ 125.00 per hour
Intern/Support	\$ 55.00 per hour
Courier	\$ 25.00 per delivery
Transportation	\$ 0.50 per mile
Materials (Stakes and Hubs)	\$ 0.35 each
(Flagging)	\$ 2.50 per roll
(Iron Pins and Caps)	\$ 5.00 each
(Spray Paint)	\$ 5.00 per can

Printing and other reimbursable expenses will be charged at cost, and are not included in the fee basis described above. Sub-consultant invoices will be billed to the client at a rate of 110% of the sub-consultant invoice. Overtime rates may apply for work required during non-standard work hours.

GENERAL TERMS AND CONDITIONS

- 1) Services performed under this Agreement will be conducted in a manner consistent with that level of care and skill exercised by members of the profession currently practicing under similar conditions. Plans, specifications, and submittals will be prepared in accordance with the written standards of the governing authorities having jurisdiction. Any extraordinary requirements for approvals will be considered additional services. No other warranty, expressed or implied, is made. Nothing in this agreement is intended to create, nor shall it be construed to create, a fiduciary duty owed by either party to the other party.
- 2) The figures given above and in the body of this Agreement are based on the Scope of Work as described herein. If the above outlined Scope of Services is changed, or if there are other services that may be requested by the Client, these additional services will also be performed at the above unit rates, or a revised fee will be negotiated to the satisfaction of both the Client and Consultant at that time. The Consultant reserves the right to adjust these unit rates for inflation costs on a one-year interval from the date of this proposal.
- 3) All claims, disputes, and other matters in controversy between Consultant and Client arising out of or in any way related to this agreement (other than as a result of Client's failure to pay amounts due hereunder) will be submitted to mediation before, and as a condition precedent to, other remedies provided by law. Mediation shall be held in the county where the project is located, and if the parties cannot agree on a mediator then one shall be appointed by the American Arbitration Association (AAA). Parties agree to split cost of mediation 50-50.
- 4) Services not expressly set forth in writing as basic or additional services and listed in the proposal to this Agreement are excluded from the scope of the Consultant's services, and the Consultant assumes no duty to the Client to perform such services.
- 5) Client, at its expense, will provide the Consultant with all required site information, existing plans, reports, studies, project schedules and similar information that is contained in Client's files. The Consultant may rely on the information provided by the Client without verification. The Client shall participate with the Consultant by providing all information and criteria in a timely manner, review documents and make decisions on project alternatives to the extent necessary to allow the Consultant to perform the scope of work within established schedules.
- 6) Consultant shall secure and maintain insurance as required by law or statutory requirements which will protect him from claims under the workers compensation acts and from claims for bodily injury, death, or property damage that may arise from the performance of his services under and pursuant to this Agreement. Certificates of such coverage will be provided to Client upon request.
- 7) All reports, plans, documents, or other materials resulting from the Consultant's efforts shall remain the property of the Consultant and are intended solely for the purpose of this Agreement. Any reuse by Client for purposes outside of this Agreement or any failure to follow Consultant's recommendations without Consultant's written permission shall be at the user's sole risk.

- 8) This Agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure to perform in accordance with the terms of the agreement by the other party through no fault of the terminating party. If this Agreement is terminated, it is agreed that Consultant shall be paid for total charges for labor performed to the termination notice date, plus reimbursable charges.
- 9) Neither party to this Agreement will be liable to the other party for delays in performing the services, nor for the direct or indirect cost resulting from such delays, that may result from labor strikes, riots, war, acts of governmental authorities, extraordinary weather conditions or other natural catastrophes, or any other cause beyond the reasonable control of either party.
- 10) The invalidity of any portion of this Agreement will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect.
- 11) The Consultant shall not be responsible for construction site safety or construction procedures, nor will the Consultant be responsible for the quality of the work performed by the contractor or other consultants.
- 12) Consultant may, at Client's request and for Client's convenience, provide documents in electronic format. Data, words, graphical representations, and drawings that are stored on electronic media or which are transmitted electronically, may be subject to uncontrollable alteration. The printed, signed and sealed hard copy is the actual professional instrument of service. In the event of a discrepancy between the electronic document and the hardcopy document, the hardcopy document will prevail.

PROPOSAL ACCEPTANCE

SUBMITTED:

Consultant: Walter Schoel Engineering Company, Inc.

Signature: Walter Schoel III

Name: Walter Schoel III

Title: President

Date: December 4, 2013

ACCEPTED:

Client: City of Vestavia Hills

Signature: Jeffrey Downes

Name: Jeffrey Downes

Title: City Manager

Date: January 14, 2014

Please print or type the following information for the individual, firm or corporation responsible for payment.

Company: City of Vestavia Hills

Client or Client's authorized representative: Rita Hosmer, Accountant

Street Address: 513 Montgomery Highway

City, State, Zip: Vestavia Hills, AL 35216

Phone Number: 205.978.0126 **Fax Number:** 205.978.0132

Email Address: rhosmer@vhal.org

Client's Project Number: _____ **Client's Purchase Order Number:** _____

CITY OF VESTAVIA HILLS
DEPARTMENT OF PUBLIC SERVICES
OFFICE OF CITY ENGINEER
INTER-DEPARTMENT MEMO

August 21, 2014

To: Jeff Downes, City Manager

CC: Brian Davis, Director of Public Services

From: Christopher Brady, City Engineer

RE: Construction of additional parking for library
Construction materials testing and overrun on design and construction administration costs

Attached is a proposal submitted by Building and Earth Sciences to perform construction materials testing for construction of the additional parking at the library. This is at a cost of approximately \$18,000

Also design and construction administration services provided by Schoel Engineering are anticipated to overrun their previous agreement amount by approximately \$4,250. This is primarily due to additional geotechnical services that were needed for the parking lot design.

Total estimated fee for these services is \$22,250.

As this is an unbudgeted item, I would recommend seeking Council approval to use general funds to initiate this work.

Please let me know if any questions,

-Christopher





Geotechnical, Environmental, and Materials Engineers

5545 Derby Drive • Birmingham, AL 35210-5414 • Ph: (205) 836-6300 • Fax: (205) 836-9007
www.BuildingAndEarth.com

August 13, 2014

City of Vestavia Hills
513 Montgomery Highway
Vestavia Hills, Alabama
35216

Attn: Mr. Christopher Brady, P.E., CFM

Subject: Vestavia Library Parking lot Addition
Vestavia Hills, Alabama
Building & Earth Proposal #16357

Dear Mr. Brady:

Building & Earth is pleased to submit this proposal to provide Construction Materials Testing (CMT) for the construction of the new parking lot serving the Vestavia Hills Public Library. We have reviewed the construction documents and this proposal documents our understanding of the proposed construction and presents an estimated budget for our services. The final cost will be dependent on the contractor's actual schedule. If the actual schedule is shorter/longer than our estimated budget was based on, the final cost will reflect that.

We understand that the project consists of constructing a new parking lot for the Vestavia Hills Public Library. The parking lot site is adjacent to the library.

SCOPE OF SERVICES

Building & Earth has developed a testing and inspection budget based on the review of the construction documents and estimated schedule provided by Walter Schoel Engineers Inc. CMT services include a proof roll of subgrade surfaces prior to fill placement, field density testing and observation during fill placement, concrete sampling during concrete placement and observation and testing of Hot Mix Asphalt (HMA) placements.

Building and Earth Proposal Number: BH16357
August 13, 2014
Page 2 of 2

Listed below are our assumptions based on past experience with similar projects, which we used to establish a cost for this phase of the work.

- a. Observation of proofroll of bearing surface prior to fill placement (two visits)
- b. Observation of undercut area prior to fill placement by engineering staff (two visits)
- c. Full-time density testing during fill placement (twenty visits). We have assumed working five days a week, with no weekend work.
- d. Concrete sampling and testing for curbs and a site drainage structures (five visits)
- e. HMA observation and testing including pavement coring (four visits)

BUDGET SUMMARY

TOTAL \$18,000.00

Only the actual time spent for the project will be billed each month, in accordance with the unit rates shown.

We look forward to working with you during the construction phase of this project. If you have any questions regarding this proposal, or care to discuss any modifications in the total scope of services outlined, please call me.

Respectfully submitted,
BUILDING & EARTH SCIENCES, INC.



Don Brown, P.E.
Project Manager



Deepa Bhate
President

Attachments



INFORMATION SHEET

PROJECT NAME/LOCATION: New Parking Lot Vestavia Hills Library (CMT)

PROPOSAL/PROJECT NO. BH16359 **DATE:** August 13, 2014

CLIENT: City of Vestavia Hills

FOR PAYMENT OF CHARGES:

Charge invoice to the account of:

Firm: _____

Address: _____

Phone No. _____ Fax No. _____ Email address _____

Attention: _____ Title _____

FOR APPROVAL OF CHARGES:

If the invoice is to be mailed to someone other than the account charges, please indicate where to mail the invoice in the space below:

Firm: _____

Address _____

Zip Code _____ Phone No. _____ Attention: _____

REPORT DISTRIBUTION:

Firm _____ Firm _____ Firm _____

Address _____ Address _____ Address _____

Attn: _____

SERVICES: See Consultant's Proposal

PAYMENT: See Consultant's Proposal

PROJECT NAME/LOCATION: New Parking Lot Vestavia Hills Library (CMT)

PROPOSAL/PROJECT NO. BH16359 **DATE:** August 13, 2014

CLIENT: City of Vestavia Hills

ACCEPTANCE OF CONTRACT:

The Contract consists of the Information Sheet, the Consultant's Proposal, and the attached General Terms and Conditions (the "Contract"), including all additions, deletions, and modifications as agreed upon in writing by Consultant. The Contract sets forth the entire agreement between the parties pertaining to the services and supersedes all inquiries, proposals, agreements, negotiations and commitments, whether written or oral, prior to the execution of the Contract. The provisions of the Contract may be changed only by a writing executed by Consultant and Client.

THIS CONTRACT is entered into as of the _____ day of _____, 20__.

CLIENT:

[Company Name]

By: _____

Its: _____

Address: _____



SECTION 1: STANDARD OF CARE

- 1.1 The standard of care for all services performed or furnished by Building & Earth Sciences, Inc. ("Consultant") under this Contract will be that level of care and skill ordinarily exercised by members of Consultant's profession practicing under similar conditions at the same time and in the same geographical region. Consultant makes no warranties, express or implied, under this Contract or otherwise, in connection with the Consultant's services.

SECTION 2: CONSULTANT'S SERVICES

- 2.1 Services. Consultant shall perform the services described in Consultant's Proposal in accordance with this Contract, which may include construction materials testing services or subsurface exploration and geotechnical consultation services.

- 2.2 Subsurface Exploration and Geotechnical Consultation Services. If Consultant's Proposal includes services for subsurface exploration and geotechnical consultation, then this Section 2.2 shall apply:

(a) Subsurface Risks. Client recognizes that special risks occur whenever engineering or related disciplines are applied to identify subsurface conditions. Site exploration may fail to detect unknown or undocumented conditions such as sinkholes, underground mines, caverns, hazardous materials, etc. Subsurface sampling may also result in unavoidable contamination of certain subsurface areas, or bodies of water if unknown contaminated zones exist at the site. The passage of time also must be considered, and Client recognizes that, due to natural occurrence or other direct or indirect human intervention at the site or distance from it, actual conditions may quickly change. Client understands that elimination of these risks is not possible and therefore waives any claim against Consultant, for injury or loss or property liability that may arise from such subsurface conditions.

(b) Site Clearing/Erosion Control. When clearing of vegetation or benching into the earth is required to provide access for exploration equipment, rough-cleared access roads and some felled trees may result. Consultant shall not be responsible for restoring the site to its original condition, and Consultant shall not conduct any regrading, revegetation or erosion control.

(c) Utilities/Existing Man Made Objects. Prior to Consultant commencing the services, Client shall disclose the presence and accurate location of any utilities and any hidden or obscure man-made objects to Consultant in writing. Consultant shall not be responsible for any damages to subterranean structures or objects that were not specifically identified to Consultant in writing prior to Consultant commencing the services and/or which were not correctly shown on the plans furnished to Consultant. The Client agrees to waive any and all claims against the Consultant Group and to defend, indemnify and hold harmless the Consultant Group from and against all claims, costs, losses, liabilities, damages, and expenses (including, but not limited to, all attorneys' fees and dispute resolution costs) arising out of or relating to damage to subsurface conditions or structures, whether owned by Client or third parties.

(d) Samples. Consultant will retain all soil and rock samples for thirty (30) days. Further storage or transfer can be made at the Client's expense upon written request.

(e) Construction Estimates/Bid Documents/Plans and Specifications.

(1) Any reports prepared by Consultant in connection this Contract are for general geotechnical design purposes only, and Client shall not rely on these reports to prepare accurate bids or estimates for excavation and rock quantities, dewatering, removal of unsuitable materials or excavation support. An entirely different work scope will be required for quantity estimation purposes.

(2) Client agrees to retain Consultant to review the plans and specifications and work with other design professionals who are affected by any report furnished by Consultant in connection with this Contract. The review of plans and specifications is to assure that the geotechnical issues have been dealt with properly and that geotechnical findings and recommendations are properly interpreted and incorporated in design.

(3) Misinterpretation or improper use of Consultant's reports by contractors or others in preparing cost and quantity estimates or bid documents is a major cause of construction claims. Client agrees to defend, indemnify and hold harmless the Consultant Group from and against all claims, costs, losses, liabilities, damages, and expenses (including, but not limited to, all attorneys' fees and dispute resolution costs) arising out of or relating to cost or quantity estimates or bid documents prepared by others without Consultant's written approval.

- 2.3 Time.** Unless specific periods of time or specific dates are specified in this Contract, Consultant's obligation to render services hereunder will be for a period which may reasonably be required for the completion of said services. If in this Contract specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided and if such periods of time or dates are changed through no fault of Consultant, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment.
- 2.4 Changes.** If Client requests changes in the scope of Consultant's services, the time of performance of Consultant's services shall be adjusted equitably and the rates and amounts of compensation provided for herein shall also be subject to equitable adjustment.

SECTION 3: OWNERSHIP OF DOCUMENTS

- 3.1** All reports, boring logs, field notes, laboratory test data, calculations, estimates, proprietary information and other documents or information ("Instruments of Service") prepared, developed, or acquired by Consultant shall be the property of Consultant, and Consultant shall retain an ownership and property interest therein.
- 3.2** Client agrees that all Instruments of Service or other work furnished to the Client or its agents, which are not paid for in accordance with the Contract, shall be returned to Consultant upon demand and shall not be used by the Client for any purpose whatever.
- 3.3** Consultant hereby grants to Client a nonexclusive license to use the Instruments of Service furnished by Consultant only for the purpose of the operation and maintenance of the Project for which the Instruments of Service were provided. Client may make and retain copies of the Instruments of Service only for use on the Project by Client. The Instruments of Service are not suitable for reuse by Client or others on extensions, modifications, or expansions of the Project or any other project. Any such reuse or modification without written verification or adaptation by Consultant, as appropriate for the specific purpose intended, shall be at Client's sole risk and without liability or legal exposure to Consultant, or to Consultant's officers, directors, partners, employees, agents, or representatives (the "Consultant Group").
- ~~**3.4** Client agrees to waive any and all claims against the Consultant Group and to defend, indemnify and hold harmless the Consultant Group from and against any and all claims, costs, losses, liabilities, damages, and expenses (including, but not limited to, all attorneys' fees and dispute resolution costs) arising out of or relating to Client's use of the Instruments of Service in violation of the Contract.~~

SECTION 4: PAYMENT TERMS

- 4.1** Client shall pay Consultant for the services performed or furnished on the basis set forth on the Information Sheet.
- 4.2** Invoices will be submitted monthly to Client and upon Consultant's completion of services. Invoices are due and payable within thirty (30) days of receipt. If Client fails to make any payment due Consultant for services or expenses within thirty (30) days after receipt of Consultant's invoice, the amounts due Consultant will be increased at the rate of 1.5% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Consultant may, after giving seven (7) days written notice to Client, suspend the services until Consultant has been paid in full all amounts due. Payments will be credited first to interest and then to principal.

- 4.3 In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and Client shall pay to Consultant the undisputed portion.
- 4.4 Client agrees to pay all collection costs and expenses, including attorneys' fees, incurred by Consultant in collecting or attempting to collect any past due account.

SECTION 5: INSURANCE & LIMITATION OF LIABILITY

5.1 Consultant shall procure and maintain the following Insurance coverage:

- | | |
|---|----------------------------|
| (a) Worker's Compensation Insurance | statutory limit |
| (b) Employer's Liability | \$1,000,000 |
| (c) Comprehensive General Liability Insurance | |
| General Aggregate | \$2,000,000 |
| Bodily injury & property damage | \$1,000,000 per occurrence |
| (d) Automobile Liability Insurance | \$1,000,000 per occurrence |

5.2 Limitation of Professional Liability. Notwithstanding anything in the Contract to the contrary, and to the fullest extent permitted by law, Client agrees that the total liability of the Consultant Group to Client and anyone claiming by, through, or under Client for any cost, loss, or damages caused by the acts or omissions of Consultant shall not exceed \$100,000.00 or Consultant's total fee for the services, whichever is less.

5.3 Waiver of Consequential Damages. Notwithstanding anything herein to the contrary, neither Consultant nor Client shall be liable to the other for any consequential, special, or indirect losses or damages, whether arising in contract, warranty, tort, strict liability or otherwise, including but not limited to losses of use, profits, business, reputation or financing.

SECTION 6: RIGHT OF ENTRY

6.1 Client and/or property owner shall provide access to and make all provisions for right of entry to Consultant and all equipment necessary for Consultant to perform the services. It is understood by Client that in the normal course of services some damage may occur, the correction of which is not part of this Contract. Client shall not be responsible whatsoever for any such damage or for the correction of any damage.

SECTION 7: SAMPLING OR TEST LOCATION

7.1 Unless otherwise specified in writing, the Consultant's fees set forth on the Information Sheet do not include costs associated with surveying the site for the accurate horizontal and vertical locations of boreholes, test pits or other field tests performed. Client shall be responsible for such additional costs. Field tests or boring locations described in Consultant's report or shown on sketches are based on information furnished by others or estimates made in the field by Consultant's representatives. Client acknowledges and agrees that such dimensions, depths, or elevations are approximations only. Client shall not rely upon such information, and Consultant makes no warranties, express or implied, as to this information.

SECTION 8: MONITORING OF FIELD ACTIVITIES

8.1 The presence of Consultant's field personnel, either full-time or part-time, at the Project will be for the purpose only of providing periodic observation and field testing of specific aspects of the Project as authorized by the Client. Client acknowledges and agrees that Consultant will not be responsible for the supervision or direction of the contractor's work, or the work of contractor's employees, agents, or subcontractors. The presence or absence of Consultant's field representatives, or Consultant's observation or testing, shall not relieve the contractor of its responsibilities to perform its work in accordance with the plans and specifications. Consultant shall not have any control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the contractor's work or of any other persons or entities performing portions of the work at the Project.

8.2 The observations and tests performed by Consultant's field representative are valid only for the time and location the test is performed. The Client acknowledges that outside factors such as construction activity, weather and the passage of time can alter condition of the material tested or observed.

- 8.3** Client agrees that the contractor will be solely and completely responsible for working conditions at the Project, including safety of all persons and property during performance of its work, and compliance with OSHA regulations, and that these requirements will apply continuously and not be limited to normal working hours. Client acknowledges and agrees that Consultant will not be responsible for job or site safety on the Project, and that Consultant does not have the duty or right to stop the work of the contractor.
- 8.4** Client waives any and all claims against the Consultant Group and agrees to indemnify, defend and hold harmless the Consultant Group from and against all claims, costs, losses, liabilities, damages, and expenses (including, but not limited to, all attorneys' fees and dispute resolution costs) arising out of or relating to contractor's failure to perform its work in accordance with plans and specifications or contractor's failure to comply with the applicable safety requirements and regulations.

SECTION 9: HAZARDOUS SUBSTANCES

9.1 Client agrees to comply with all applicable laws related to Hazardous Substances. Consultant shall not be responsible in any way for any Hazardous Substances uncovered, revealed, or discovered at the Project site.

9.2 The term "Hazardous Substance" means any substance or material: (i) the presence of which requires management, reporting, investigation or remediation under any federal, state or local law, statute, rule, regulation, ordinance, order, action, policy or common law; (ii) which is or becomes regulated by any federal, state or local governmental authority, including without limitation, any substance or waste material which is defined or listed as a "hazardous waste," "acutely hazardous waste," "extremely hazardous substance," "restricted hazardous waste," "industrial waste," "hazardous substance," "hazardous material," "pollutant" "hazardous air pollutant," "criteria pollutant," "volatile organic compound," "priority pollutant," "special waste," "SARA 313 chemical" or "contaminant" under any law; (iii) which contains gasoline, diesel fuel or other petroleum hydrocarbons or a petroleum derivative; (iv) which contains polychlorinated biphenyls ("PCBs"), asbestos or urea formaldehyde; or (v) which poses an unreasonable risk of injury to human health or the environment.

9.3 If any Hazardous Substance is discovered at the Project site, the Client shall be solely responsible for all costs and expenses associated with the discovery of such Hazardous Substance. To the fullest extent permitted by law, the Client shall defend, indemnify and hold harmless the Consultant Group from and against any and all claims, costs, losses, liabilities, damages, and expenses (including, but not limited to, all attorneys' fees and dispute resolution costs) arising out of or related to Consultant's performance of the services in an area where a Hazardous Substance is discovered.

SECTION 10: DISPUTES

10.1 In the event of a dispute arising out of or relating to this Contract or the services to be rendered hereunder, Client and Consultant agree to attempt to resolve such disputes in the following manner:

(a) Amicable Resolution. The parties agree to first attempt to resolve such disputes amicably through direct negotiations between the appropriate representatives of each party.

(b) Mediation. If such negotiations are not fully successful, the parties agree to attempt to resolve any remaining disputes by mediation conducted in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Birmingham, Alabama. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

(c) Arbitration. The parties acknowledge and agree that the Contract and the subject matter hereof are substantially connected with and involved with interstate commerce. Any controversy, dispute or claim arising out of or related to the Contract, or the breach thereof, not otherwise resolved in accordance with this Section shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. The arbitration hearing shall be held in Birmingham, Alabama. The provisions of this section to arbitrate and any judgment rendered upon the award by the arbitrator or arbitrators may be enforced in any court having jurisdiction thereof. The prevailing party shall be entitled to have its reasonable attorneys' fees and related costs and expenses paid by the non-prevailing party.

SECTION 11: THIRD PARTY CLAIMS

- 11.1** To the fullest extent permitted by law, Client agrees to defend, indemnify and hold harmless the Consultant Group from and against any and all third party claims whatsoever (including, but not limited to, all attorneys' fees and dispute resolution costs) arising from any act, error, or omission of Client relating to the Project. To the fullest extent permitted by law, Consultant agrees to defend, indemnify and hold harmless the Client from and against any and all third party claims whatsoever (including, but not limited to, all attorneys' fees and dispute resolution costs) arising from any act, error, or omission of Consultant relating to the Project.

SECTION 12: TERMINATION

- 12.1** This Contract may be terminated by either party upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with this Contract, and provided that the defaulting party has not cured such failure within five (5) days after receiving such written notice. In the event of termination, Consultant shall be paid for services performed to the termination date plus reasonable termination expenses.
- 12.2** In the event Client terminates or suspends Consultant's services for three (3) months or more prior to Consultant's completion of all reports contemplated by this Contract, Consultant may complete such analyses and records as are necessary to complete its files and may also complete a report on the services performed to the date of termination or suspension. Client shall be responsible for the expenses of such termination or suspension, which shall include, without limitation, all costs of Consultant to complete such analyses, reports or records.
- 12.3** Consultant may terminate the Contract by written notice to Client if Client fails to pay Consultant's undisputed invoices in the manner required by this Contract, if such failure continues for a period of ten (10) days after written notice is given to Client.

SECTION 13: ASSIGNS

- 13.1** Neither the Client nor Consultant may delegate, assign, sublet or transfer any obligation or interest in this Contract without the written consent of the other party.

SECTION 14: CERTIFICATIONS, GUARANTEES AND WARRANTIES

- 14.1** Consultant shall not be required to sign any documents, no matter by whom requested, that would result in Consultant having to certify, guarantee or warrant the existence of conditions whose existence Consultant cannot ascertain. Client shall not make resolution of any dispute with Consultant or payment of any amount due to Consultant in any way contingent upon signing any such certification, guarantee, or warranty.

SECTION 15: MISCELLANEOUS

- 15.1 Governing Law.** This Contract shall be governed by the law of the state in which the Project is located.
- 15.2 Notices.** Any notice required under this Contract shall be in writing, addressed to the appropriate party at its address on the signature page and given personally, by certified mail (return receipt requested), or by Federal Express, UPS, or other nationally recognized overnight carrier. All notices shall be effective upon the date of receipt.
- 15.3 Waiver.** Non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Contract.
- 15.4 Headings.** This Contract may be executed in one or more counterparts and by the parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument. All signatures need not appear on the same counterpart.
- 15.5 Severability.** The determination of the invalidity of all or any provision in this Contract shall not render the remaining provisions void or unenforceable, and this Contract shall thereafter be construed as though such invalid provision were not a part hereof.

BUILDING & EARTH SCIENCES, INC. **2014 CMT FEE SCHEDULE**

PERSONNEL

Clerical Services	\$30.00/hour
Engineering Technician.....	\$42.00/hour
Structural Steel Inspector (CWI)	\$85.00/hour
Staff Engineer	\$65.00/hour
Project Manager/Engineer.....	\$85.00/hour
Sr. Project Manager, P.E.....	\$125.00/hour
Geotechnical Division Manager, P.G., P.E.....	\$150.00/hour

LABORATORY TESTING

Standard Proctor Test (ASTM D-698 or AASHTO T-99).....	\$95.00/each
Modified Proctor Test (ASTM D-1557 or AASHTO T-180).....	\$110.00/each
Atterberg Limits Determination.....	\$75.00/each
Material Finer than No. 200 Sieve (washed)	\$50.00/each
Pavement Coring.....	\$200.00 LS
Concrete Cylinders	\$12.00/each
Grout or Mortar Cubes	\$12.00/each
Masonry Prisms	\$125.00/each

ADMINISTRATIVE/MANAGEMENT

Mileage.....	\$0.65/mile
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The personnel rates will be billed with a 3 hour minimum charge per day. Overtime will apply for hours worked in excess of eight (8) hours per day or for work performed on weekends or holidays. Overtime will be billed at a rate of 1.5 times the normal unit rates.

Engineering review of 0.25 hours per report is typically required for report review and incidental consultation. Clerical services will be billed at a rate of 0.25 hours per report to cover the cost of report preparation, revisions and distribution. Project coordination time will be billed according to the actual time required for scheduling.