

**Vestavia Hills
City Council Agenda
Special Meeting
August 27, 2015
8:30 AM**

1. Call to Order
2. Roll Call
3. Invocation – Jim Sharp
4. Pledge Of Allegiance

New Business, Unanimous Consent Requested

5. Ordinance Number 2595 - An Ordinance To Rescind, Cancel And Terminate An Agreement For Sale And Purchase Of Real Estate And To Rescind Ordinance Number 2555 (*Public Hearing*)
6. Various Issues of the City
7. Citizens Comments
8. Motion For Adjournment

ORDINANCE NUMBER 2595

AN ORDINANCE TO RESCIND, CANCEL AND TERMINATE AN AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE AND TO RESCIND ORDINANCE NUMBER 2555

THIS ORDINANCE NUMBER 2595 is considered, approved, enacted and adopted on this the 27th day of August, 2015.

WITNESSETH THESE RECITALS

WHEREAS, on February 23, 2015, the City Council approved and adopted Ordinance Number 2555 authorizing and directing the Mayor and City Manager to execute and deliver an Agreement for Sale and Purchase of Real Estate (the “Contract”) by and between Continental Equity Corporation, as “Seller,” and the City of Vestavia Hills, Alabama, as “Purchaser,” whereby the City agreed to purchase property located at 2221 Old Columbiana Road for and in consideration of \$850,000.00; and

WHEREAS, a copy of said Contract is attached hereto, marked as Exhibit A and Amendment is attached hereto, marked as Exhibit B and incorporated into this Ordinance Number 2595 by reference as though set out fully herein; and

WHEREAS, the Contract reads in pertinent parts as follows:

“8. PURCHASER INSPECTION PERIOD: Within seven (7) days from the date this contract is accepted by all parties, Seller shall deliver to Purchaser all documents in Seller’s possession related to title and environmental matters, including any existing title policies, copies of any leases, surveys, environmental reports and the like. Purchaser shall have a period of 4 months from the Effective Date (“Inspection Period”) to determine, either personally or through or with a representative of Purchaser’s choosing, any and all conditions of the Property (including without limitation the condition of all improvements thereon) material to Purchaser's decision to purchase the Property. This determination shall include, without limitation, Purchaser satisfying itself as to title matters, survey matters, structural matters, zoning matters, subdivision restrictions, environmental matters, existing contracts and financial matters affecting the Property, all soil, landscaping and other physical conditions of the Property, availability and sufficient quantities of all utilities, and all additional matters that Purchaser believes relevant, in its sole and absolute discretion, in determining whether or not to purchase the Property. Purchaser, at Purchaser’s sole discretion, for any reason or no reason, shall have the right and option to cancel this Contract by giving written notice

of termination to Seller no later than the last day of the Inspection Period, in which event this Contract shall be of no further force or effect except for any indemnity or other obligations that expressly survive, and the Earnest Money shall be refunded to Purchaser. Purchaser shall coordinate all of its testing and investigations and its agents' testing and investigations with Seller in order to insure the least amount of interference with Seller's operations. Purchaser agrees to indemnify and hold Seller harmless against any claims for bodily injury, property damage and mechanics' liens arising out of any actions of Purchaser or its agents or representatives on the Property in the course of such activities. Purchaser also agrees to restore or repair any of the Property damaged or disturbed as a result of Purchaser's exercise of its rights under this Agreement to as near as is reasonably possible the condition that existed immediately prior to the exercise of such rights. Purchaser's obligations to indemnify and hold Seller harmless under this paragraph shall survive Closing and any termination of this Agreement. Purchaser's obligation under this paragraph to restore the Property shall survive any termination of this Agreement, but shall not survive Closing. If Purchaser fails to notify Seller of his intent to cancel prior to the expiration of the Inspection Period then this contingency will be considered removed and the contract shall continue in full force and effect and the Earnest Money will be considered "at risk" and will not be refunded in any event other than a default by Seller

20. NOTICE: All notices, demands and/or consents provided for in this Agreement shall be in writing and shall be deemed to have been served on the date mailed by United States registered or certified mail, return receipt requested, with postage prepaid. All such notices and communications Exhibit A - Ordinance No. 2555 shall be addressed to the parties hereto at the respective addresses set forth at page 1 hereof, or at such other addresses as either may specify to the other in writing. If the parties fax number or email addresses are available notice shall be deemed to have been served when sent by one of these methods"; and

WHEREAS, the First Amendment to Sales Contract reads in pertinent part(s) as follows:

8. **PURCHASER INSPECTION PERIOD:** Within seven (7) days from the date this contract is accepted by all parties, Seller shall deliver to Purchaser all documents in Seller's possession related to title and environmental matters, including any existing title policies, copies of any leases, surveys, environmental reports and the like. Purchaser shall have until **September 1, 2015** ("Inspection Period") to determine, either personally or through or with a representative of Purchaser's choosing, any and all conditions of the Property (including without limitation the condition of all improvements thereon) material to Purchaser's decision to

purchase the Property. This determination shall include, without limitation, Purchaser satisfying itself as to title matters, survey matters, structural matters, zoning matters, subdivision restrictions, environmental matters, existing contracts and financial matters affecting the Property, all soil, landscaping and other physical conditions of the Property, availability and sufficient quantities of all utilities, and all additional matters that Purchaser believes relevant, in its sole and absolute discretion, in determining whether or not to purchase the Property. Purchaser, at Purchaser's sole discretion, for any reason or no reason, shall have the right and option to cancel this Contract by giving written notice of termination to Seller no later than the last day of the Inspection Period, in which event this Contract shall be of no further force or effect except for any indemnity or other obligations that expressly survive, **and the Earnest Money (\$10,000) shall be paid to Seller.** Purchaser shall coordinate all of its testing and investigations and its agents' testing and investigations with Seller in order to insure the least amount of interference with Seller's operations. Purchaser agrees to indemnify and hold Seller harmless against any claims for bodily injury, property damage and mechanics' liens arising out of any actions of Purchaser or its agents or representatives on the Property in the course of such activities. Purchaser also agrees to restore or repair any of the Property damaged or disturbed as a result of Purchaser's exercise of its rights under this Agreement to as near as is reasonably possible the condition that existed immediately prior to the exercise of such rights. Purchaser's obligations to indemnify and hold Seller harmless under this paragraph shall survive Closing and any termination of this Agreement. Purchaser's obligation under this paragraph to restore the Property shall survive any termination of this Agreement, but shall not survive Closing. If Purchaser fails to notify Seller of his intent to cancel prior to the expiration of the Inspection Period then this contingency will be considered removed and the contract shall continue in full force and effect and the Earnest Money will remain "at risk" and will not be refunded in any event other than a default by Seller.

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

WHEREAS, the City of Vestavia Hills, Alabama has, by the enactment of this Ordinance Number 2595, exercised its rights under the Contract and First Amendment to Sales Contract to cancel, rescind and terminate the Contract and First Amendment to Sales Contract and to forego a refund of the earnest money in the amount of Ten Thousand Dollars (\$10,000.00).

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

1. The City Council hereby exercises its rights under the Contract, specifically including, but not limited to, Sections 8 and 20 and First Amendment to Sales Contract thereof to cancel, terminate and rescind the Contract. The City Manager is hereby authorized and directed to furnish written notice of the cancellation, termination and rescission of the Contract via certified mail-return receipt requested with postage prepaid to the following named parties:

SOUTHPACE PROPERTIES, INC
300 Richard Arrington, Jr. Boulevard, North
Suite 900, Title Building
Birmingham, Alabama 35203

Continental Equity Corporation
2604 Tyne Boulevard
Nashville, Tennessee 35215-4616

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

3. Ordinance Number 2555 is hereby rescinded in its entirety. The Contract attached to said Ordinance Number 2555 is also rescinded, cancelled and terminated in its entirety so that said Contract shall be null and void, and have no force and effect.

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

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

DONE, ORDERED, APPROVED and ADOPTED, this the 27th day of August, 2015.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Wendy Appling
Acting City Clerk

CERTIFICATION:

I, Wendy Appling, as Acting City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2595 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 27th day of August, 2015 as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills New Merkle House, Vestavia Hills Civic Center and Vestavia Hills Library in the Forest this the _____ day of _____, 2015.

Rebecca Leavings
City Clerk

SOUTHPACE PROPERTIES, INC
300 Richard Arrington, Jr. Boulevard, North
Suite 900, Title Building
Birmingham, Alabama 35203
(205-326-2222)

Date: November 24, 2014

GENERAL SALES CONTRACT The Undersigned Purchaser(s) City of Vestavia Hills, whose address is 513 Montgomery Hwy, Vestavia, AL 35216 hereby agrees to purchase and the Undersigned Seller Continental Equity Corporation, whose address is, 2604 Tyne Blvd, Nashville, TN 37215-4616 hereby agrees to sell the following described real estate, together with all improvements, shrubbery, plantings, fixtures and appurtenances, situated in the City of Vestavia Hills County of Jefferson, Alabama, on the terms stated below: Address 2221 Old Columbia Road and described as:

Lot 1 of the Polhemus Addition to Vestavia Hills as recorded in Map Book 223 Page 5 in the Office of the Judge of Probate in Jefferson County, Alabama

1. **THE PURCHASE PRICE:** shall be \$ 850,000.00 which shall be payable as follows:

Earnest Money.....	\$	<u>5,000.00</u>
Cash on closing this sale.....	\$	<u>845,000.00</u>
Total.....	\$	<u>850,000.00</u>

2. **TITLE INSURANCE:** The Seller agrees to furnish the Purchaser within 21 days after the Effective Date a standard owner's title insurance commitment for the issuance of an owner's title insurance policy, issued by a company qualified to insure titles in Alabama in the amount of the purchase price, showing Seller has fee simple title to the Property, together with the documents relating to exceptions to title referred to therein ("Title Commitment"). Purchaser shall notify Seller of any unacceptable liens, encumbrances, restrictions, or other defects or matters ("Title Objections") on or before the expiration of the Inspection Period. In the event that Purchaser fails to notify Seller of any Title Objections within said time period, Purchaser shall be deemed to have accepted such title and all matters contained therein shall be deemed to be "Permitted Encumbrances". In the event that Purchaser does provide Title Objections within said time period, within five (5) days following Purchaser's delivery of the Title Objections, Seller shall elect (by written notice to Purchaser) to cure or decline to correct such Title Objections. If Seller advises Purchaser that Seller is unwilling or unable to correct any or all Title Objections or if Seller fails to respond, within five (5) days thereafter, Purchaser may elect to terminate this Agreement by giving written notice to Seller, at which time the Earnest Money shall be returned to Purchaser. In the event that Purchaser fails to provide such notice during such time, Purchaser shall be deemed to have accepted such title and such matters shall be deemed to be "Permitted Encumbrances". At Closing, Seller shall pay for the owner's title insurance policy ("Owner's Policy") to be issued by the Title Company pursuant to the Title Commitment which shall contain references to the Permitted Encumbrances. In the event both Owner's and Mortgagee's title policies are obtained at the time of closing, the total expense of procuring the two policies will be divided equally between the Seller and the Purchaser provided the mortgagee is not the Seller. Purchaser shall pay for any special endorsements required by Purchaser or Purchaser's lender.

3. **PRORATIONS:** All items customarily prorated and adjusted in connection with the closing of real estate similar to the Property, including all ad valorem taxes, escrow deposits, rents, operating expenses, insurance, and accrued interest on mortgages assumed, if any, are to be prorated between Seller and Purchaser as of the Closing Date, and any advance escrow deposits held by Mortgagees shall be credited to Seller. The cost of recording the deed shall be paid by the Purchaser. UNLESS OTHERWISE AGREED HEREIN, ALL AD VALOREM TAXES EXCEPT MUNICIPAL TAXES ARE PRESUMED TO BE PAID IN ARREARS FOR PURPOSES OF PRORATION; MUNICIPAL TAXES, IF ANY, ARE PRESUMED TO BE PAID IN ADVANCE.

4. **CLOSING & POSSESSION DATES:** The sale shall be closed and the deed delivered on or before 30 days from expiration of the inspection period except the Seller shall have a reasonable length of time within which to perfect title or cure defects in the title to the said property. Possession, subject to any existing leases on the property, is to be given on delivery of the deed unless otherwise agreed to herein.

5. **CONVEYANCE:** The Seller agrees to convey said property to the Purchaser by Statutory warranty deed free of all encumbrances, except for mineral and mining rights not owned by Seller and the "Permitted Encumbrances" and except as otherwise herein set out. Seller and Purchaser agree that any encumbrances not herein excepted or assumed may be cleared at the time of closing from sales proceeds. At closing all existing leases shall be assigned to Purchaser and all lease escrow deposits shall be transferred to Purchaser.

6. **THE COMMISSION PAYABLE IN THIS SALE IS NOT SET BY THE BIRMINGHAM ASSOCIATION OF REALTORS, INC., BUT IS NEGOTIABLE.** In this agreement Seller (Seller/Purchaser) agrees to pay to Southpace Properties, Inc. Broker in this transaction, at closing a total commission in the amount of 3 % of the purchase price. All parties stipulate that there were no other Brokers involved in the transaction.

7. **CONDITION OF PROPERTY:** Property is being sold in its present "as is" condition, including ordinary wear and tear to the closing date. Neither Seller nor any Agent makes any representations or warranties regarding condition of the Property except to the extent expressly and specifically set forth herein. However, if the Property suffers material damage prior to the closing date, and Seller refuses to pay for any repairs reasonably required to restore the Property to a condition at least as good as previously existing, ordinary wear and tear excepted, Purchaser may proceed with the closing or cancel the Agreement and have Earnest Money refunded. Purchaser has the obligation to determine, either personally or through or with a representative of Purchaser's choosing, any and all conditions of the Property material to Purchaser's decision to buy the Property, including without limitation, the condition of the heating, cooling, plumbing and electrical systems and any built-in appliances, and the roof and the basement, including floors; structural condition; subsurface condition; utility and sewer or septic tank availability and condition.

8. **PURCHASER INSPECTION PERIOD:** Within seven (7) days from the date this contract is accepted by all parties, Seller shall deliver to Purchaser all documents in Seller's possession related to title and environmental matters, including any existing title policies, copies of any leases, surveys, environmental reports and the like. Purchaser shall have a period of 4 months from the Effective Date ("Inspection Period") to determine, either personally or through or with a representative of Purchaser's choosing, any and all conditions of the Property (including without limitation the condition of all improvements thereon) material to Purchaser's decision to purchase the Property. This determination shall include, without limitation, Purchaser satisfying itself as to title matters, survey matters, structural matters, zoning matters, subdivision restrictions, environmental matters, existing contracts and financial matters affecting the Property, all soil, landscaping and other physical conditions of the Property, availability and sufficient quantities of all utilities, and all additional matters that Purchaser believes relevant, in its sole and absolute discretion, in determining whether or not to purchase the Property. Purchaser, at Purchaser's sole discretion, for any reason or no reason, shall have the right and option to cancel this Contract by giving written notice of termination to Seller no later than the last day of the Inspection Period, in which event this Contract shall be of no further force or effect except for any indemnity or other obligations that expressly survive, and the Earnest Money shall be refunded to Purchaser. Purchaser shall coordinate all of its testing and investigations and its agents' testing and investigations with Seller in order to insure the least amount of interference with Seller's operations. Purchaser agrees to indemnify and hold Seller harmless against any claims for bodily injury, property damage and mechanics' liens arising out of any actions of Purchaser or its agents or representatives on the Property in the course of such activities. Purchaser also agrees to restore or repair any of the Property damaged or disturbed as a result of Purchaser's exercise of its rights under this Agreement to as near as is reasonably possible the condition that existed immediately prior to the exercise of such rights. Purchaser's obligations to indemnify and hold Seller harmless under this paragraph shall survive Closing and any termination of this Agreement. Purchaser's obligation under this paragraph to restore the Property shall survive any termination of this Agreement, but shall not survive Closing. If Purchaser fails to notify Seller of his intent to cancel prior to the expiration of the Inspection Period then this contingency will be considered removed and the contract shall continue in full force and effect and the Earnest Money will be considered "at risk" and will not be refunded in any event other than a default by Seller

9. **HAZARDOUS SUBSTANCES:** Seller and Purchaser expressly acknowledge that the Agent(s) have not made an independent investigation or determination with respect to the existence or nonexistence of asbestos, PCB transformers, or other toxic, hazardous or contaminated substances or gases in, on, or about the Property, or for the presence of underground storage tanks. Any such investigation or determination shall be the responsibility of Seller and/or Purchaser and their respective Agent(s) shall not be held responsible therefor.

10. **SELLER WARRANTIES** Seller warrants that unless excepted herein, Seller has not received notification from any lawful authority regarding any assessments, pending public improvements, repairs, replacements, or alterations to the Property that have not been satisfactorily made. Seller warrants that Seller is the fee owner of the Property or is authorized to execute this document for the fee owner. Seller also represents that, to the best of its knowledge, except as may otherwise be expressly disclosed herein, Seller has not released or disposed of any hazardous or toxic waste, substance or material, including without limitation any asbestos or any oil or pesticides (collectively, "Hazardous Substances"), on or about the Property; has not disposed of or arranged for the disposition of any Hazardous Substances from the Property except in compliance with all applicable federal, state or local laws; and to best of seller's knowledge no Hazardous Substances exist on the Property or about the Property that threaten the Property. Seller makes no warranty that the Property is suitable for any particular purpose, nor that the Property is in compliance with the requirements of the Americans with Disabilities Act. **THESE WARRANTIES SHALL SURVIVE THE DELIVERY OF THE DEED.**

11. **EARNEST MONEY & PURCHASER'S DEFAULT:** The Seller hereby authorizes the listing Broker Southpace Properties, Inc. the (Escrow Holder") to hold the earnest money in trust for the Seller in its general non-interest bearing escrow account, pending the fulfillment of this Contract. In the event the Purchaser fails to carry out and perform the terms of this agreement the earnest money shall be forfeited as liquidated damages at the option of the Seller, provided the Seller agrees to the cancellation of this Contract. Said earnest money so forfeited shall be divided equally between the Seller and his Broker however Broker will not receive more than the fee that would have been received if the transaction had closed. If this Contract does not close and the earnest money is to be turned over to Seller or refunded to Purchaser pursuant to this Contract, Seller and Purchaser agree to execute a written release to the listing company affirming the proper disposition of the earnest money. If either party unreasonably refuses or fails to tender such written release, and in subsequent proceedings it is ruled the Earnest Money does not belong to them, then they shall be liable for all fees and expenses, including attorney fees, incurred by Listing Broker and/or the other party in connection with their efforts to effect the proper disposition of the earnest money. In the event of a dispute between Seller and Purchaser with respect to the Earnest Money, the Escrow Holder shall be entitled to tender into the registry or custody of any court of competent jurisdiction the Earnest Money, together with such legal proceedings as it deems appropriate, and therefore to be discharged from all further duties under this Agreement. Escrow Agent shall be entitled to deduct or recover from the Earnest Money its court costs, reasonable attorney fees and other out-of-pocket expenses related to this interpleader. Seller and Purchaser agree to indemnify and hold harmless the Escrow Holder against any and all losses, claims, damages, liabilities, and expenses, including without limitation, attorney's fees and expenses, incurred by it in connection with its acceptance of this appointment as Escrow Holder. Purchaser and Seller agree that "Escrow Holder" shall not be required to deposit Purchaser's earnest money check until this Contract has been accepted and signed by all parties. If Purchaser's Earnest Money check is returned by a financial institution as unpaid, Seller shall have the right to void this Agreement and neither party shall have any further obligation to the other.

12. **DISCLAIMER:** Seller and Purchaser acknowledge that they have not relied upon advice or representations of Broker (or Broker's associated salespersons) relative to (i) the legal or tax consequences of this Contract and the sale, purchase or ownership of the Property, (ii) the structural condition of the Property, including condition of the roof and basement; (iii) construction materials; (iv) the nature and operating condition of the electrical, heating, air conditioning, plumbing, water heating systems and appliances; (v) the availability of utilities or sewer service; (vi) the character of the neighborhood; (vii) the investment or resale value of the Property; (viii) the existence of any hazardous or toxic waste, substance, or material, including without limitation any asbestos or any oil or pesticides; (ix) any state of facts which would be disclosed by an accurate survey of the Property; or (x) any other matters affecting their willingness to sell or purchase the Property on the terms and price herein set forth. Seller and Purchaser acknowledge that if such matters are of concern to them in the decision to sell or purchase the Property, they have sought and obtained independent advice relative thereto.

13. **SELECTION OF ATTORNEY:** The parties hereto acknowledge and agree that, if they have agreed to share the fees of a closing attorney hereunder, such fees sharing may involve a potential conflict of interest and they may be required to execute an affidavit at closing acknowledging their recognition and acceptance of same. Each of the parties further acknowledges that he has a right to be represented at all times in connection with this Contract and the closing by an attorney of his own choosing, at his own expense. Any additional fees relating to financing may be allocated to Purchaser, and any additional fees relating to clearing of title may be allocated to Seller.

14. **SURVEY:** Within seven (7) days following the Effective Date, the Seller will furnish Purchaser a copy of any survey of the Property in its possession (or, if more than one, the most current survey), or will advise Purchaser that it has no such survey. The Seller does not warrant the accuracy of any survey so provided. Purchaser at its expense may elect to obtain a current survey. In the event a current survey is obtained, all easements and other matters shown on the survey shall be Permitted Encumbrances unless objected to in writing prior to the end of the Review Period. If no survey is obtained, any easements and other matters that would be disclosed by a current and accurate survey shall be Permitted Encumbrances. Broker recommends the Purchaser obtain an ALTA Survey.

15. **AGENCY DISCLOSURE:**

The Listing Company: Southpace Properties, Inc is: (Two blocks may be checked)
 An Agent of the Seller
 An Agent of the Purchaser
 An Agent of the Purchaser and Seller and is acting as a Limited Consensual Dual Agent
 Assisting the Purchaser as a Transaction Broker
 Assisting the Seller as a Transaction Broker

The Selling Company: Southpace Properties, Inc is: (Two blocks may be checked)
 An Agent of the Seller
 An Agent of the Purchaser
 An Agent of the Purchaser and Seller and is acting as a Limited Consensual Dual Agent
 Assisting the Purchaser as a Transaction Broker
 Assisting the Seller as a Transaction Broker

Purchaser's Initial _____

Seller's Initial _____

16. **ARBITRATION:** Any controversy or claim arising out of or relating to this Agreement, or the breach hereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Such arbitration shall be held in Birmingham, Alabama. Any party may, without any inconsistency with this Agreement, seek from a court any interim or provisional relief that is necessary to protect the rights of property of such party, pending the establishment of the arbitral tribunal (or pending the arbitral tribunal's determination of the merits of the controversy). Such arbitration and determination shall be final and binding on the parties, and the parties agree to abide by the arbitration findings. Judgment may be entered upon such determination and award in any court having jurisdiction thereof, and the parties agree that no appeals shall be taken there from. The arbitrator shall award to the prevailing party, if any, as determined by the arbitrator, all of its costs and fees in connection with such arbitration, including the arbitrator's fees, administrative fees, travel expenses, out-of-pocket expenses, court costs, witness fees and attorney's fees.

17. **INSURANCE AND RISK OF LOSS:** The Seller will keep in force sufficient hazard insurance on the property to protect all interests until sale is closed and the deed delivered. If the Property is destroyed or materially damaged between the date hereof and the closing, and Seller is unable or unwilling to restore it to its previous condition prior to closing, Purchaser shall have the option of canceling this Agreement and receiving a full refund of the Earnest Money or accepting the Property in its then condition. If Purchaser elects to accept the Property in its damaged condition, any insurance proceeds (for damage to structures, only) otherwise payable to Seller by reason of such damage shall be applied to the balance of the purchase price or otherwise be payable to Purchaser.

18. **FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA):** In the closing of this transaction, Seller and Purchaser shall comply with the FIRPTA and the regulations promulgated thereunder by the IRS.

19. **FACSIMILE AND COUNTERPART SIGNATURES:** This agreement may be executed in counterparts and by either party or by both parties by telecopy, electronic scanned email documents or facsimile and shall be binding upon the party so executing it upon receipt by the other party of the signature.

20. **NOTICE:** All notices, demands and/or consents provided for in this Agreement shall be in writing and shall be deemed to have been served on the date mailed by United States registered or certified mail, return receipt requested, with postage prepaid. All such notices and communications

shall be addressed to the parties hereto at the respective addresses set forth at page 1 hereof, or at such other addresses as either may specify to the other in writing. If the parties fax number or email addresses are available notice shall be deemed to have been served when sent by one of these methods

21. ENTIRE AGREEMENT This Agreement constitutes the entire agreement between Purchaser and Seller regarding the Property, and supersedes all prior discussions, negotiations and agreements between Purchaser and Seller, whether oral or written. Neither Purchaser, Seller, Agent nor any other sales agent shall be bound by any understanding, agreement, promise, or representation concerning the Property, expressed or implied, not specified herein. Any further changes or modifications to this Agreement must be in writing and signed by the parties hereto.

22. ADDITIONAL PROVISIONS set forth on any attached Addendum, signed and dated by all parties, are hereby made a part of this Contract.

23. GOVERNING LAW: This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama, without regard to principles governing conflicts of law, except that it is agreed that the provisions of this Agreement relating to arbitration or disputes hereunder shall be governed by the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*, and, to the extent not in conflict with the Federal Arbitration Act, by the Commercial Arbitration Rules of the American Arbitration Association.

24. TIME IS OF THE ESSENCE: The Parties agree that time is of the essence of this Agreement.

25. "EFFECTIVE DATE" OF CONTRACT: THE "EFFECTIVE DATE" SHALL BE THE DATE ON WHICH THE SECOND PARTY EXECUTES THIS CONTRACT AS SHOWN ON THE SIGNATURE PAGE OR, IF THE CONTRACT INCLUDES SUBSEQUENT CHANGES SIGNED OR INITIALED AND DATED BY THE PARTIES, THE LATEST SUCH CHANGE AS SO SIGNED OR INITIALED AND DATED.

THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF YOU DO NOT UNDERSTAND THE LEGAL EFFECT OF ANY PART OF THIS CONTRACT, SEEK LEGAL ADVICE BEFORE SIGNING.

SELLER: Continental Equity Corporation

Witness to Seller's Signature(s)

By: _____
Its: _____ DATE

PURCHASER: City of Vestavia Hills

Witness to Purchaser's Signature(s)

By: _____
Its: _____ DATE

Receipt is hereby acknowledged of the earnest money as hereinabove set forth ____ CASH ____ CHECK

Firm: _____

By: _____

FIRST AMENDMENT TO SALES CONTRACT

THIS AMENDMENT was executed as of June 6th, 2015 by and between Continental Equity Corporation (the Seller) and City of Vestavia Hills (the Purchaser)

RECITALS:

Seller and Purchaser are parties to that certain Sales Contract dated February 23, 2015 concerning the purchase and sale of the Property described therein.

The parties have agreed to amend the Sales Contract on the terms and provisions hereinafter set forth.

NOW, THEREFORE, In consideration of Purchaser depositing an additional Five Thousand and no/100 Dollars (\$5,000.00) Earnest Money with Southpace Properties, Inc. (Escrow Holder) the Seller and Purchaser agree as follows:

Section 8 of the Contract is hereby deleted and replaced with the following:

8. **PURCHASER INSPECTION PERIOD:** Within seven (7) days from the date this contract is accepted by all parties, Seller shall deliver to Purchaser all documents in Seller's possession related to title and environmental matters, including any existing title policies, copies of any leases, surveys, environmental reports and the like. Purchaser shall have until September 1, 2015 ("Inspection Period") to determine, either personally or through or with a representative of Purchaser's choosing, any and all conditions of the Property (including without limitation the condition of all improvements thereon) material to Purchaser's decision to purchase the Property. This determination shall include, without limitation, Purchaser satisfying itself as to title matters, survey matters, structural matters, zoning matters, subdivision restrictions, environmental matters, existing contracts and financial matters affecting the Property, all soil, landscaping and other physical conditions of the Property, availability and sufficient quantities of all utilities, and all additional matters that Purchaser believes relevant, in its sole and absolute discretion, in determining whether or not to purchase the Property. Purchaser, at Purchaser's sole discretion, for any reason or no reason, shall have the right and option to cancel this Contract by giving written notice of termination to Seller no later than the last day of the Inspection Period, in which event this Contract shall be of no further force or effect except for any indemnity or other obligations that expressly survive, **and the Earnest Money (\$10,000) shall be paid to Seller.** Purchaser shall coordinate all of its testing and investigations and its agents' testing and investigations with Seller in order to insure the least amount of interference with Seller's operations. Purchaser agrees to indemnify and hold Seller harmless against any claims for bodily injury, property damage and mechanics' liens arising out of any actions of Purchaser or its agents or representatives on the Property in the course of such activities. Purchaser also agrees to restore or repair any of the Property damaged or disturbed as a result of Purchaser's exercise of its rights under this Agreement to as near as is reasonably possible the condition that existed immediately prior to the exercise of such rights. Purchaser's obligations to indemnify and hold Seller harmless under this paragraph shall survive Closing and any termination of this Agreement. Purchaser's obligation under this paragraph to restore the Property shall survive any termination of this Agreement, but shall not survive Closing. If Purchaser fails to notify Seller of his intent to cancel prior to the expiration of the Inspection Period then this contingency will be considered removed and the contract shall continue in full force and effect and the Earnest Money will remain "at risk" and will not be refunded in any event other than a default by Seller.

Except as hereby amended, the Sales Contract shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed as of the date first shown above.

SELLER: Continental Equity Corporation

Witness to Seller's Signature(s)

By: _____
Its: _____

PURCHASER: City of Vestavia Hills

Witness to Purchaser's Signature(s)

By: _____
Its: Mayor

By: _____
Its: City Manager