

RESOLUTION NO. 14-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and is hereby authorized to enter into a Purchase Agreement by and between the City of Huntsville, 103 Wynn LLC and the Alabama State Board of Education for Wynn Drive Relocation, Project No. 65-141-SP18, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Real Estate Purchase Agreement between the City of Huntsville, 103 Wynn LLC and the Alabama State Board of Education" consisting of twenty-three (23) pages plus eleven (11) additional pages consisting of Exhibits A-1 through F and the date of March 13, 2014, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 13th day of March, 2014.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 13th day of March, 2014.

Mayor of the City of
Huntsville, Alabama

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made and entered as of the Effective Date (hereinafter defined) by and between 103 Wynn LLC, a Missouri limited liability company ("Seller"), and the Alabama State Board of Education, an agency of the State of Alabama (the "Board") and the City of Huntsville, Alabama, an Alabama municipal corporation (the "City," and collectively with the Board, "Buyers"). In consideration of the mutual promises and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged by each party hereto, the parties hereto, intending to be legally bound, do hereby covenant and agree as follows:

ARTICLE 1. SALE OF PROPERTY

1.1. City Property. Seller shall sell and convey to the City and the City shall purchase and acquire from Seller on the terms hereafter stated that certain parcel of real property located in Madison County, Alabama depicted on Exhibit "A-1" attached hereto to be more specifically described in the Survey (defined below) (the "City Land"), being all the land owned by Seller at the location identified on Exhibit "A-1," together with all buildings, improvements, structures and fixtures located thereon (collectively, "City Improvements"), and together with the tenements, hereditaments, appurtenances, rights of way, strips, gores, easements, oil, gas, sand, gravel and other mineral rights, water rights, air rights, and all other licenses, rights and privileges in any way pertaining or beneficial to the City Land or the City Improvements (including without limitation any rights of the Seller as a declarant), the land lying in the bed of any street, road, highway, avenue or alley, opened or unopened, adjoining the City Land, and all damages, awards, claims and causes of action now or hereafter payable or assertable with respect to any of the foregoing by reason of any exercise of the power of eminent domain, any change of grade of any street, road, highway, avenue or alley, or any damage, destruction, loss or removal of any of the foregoing, including but not limited to the removal of any fixtures (the City Land, City Improvements and all of the other property, right, title and interest referred to in this Section being sometimes collectively referred to as the "City Property").

1.2. Board Property. Seller shall sell and convey to the Board and the Board shall purchase and acquire from Seller on the terms hereafter stated that certain parcel of real property located in Madison County, Alabama depicted on Exhibit "A-2" attached hereto to be more specifically described in the Survey (defined below) (the "Board Land"), being all the land owned by Seller at the location identified on Exhibit "A-2," together with all buildings, improvements, structures and fixtures located thereon (collectively, "Board Improvements"), and together with the tenements, hereditaments, appurtenances, rights of way, strips, gores, easements, oil, gas, sand, gravel and other mineral rights, water rights, air rights, and all other licenses, rights and privileges in any way pertaining or beneficial to the Board Land or the Board Improvements (including without limitation any rights of the Seller as a declarant), the land lying in the bed of any street, road, highway, avenue or alley, opened or unopened, adjoining the Board Land, and all damages, awards, claims and causes of action now or hereafter payable or

assertable with respect to any of the foregoing by reason of any exercise of the power of eminent domain, any change of grade of any street, road, highway, avenue or alley, or any damage, destruction, loss or removal of any of the foregoing, including but not limited to the removal of any fixtures (the Board Land, Board Improvements and all of the other property, right, title and interest referred to in this Section being sometimes collectively referred to as the "Board Property"). The City Property and the Board Property are collectively referred to as the "Property").

ARTICLE 2. PURCHASE PRICE

2.1. Independent Contract Consideration. Concurrent with the Effective Date, each Buyer has paid to Seller the amount of Ten and No/100 Dollars (\$10.00) (the "Independent Contract Consideration"), the receipt of which is hereby acknowledged by Seller, which amount the parties have bargained and agreed to as the consideration for the City's exclusive option to purchase the City Property and the Board's exclusive option to purchase the Board Property in accordance herewith, and Seller's execution, delivery and performance of this Agreement. The Independent Contract Consideration is in addition to and independent of any other consideration or payment provided for in this Agreement, is nonrefundable, and shall be retained by Seller, notwithstanding any other provision of this Agreement.

2.2. City Purchase Price. Subject to the adjustments and prorations hereinabove or hereafter described, the purchase price to be paid by City to Seller for the purchase of the City Property is the sum of Two Hundred Seventy One Thousand One Hundred N i n e t y Three and 33/100 Dollars (\$271,193.33) (the "City Purchase Price"). The City Purchase Price will be paid in the following manner:

2.2.1. City Purchase Option. On or before the date that is five (5) Business Days (hereinafter defined) following the Effective Date, the City shall deposit Thirteen Thousand Five Hundred Sixty and No/100 Dollars (\$13,560.00) in immediately available funds (the "City Option Money") with the Title Company (as defined below), as payment for the exclusive option to purchase the City Property pursuant to the terms of this Agreement. The City has the exclusive right to purchase the City Property from and after the Effective Date, and once Seller executes this Agreement it shall cease marketing the Property and will not accept or consider any other offers for the Property, including those already received, from any other individuals or entities. The City Option Money will be held by the Title Company in an interest bearing escrow account and applied to the City Purchase Price at the Closing or as otherwise provided in this Agreement. Any interest that accrues upon the City Option Money becomes a part of the City Option Money.

2.2.2. Cash at Closing. At Closing, the City shall pay the City Purchase Price to Seller in cash or other immediately available funds, with the City Option Money being applied to the City Purchase Price, subject to the prorations, costs and adjustments as provided herein.

2.3. Board Purchase Price. Subject to the adjustments and prorrations hereinabove or hereafter described, the purchase price to be paid by Board to Seller for the purchase of the Board Property is the sum of Nine Hundred Forty Three Thousand Eighty and No/100 Dollars (\$943,080.00) (the "Board Purchase Price"). The Board Purchase Price will be paid in the following manner:

2.3.1. Board Purchase Option. On or before the date that is five (5) Business Days (hereinafter defined) following the Effective Date, the Board shall deposit Forty Seven Thousand One Hundred Fifty Four and No/100 Dollars (\$47,154.00) in immediately available funds (the "Board Option Money") with the Title Company as payment for the exclusive option to purchase the Board Property pursuant to the terms of this Agreement. The Board has the exclusive right to purchase the Board Property from and after the Effective Date, and once Seller executes this Agreement it shall cease marketing the Property and will not accept or consider any other offers for the Property, including those already received, from any other individuals or entities. The Board Option Money will be held by the Title Company in an interest bearing escrow account and applied to the Board Purchase Price at the Closing or as otherwise provided in this Agreement. Any interest that accrues upon the Board Option Money becomes a part of the Board Option Money. The City Option Money or Board Option Money may each be referred to in this Agreement as the "Option Money," and each reference to the Option Money means the City Option Money or the Board Option Money, as applicable.

2.3.2. Cash at Closing. At Closing, the Board shall pay the Board Purchase Price to Seller in cash or other immediately available funds, with the Board Option Money being applied to the Board Purchase Price, subject to the prorrations, costs and adjustments as provided herein.

ARTICLE 3. BUYERS' DILIGENCE

3.1. Property Condition. Commencing upon the Effective Date and continuing through the Closing Date, Buyers shall, at Buyers' expense, have the right to access and make reasonable examinations and inspections of the Property and the contracts, books, records, leasing files, plans, reports and inspections relating to the environmental and physical condition of the Property, notices to or from third parties, and leases and accounts of Seller regarding the Property to the extent Seller possesses same. Seller shall provide Buyers access as aforementioned upon reasonable request to Seller for same, and Seller shall provide all documentation requested by Buyers at the Property during normal business hours. Prior to entering upon the Property, each Buyer shall provide Seller with a certificate of insurance or a written statement of self-insurance evidencing reasonable and appropriate coverage of Seller for Buyer's diligence activities on the Property and promptly repair at such Buyer's expense any material damage to the Property caused by such Buyer. Each Buyer shall, to the extent permitted by law, and subject to the limitations imposed by law, indemnify, defend and hold Seller (and Seller's employees, members, managers, officers, directors and affiliates) harmless from any and all claims, damages, costs and expenses arising out of or related to Buyer's diligence activities on the Property. If, on or before the date that is seventy-five (75) calendar days after the later of (a) the Effective Date or (b) receipt by Buyers of all Seller Deliverables (as defined below) (the "Inspection Period"), either Buyer determines in its sole

discretion that the condition of the Property is unsatisfactory for any reason or no reason or that such Buyer is no longer interested in purchasing the City Property or the Board Property, as applicable, the determination of which shall be in each Buyer's sole and absolute discretion, either Buyer may, for and in consideration of the Independent Contract Consideration, terminate its obligations under this Agreement by serving written notice of termination prior to the expiration of the Inspection Period to Seller and the other Buyer. Any such termination by one Buyer shall constitute termination by the other Buyer. Upon termination, the Title Company shall return the Option Money to the Buyers, and the rights, duties and obligations of each such Buyer hereunder shall terminate and be of no further force or effect. Upon expiration of the Inspection Period, both of the Option Moneys will be non-refundable except in the event of a default by Seller or as otherwise specifically provided for herein. For purposes of undertaking Buyers' diligence activities under this subsection, Buyers shall use commercially reasonable efforts to coordinate efforts so as to act jointly and in a single instance and to minimize separate instances of inspection and access. Notwithstanding the foregoing, each Buyer has the right to perform all separate and independent investigations of the Property as may be required by law or deemed necessary or expedient by such Buyer.

3.2. Title. On or before the date that is ten (10) Business Days following the Effective Date, each Buyer shall obtain (and provide true and accurate copies of Seller): (a) commitments for title insurance (the "Title Commitments") for issuance of owners' title insurance policies in form and substance reasonably satisfactory to the Buyers (the "Title Policies") issued by Hand Arendall LLC, as agent for Mississippi Valley Title Insurance Company (the "Title Company") containing the requirements and exceptions to coverage described therein, offering to issue title insurance to the Property for the benefit of Buyers, subject to the requirements and exceptions demonstrated by the Exception Documents (hereinafter defined), and (b) legible copies of all instruments creating title exceptions described in the Title Commitments (the "Exception Documents"). Each Buyer will have fifteen (15) Business Days after receipt of the Title Commitments (or any update thereto reflecting requirements or exceptions not reflected on the Title Commitments) and all of the Exception Documents to provide to Seller a written notice setting forth all of such Buyer's objections to Seller's title to the Property as reflected in the Title Commitments and the Exception Documents (each notice, a "Title Objection"). Within ten (10) Business Days after receipt of the Title Objection, Seller shall notify Buyers in writing whether or not it will attempt to cure or remedy any such objection. For those Title Objections, if any, which Seller agrees to attempt to cure or remedy, Seller shall have thirty (30) Business Days to undertake such efforts and the Inspection Period shall be extended for thirty (30) Business Days. If Seller fails or refuses to notify Buyers in writing of its agreement to attempt to cure or remedy any Title Objections, Seller shall be deemed to have declined to agree to attempt to cure or remedy same. If Seller refuses or is unable to correct any such defect(s) by the end of the Inspection Period, the objecting Buyer may either waive such defect(s) or terminate this Agreement by written notice to Seller (which such termination shall be deemed a termination by both Buyers) and Buyers shall obtain a refund of the Option Money. In the event Buyers fail to so terminate, all such Title Objections shall be deemed waived by Buyers. All title exceptions reflected in the Title Commitments and the Exception Documents not objected to, or objected to and waived, will be deemed "Permitted Exceptions." Notwithstanding the foregoing, in no event shall monetary liens and encumbrances

such as mortgages, deeds of trust, mechanic's liens, tax liens etc. be deemed "Permitted Exceptions," and Buyers are under no obligation to object to same. Seller is obligated to discharge and satisfy all such monetary liens and encumbrances at or prior to Closing.

3.3. Survey. Prior to the end of the Inspection Period, Buyers shall have the Property surveyed consistent with most recently promulgated ALTA/ACSM Minimum Standards by a surveyor registered in the State of Alabama (each a "Survey") and provide a true and accurate copy of the Survey certified to Seller. If the Survey reveals any matters unacceptable to either Buyer exercising its sole discretion, then within fifteen (15) Business Days following receipt of the Survey, either Buyer may deliver to Seller a written objection (a "Survey Objection"). Within ten (10) Business Days after receipt of the Survey Objection, Seller shall notify Buyers in writing whether or not it will attempt to cure or remedy any such objection. For those Survey Objections, if any, which Seller agrees to attempt to cure or remedy, Seller shall have thirty (30) Business Days to undertake such efforts and the Inspection Period shall be extended for thirty (30) Business Days. If Seller refuses or is unable to correct any such defect(s) by the end of the Inspection Period, the objecting Buyer may either waive such defect(s) or terminate this Agreement by written notice to Seller (which such termination shall be deemed a termination by both Buyers) and Buyers shall obtain a refund of the Option Money. In the event Buyers fail to so terminate, all such Survey Objections shall be deemed waived by Buyers. The metes and bounds description of the Survey of the Property shall then become the legal description of the Property for all purposes hereunder and shall be the description of the Property to be conveyed by the Deeds.

3.4. Seller Deliverables. On or before the date that is ten (10) days following the Effective Date, Seller shall deliver to the Buyers, in the form and format in which such material is possessed by Seller, two full sets (one to each Buyer) of all contracts, title policies, surveys, records, leasing files, plans, reports and inspections relating to the environmental and physical condition of the Property, notices to or from third parties, and leases of Seller regarding the Property, including without limitation all of the materials listed in Exhibit "B" attached hereto, to the extent Seller possesses or otherwise controls access to same, (collectively, "Seller Deliverables"). For purposes of clarity and avoidance of doubt, in no event shall Seller be required to deliver documents which pertain to the building located on Seller's property nor to any land or improvements which are not "Property" as defined herein.

ARTICLE 4. CLOSING

4.1. Closing Date. The closing of the purchase and sale of the Property (the "Closing") will occur on or before the fifteenth (15th) day following the last to occur of (a) the expiration of the Inspection Period, including any extension thereof or (b) satisfaction or waiver of all conditions precedent to Closing described in Sections 4.9 and 4.10 (the "Closing Date"); provided, however, that Buyers may jointly cause the Closing to occur on any particular Business Day that is no later than the Closing Date by the giving of written notice to Seller of the Business Day on which Buyers intend to conduct the Closing. The Closing will take place at the office of the Title Company; provided, however, Buyer and Seller shall use commercially reasonable

efforts to cause the Closing to occur without either party having to be physically present at such office of the Title Company.

4.2. Seller's Instruments. On the Closing Date Seller shall deliver or cause to be delivered to Buyers the following items (all documents will be duly executed and acknowledged where required):

4.2.1. Statutory Warranty Deed. Statutory warranty deeds in form and substance reasonably acceptable to each Buyer (the "Deeds") executed by Seller conveying the City Property to the City and the Board Property to the Board, subject only to the Permitted Exceptions.

4.2.2. Title Affidavits. Such affidavits and other documents as might be reasonably requested by the Title Company to issue the Title Policies in accordance with the terms of the Title Commitments;

4.2.3. Documents; Keys. All keys and combinations to locks and other security devices located on the Property and all other items reasonably requested by Buyers relating to the Property;

4.2.4. Evidence of Authority. Authorizing resolutions executed by all of the members of Seller authorizing the sale of the Property to Buyers, together with such other evidence of the authority of the person or persons executing the documents contemplated by this Agreement on behalf of Seller as Buyers and the Title Company might reasonably request;

4.2.5. Non-foreign Affidavit. An affidavit in the form prescribed by Treasury Regulation §1.1445-2 stating Seller's taxpayer identification number and confirming that the Seller is not a foreign person within the purview of 26 U.S.C. §1445 and the regulations issued thereunder; and

4.2.6. Non-Alabama Seller Withholding. Such documents and funds of Seller to the extent such items are required to comply with Alabama Code Section 40-18-86 (1975) pertaining to income tax withholding on transfers of real property by non-residents of Alabama.

4.2.7. General Assignment. A General Assignment ("General Assignment") to the City for the City Property and the Board for the Board Property substantially in the form attached hereto as Exhibit "C";

4.2.8. Closing Statement. A duly executed counterpart of each Closing Statement (as defined below);

4.2.9. Additional Documents. Such additional documents as might be reasonably requested by Buyers to consummate the sale of the Property to Buyers.

The foregoing documents are sometimes hereinafter collectively referred to as "Seller's Closing Documents".

4.3. City Instruments. On the Closing Date, City shall deliver to Seller the following items (all documents will be duly executed and acknowledged where required):

4.3.1. Payment. Payment of the City Purchase Price in accordance with Article 2 of this Agreement;

4.3.2. Title Affidavits. Such affidavits and other documents as might be reasonably requested to issue the City's Title Policy in accordance with the terms of the City's Title Commitment;

4.3.3. Evidence of Authority. Such resolutions, ordinances and other evidence of authority with respect to the City and the person or persons acting on behalf of the City as might be reasonably requested by the Title Company;

4.3.4. Closing Statement. A duly executed counterpart of the City's Closing Statement; and

4.3.5. Additional Documents. Such additional documents as might be reasonably requested by Seller to consummate the sale of the City Property to the City.

The foregoing are sometimes hereafter collectively referred to as "City's Closing Documents."

4.4. Board Instruments. On the Closing Date, the Board shall deliver to Seller the following items (all documents will be duly executed and acknowledged where required):

4.4.1. Payment. Payment of the Board Purchase Price in accordance with Article 2 of this Agreement;

4.4.2. Title Affidavits. Such affidavits and other documents as might be reasonably requested to issue the Board's Title Policy in accordance with the terms of the Board's Title Commitment;

4.4.3. Evidence of Authority. Such resolutions, ordinances and other evidence of authority with respect to the Board and the person or persons acting on behalf of the Board as might be reasonably requested by the Title Company;

4.4.4. Closing Statement. A duly executed counterpart of the Board's Closing Statement; and

4.4.5. Additional Documents. Such additional documents as might be reasonably requested by Seller to consummate the sale of the Board Property to the Board.

The foregoing are sometimes hereafter collectively referred to as "Board's Closing Documents."

4.5. Possession. Seller shall deliver possession of the Property to Buyers at the time of Closing, free from all tenancies and parties claiming rights to possession of or having claims against the Property. Effective on the delivery of the Deeds, beneficial ownership and the risk of loss of the Property will pass from Seller to Buyers.

4.6. Closing Costs.

4.6.1. Seller Costs. Seller shall pay: (a) all costs of abstracting, title examination and other costs relating to the issuance of the Title Commitments, and the premium expense for the Title Policies in the amount of the City Purchase Price and the Board Purchase Price, respectively (provided, however, each Buyer shall pay all the costs of endorsements to its Title Policy and any mortgagee's title policy); (b) one-half of the costs of the Survey; (c) all state, county and municipal transfer taxes, income taxes and sales taxes; (d) the cost of the preparation of Seller's Closing Documents; (e) Seller's attorneys' fees; and (f) any real estate brokerage commissions.

4.6.2. Buyer Costs. Each Buyer shall pay: (a) one-half the cost of the Survey of each such Buyer's respective Property; (b) the cost of any endorsements to the Buyer's Title Policy (c) the cost of any mortgagee's title policy; (d) all recording costs due upon recording of the applicable Deed; and (e) such Buyer's attorneys' fees.

4.6.3. Shared Costs. Seller and Buyers shall each pay one-third (1/3) of: (a) the fees and charges, if any, charged by the Title Company for its services as the escrow agent hereunder; and (b) any closing fee charged by the Title Company for purposes of handling the Closing.

4.6.4. Limitation on Seller Costs. Notwithstanding the foregoing, in no event shall Seller be liable or obligated under Section 4.6.1(b) for survey costs in excess of Eight Thousand Six Hundred and 00/100 Dollars (\$8,600.00) nor under Section 4.6.1(a) for title abstracting, commitment and policy related costs in excess of Two Thousand Six Hundred and 00/100 Dollars (\$2,600.00).

4.7. Adjustments; Prorations. All receipts and disbursements of the Property will be prorated between Seller and Buyers as of 11:59 p.m. on the Closing Date and the Purchase Price will be adjusted on the following basis:

4.7.1. Disbursements. All sums due for accounts payable which were owing or incurred in connection with the Property on or prior to the Closing Date will be paid by Seller. Each Buyer will promptly furnish to Seller any bills for such period received after the Closing Date for payment, and Buyers will have no further obligation with respect thereto.

4.7.2. Property Taxes. Seller shall pay all real and personal property ad valorem taxes, if any, for the calendar years preceding the year in which the Closing Date occurs. Seller shall pay any special assessments assessed against the Property and accruing prior to the

Closing, and Buyers shall pay such accruing after the Closing even if such special assessments are to be paid in installments. All real and personal property ad valorem taxes for the calendar year in which the Closing Date occurs will be prorated to the Closing Date. If for any reason ad valorem property taxes for the then-current tax year have not been assessed on the Property, such pro-ration will be estimated based upon the property taxes for the immediately preceding tax year, and Seller and Buyers shall subsequently make a cash adjustment when exact amounts are available. The provisions of this Section 4.7.2 survive the Closing.

4.7.3. Utility Charges. All utility charges will be prorated to the Closing Date and Seller will obtain a final billing therefore. All security deposits for utilities will be retained by Seller.

4.7.4. Insurance. Seller will terminate all existing insurance policies on the Closing Date, and Buyers shall place all insurance coverage desired by Buyers. Any prepaid insurance premiums will be retained by Seller.

4.8. Closing Statement. Prior to the Closing, Seller and each Buyer shall approve a preliminary closing statement in the Title Company's customary form (each, a "Closing Statement") which details: (i) the disposition of the applicable Option Money and the applicable Purchase Price, (ii) the proration amounts and charges allocable to each of the parties pursuant to Section 4.6, (iii) the closing costs allocable to each of the parties pursuant to Section 4.5, (iv) all fees, costs and expenses payable to any third party, including the Title Company, and (v) all necessary wiring instructions.

4.9. Conditions to Buyers' Obligation to Purchase. Without limitation to other conditions or agreements stated herein, the performance by Buyers of all agreements and obligations under this Agreement, including, without limitation, the Buyers' obligation to complete Closing, is conditioned upon the complete satisfaction (or both Buyers' waiver), on or prior to the Closing Date, of all of the following conditions (the "Buyers' Conditions Precedent"):

4.9.1. Seller's Representations and Warranties. The representations and warranties of Seller herein contained must be true and correct at all times, including on and as of the Closing Date.

4.9.2. Seller's Performance. Seller must have performed, observed and complied with all agreements and obligations required by this Agreement to be performed, observed and complied with on its part hereunder at or prior to Closing. Seller must have delivered to Buyers such documents and other materials as Buyers reasonably may deem necessary to confirm fully such performance, observance and compliance.

4.9.3. Seller's Closing Documents. Seller must have delivered Seller's Closing Documents.

4.9.4. The Seller's Conditions to Closing. All of the Seller's Conditions Precedent must have been satisfied or waived.

4.9.5. Closing by Both Buyers. Neither Buyer may have terminated its obligations under this Agreement.

4.9.6. ADEM Clearance. The Buyers must have received a no further action letter or other similar agreement (a "NFA Letter") from the Alabama Department of Environmental Management ("ADEM"), in form and substance reasonably satisfactory to both Buyers permitting development of the Project on the Board Property and construction of a road right of way and related improvements on the City Property (the "Road"), subject to environmental restrictive covenants in form and substance reasonably satisfactory to both Buyers and as may be required by ADEM in order to issue the NFA Letter. For the avoidance of doubt and for purposes of clarity, Buyers acknowledge that Buyers bear the sole cost, expense and responsibility for satisfying this condition and Buyers shall, immediately upon the Effective Date, exercise commercially reasonable efforts to procure such NFA Letter.

4.9.7. Termination Rights. If Buyers' Conditions Precedent have not been satisfied or waived by the date which is one hundred eighty (180) calendar days following the Effective Date, and such failure is not caused by a default by either Buyer under this Agreement, the non-defaulting Buyer(s) may terminate this Agreement upon written notice given to the Seller and other Buyer, in which event the Option Money shall be returned to the Buyers and the parties shall have no further obligations to each other.

4.10. Conditions to Seller's Obligation to Sell. Without limitation to other conditions or agreements stated herein, the performance by Seller of all agreements and obligations under this Agreement, including, without limitation, Seller's obligation to complete Closing, is conditioned upon the complete satisfaction (or Seller's waiver), on or prior to the Closing Date, of all of the following conditions ("Seller's Conditions Precedent"):

4.10.1. Buyers' Representations and Warranties. The representations and warranties of Buyers herein contained must be true and correct at all times, including on and as of the Closing Date.

4.10.2. Buyers' Performance. Buyers must have performed, observed and complied with all agreements and obligations required by this Agreement to be performed, observed and complied with on each of their part hereunder at or prior to Closing. Buyers must have delivered to Seller such documents and other materials as Seller reasonably may deem necessary to confirm fully such performance, observance and compliance.

4.10.3. Buyers' Closing Documents. The City must have delivered the City's Closing Documents, and the Board must have delivered the Board's Closing Documents.

4.10.4. The Board's and City's Conditions to Closing. All of the Buyers' Conditions Precedent must have been satisfied or waived.

4.10.5. Termination Rights. If Seller's Conditions Precedent have not been satisfied or waived by the date which is one hundred eighty (180) calendar days following the Effective Date, and such failure is not caused by a default by Seller under this Agreement, Seller may terminate this Agreement upon written notice given to the Buyers, in which event the Option Money shall be returned to the Buyers and the parties shall have no further obligations to each other.

ARTICLE 5. CONDEMNATION; CASUALTY

In the event of casualty loss or condemnation occurring prior to the Closing any party may elect to terminate this Agreement, in which event Title Company shall immediately return the applicable Option Money to the Buyers. In the event the parties fail to terminate and thereby elect to proceed with the Closing despite any such casualty or condemnation, the obligations of the parties hereunder shall remain in full force and effect as if such casualty or condemnation had not occurred. In the event the parties fail to terminate and thereby elect to proceed with the Closing and Seller receives any condemnation awards or proceeds collected under policies of insurance pertaining to the Property, Seller shall pay to Buyers any and all sums of money received as condemnation awards or insurance proceeds, prorata in accordance with Buyers' respective Property ownership, and shall assign, transfer and set over to Buyers all of Seller's right, title and interest in and to said awards and proceeds and any further sums payable thereunder or by reason thereof.

ARTICLE 6. REPRESENTATIONS AND WARRANTIES

6.1. Representations and Warranties of Seller. In order to induce Buyers to enter into this Agreement and to complete Closing, Seller represents and warrants to Buyers:

6.1.1. Seller Subsistence; Power; Authority.

6.1.1.1. Seller is the entity identified in the first paragraph of this Agreement, and is duly organized, validly subsisting and in good standing under the laws of its state of formation, and duly qualified and with full power and authority generally to do business in the state where the Property is located, with all legal power and authority to undertake, observe and perform all of Seller's agreements and obligations hereunder and under Seller's Closing Documents.

6.1.1.2. Seller's entry into this Agreement, and the observance and performance of Seller's agreements and obligations hereunder, have been duly approved by all necessary action of the directors, shareholders, members and/or partners (as applicable) of Seller. This Agreement constitutes and Seller's Closing Documents will, when executed and delivered, constitute the valid and binding obligations of Seller, enforceable in accordance with their terms.

6.1.1.3. Seller is not a foreign person within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended.

6.1.1.4. All the persons who have any legal or equitable interest in the Property, or whose joinder in any Seller's Closing Document would be necessary to convey to Buyer title to all the Property, as required by this Agreement, are named above as "Seller."

6.1.1.5. Seller's execution and delivery of this Agreement and Seller's Closing Documents and Seller's compliance with the provisions thereof will not conflict with or constitute a breach of, or a default under, any of the provisions of any applicable law, rule, regulation or order of any court, administrative agency, bureau, board, commission, office, authority, department or other Governmental Authority.

6.1.1.6. Seller is not a party to or bound by any agreement or obligation or subject to any restriction or to any applicable law, rule, regulation or order of any court, administrative agency, bureau, board, commission, office, authority, department or other Governmental Authority, which might result in a material impairment of the rights or abilities of Seller to perform its obligations hereunder or under Seller's Closing Documents.

6.1.2. Litigation. To Seller's Knowledge, there are no judgments, orders, suits, actions, garnishments, attachments or proceedings of any nature by or before any court, commission, board or other Governmental Authority pending, or to the knowledge of Seller threatened, which involve or affect, or could involve or affect: (a) the Property, or any part thereof, (b) the validity or enforceability of this Agreement or Seller's Closing Documents, (c) any risk of any judgment or liability being imposed upon Seller which could materially adversely affect the financial condition of Seller or Seller's ability to observe or perform fully its agreements and obligations hereunder or under Seller's Closing Documents.

6.1.3. Bankruptcy Matters. The consummation of the transactions contemplated hereby will not render Seller insolvent or constitute a fraudulent conveyance or fraudulent transfer under any applicable law. Seller has not made any general assignment for the benefit of Seller's creditors. No proceeding seeking (a) relief for Seller under any bankruptcy or insolvency law, (b) the rearrangement or readjustment of Seller's debt, (c) the appointment of a receiver, custodian, liquidator or trustee to take possession of substantially all of the assets of Seller, or (d) the liquidation of Seller, has been commenced or is planned by Seller or has been threatened by any other third party.

6.1.4. No Default. To Seller's Knowledge, Seller is not in default under any license, permit, lease, lease guaranty, contract, or other agreement or instrument relating to the Property to which Seller is a party or by which Seller or the Property is bound. There exists no condition or state of facts which, but for the giving of notice or the expiration of time (or both), would constitute such a default. The observance and performance of Seller's obligations hereunder and under Seller's Closing Documents will not conflict with or result in the breach of any license, permit, lease, lease guaranty, contract or other such agreement or other instrument.

6.1.5. Environmental. Seller has provided to Buyer or will provide to

Buyer as part of the Seller Deliverables true and complete copies of all environmental assessments, reports, permits and other written material relating to the environmental condition of the Property, including but not limited to the presence of asbestos, lead paint or other Hazardous Substances, to the extent in Seller's possession or control or of which Seller otherwise has knowledge.

6.1.5.1. Seller has provided Buyer with true, complete and correct copies of all notices and information received by Seller from any person or entity relating to the presence of Hazardous Substances on the Property or in the vicinity of the Property.

6.1.5.2. To Seller's Knowledge, Seller has not received any complaint, order, summons, citation, notice of violation, directive, letter or other communication from any Governmental Authority with regard to air emissions, water discharges, noise emissions or Hazardous Substances, or any other environmental, health or safety matters affecting the Property, or any portion thereof. Except as previously disclosed to Buyers, Seller has complied with all federal, state or local environmental laws affecting the Property, including notification requirements relating to the release of Hazardous Substances.

6.1.5.3. To Seller's Knowledge, Seller has not knowingly undertaken, permitted, authorized or suffered the presence, or suspected presence, use, manufacture, handling, generation, storage, treatment, discharge, release, burial or disposal on, under or about the Property of any Hazardous Substances, except in compliance with all federal, state or local environmental laws, or the transportation to or from the Property, of any Hazardous Substances in violation of any federal, state or local environmental laws.

6.1.5.4. To Seller's Knowledge, Seller has not removed, or caused to be removed, any underground storage tanks from the Property and there are no underground storage tanks located on the Property.

6.1.5.5. For purposes of this Agreement, the term "Hazardous Substance" means materials, wastes or substances that are (i) included within the definition of any one or more of the terms "hazardous substances," "hazardous materials," "toxic substances," "toxic pollutants" and "hazardous waste" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901, et seq.), the Clean Water Act (33 U.S.C. Section 1251, et seq.), the Safe Drinking Water Act (14 U.S.C. Section 1401, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801, et seq.), and the Toxic Substance Control Act (15 U.S.C. Section 2601, et seq.) and the regulations promulgated pursuant to such laws, (ii) regulated or classified as hazardous or toxic, under federal, state or local environmental laws or regulations, (iii) petroleum, (iv) asbestos or asbestos-containing materials, (v) polychlorinated biphenyls, (vi) flammable explosives or (vii) radioactive materials.

6.1.6. Mechanics' Liens. No work has been or will be performed at, and no materials have been or will be furnished to, the Property, or any part thereof, which might give rise to any mechanics', materialmen's or other lien against the Property, or any part thereof. If any lien for such work is filed, Seller shall discharge the same promptly and in any event prior to Closing.

6.1.7. Compliance with Laws. To Seller's Knowledge,, no notice or communication of any kind has been issued by any Governmental Authority relating to the Property, or any business or activity conducted thereon, including, but not limited to, notice of violation under zoning, building, health, or fire codes. Seller shall be responsible for all such notices and communications, and for the cost of all work, repairs, construction and installations which may be required or called attention to by any such notice or communication issued prior to Closing, except for any environmental remediation or cleanup work required in order to induce ADEM to issue the NFA Letter, which work shall be the sole responsibility and cost of Buyers. If any such notice or communication is received by Seller after the Effective Date, Seller shall promptly notify Buyers in writing, and Seller, if either Buyer so requests, shall give such Buyer full opportunity, with the cooperation of Seller, to contest such governmental action and to initiate or participate in such proceedings as such Buyer may deem necessary or desirable to protect such Buyer's interests.

6.1.8. Condemnation. To Seller's Knowledge, Seller has not received any written notice of any pending or threatened condemnation of all or any portion of the Property. If at any time prior to Closing, Seller receives any written notice of any pending or threatened condemnation of all or any portion of the Property, Seller shall promptly provide a copy of such notice to Buyers.

6.1.9. Quality of Title.

6.1.9.1. Seller now has, and at Closing will have, full legal and equitable fee simple absolute title to the Property, of the quality and insurability called for by this Agreement.

6.1.9.2. There is no existing agreement, commitment, right of first refusal, right of first offer, option or right with, in or to any person to acquire the Property or any interest therein.

6.1.9.3. To Seller's Knowledge, no default or breach exists under any recorded easement, covenant, agreement or restriction affecting the Property.

6.1.10. No Fill Material. To the best of Seller's Knowledge, (a) no soils on the Property have been removed or otherwise replaced, (b) the soils located on the Property are native and original to the Property, and (c) no materials have been buried or otherwise disposed of on, under or at the Property.

6.1.11. Consents. No consent, approval, or authorization from any governmental authority or third party is required to be obtained by Seller in connection with the execution, delivery, and performance by Seller of this Agreement.

6.1.12. Accuracy of Information. All Seller Deliverables and all other information, materials, copies of documents and other materials (including, without limitation, financial data, contracts, books and records, licenses and permits, insurance policies, warranties, municipal approvals, architect's certificates, plans, surveys, estoppel certificates and subordination agreements) heretofore or hereafter submitted by Seller, or anyone on Seller's behalf, to Buyers with respect to the Property or this Agreement are complete and true copies, and, except as disclosed to Buyers in the Seller Deliverables, Seller is unaware of any fact or circumstance that has occurred or exists since the time of such submissions which in any way materially affects same. To Seller's knowledge, such submissions are not misleading and do not omit facts or circumstances having a material bearing on the Property or on Seller's ability to observe or perform its agreements or obligations hereunder or under Seller's Closing Documents. Seller makes no warranty or representation as to the accuracy and factual correctness of any Seller Deliverables prepared by unaffiliated third parties, and the parties expressly disclaim such warranties and representations.

6.1.13. Seller's Knowledge. For purposes of this Section 6.1, "Seller's Knowledge" is that within the actual knowledge of Robert Schoelch without requirement of inspection or inquiry.

6.2. Representations and Warranties of the City. The City represents and warrants to Seller:

6.2.1. Authority. The City has full power and authority to execute and deliver this Agreement and carry out its obligations hereunder.

6.2.2. Consents. No consent, approval, or authorization from any governmental authority or third party is required to be obtained by the City in connection with the execution, delivery, and performance by the City of this Agreement.

6.2.3. Effect of Agreement. This Agreement is binding on the City and enforceable against the City in accordance with its terms. Neither the execution of this Agreement nor consummation of the transactions contemplated hereby will (i) result in a breach of, default under or acceleration of any agreement to which the City is a party or by which the City is bound, or (ii) violate any restriction, court order, agreement or other legal obligation to which the City is subject.

6.3. Representations and Warranties of the Board. The Board represents and warrants to Seller:

6.3.1. Authority. The Board has full power and authority to execute and deliver this Agreement and carry out its obligations hereunder.

6.3.2. Consents. No consent, approval, or authorization from any governmental authority or third party is required to be obtained by the Board in connection with the execution, delivery, and performance by the Board of this Agreement.

6.3.3. Effect of Agreement. This Agreement is binding on the Board and enforceable against the Board in accordance with its terms. Neither the execution of this Agreement nor consummation of the transactions contemplated hereby will (i) result in a breach of, default under or acceleration of any agreement to which the Board is a party or by which the Board is bound, or (ii) violate any restriction, court order, agreement or other legal obligation to which the Board is subject.

6.4. Representations and Warranties of City and Board & Release and Indemnity. The Buyers represent and warrant to Seller that, except for Seller's representations and warranties set forth in this Agreement, Buyers are relying upon their own investigation and inspection of the Property, including the Title Commitment and Survey and any other reports, inspections or studies obtained by Buyers in Buyers' judgment, and Buyers will take title to the Property in its AS IS condition (including environmental and physical condition) based solely upon such investigations and inspections and the opportunity afforded to Buyers to undertake same during the Inspection Period, which opportunity Buyers acknowledge is ample and sufficient. Accordingly, except as otherwise expressly provided herein, from and after Closing, Buyers shall, to the extent permitted by law, release and forever discharge (and indemnify, defend and hold harmless Seller and Seller's employees, members, managers, officers, directors and affiliates – "Seller Parties") from and against any and all obligations, liabilities, claims, actions, causes of action, suits, losses, costs, damages, expenses, judgments, and demands, whether in law or equity which Buyers could bring against Seller Parties arising from or related to any environmental and/or physical condition of the Property disclosed in the Environmental Reports, the Title Commitment and/or the Survey. The provisions of this subsection shall survive Closing indefinitely.

6.5. Continuing Nature. Each of the representations and warranties of Seller and Buyers contained in this Agreement: (a) is made as of the Effective Date, and (b) shall be deemed remade by Seller and Buyers, as applicable, and shall be true and correct in all respects, as of the Closing Date. If, after the execution of this Agreement, any event occurs or condition exists which renders any of Seller's or either Buyer's, as applicable, representations or warranties untrue or misleading, then Seller or the applicable Buyer, respectively, shall promptly notify the other party.

ARTICLE 7. COVENANTS

7.1. Vacation of Road. After Closing, the City shall design, construct and open for public use the Road on the City Property. The City shall also be responsible for obtaining location, character, and extent approval for the Road at the appropriate time. After completion of the Road and opening of the Road for public traffic, it shall be the Board's responsibility, as the landowner abutting the old Wynn Drive right of way, as more particularly described on Exhibit "D" ("Wynn Drive"), to obtain a vacation of Wynn Drive. The City will assist the Board in completing the appropriate documentation and routing of the request. The City agrees that it will not, as a condition of the vacation, require the Board to pay a vacation of right-of-way fee.

7.2. Subdivision Approval.

7.2.1. The Property is part of a larger parcel of real property owned by Seller ("Seller's Overall Property"). Prior to Closing and within the Inspection Period, the Buyers shall, at their sole cost and expense, prepare and file all necessary submittals in order to subdivide Seller's Overall Property in such a manner so that the City Property and the Board Property will be separate subdivided parcels from the remaining portion of Seller's Overall Property ("Seller's Remaining Property"). The Seller shall cooperate with the Buyers in order to subdivide the property, which cooperation includes, but is not necessarily limited to, executing the final plat and obtaining all necessary signatures of those having an interest in the Seller's property that grants title, including, but not limited to, mortgage holders, if any. If the final subdivision plat is not approved by the Planning Commission of the City of Huntsville, Alabama, ("Planning Commission") by the end of the Inspection Period, any party may, for and in consideration of the Independent Contract Consideration, terminate this Agreement by serving written notice of termination to Seller and the other Buyer. Upon termination, the Title Company shall return the Option Money to the Buyers, and the rights, duties and obligations of the parties hereunder shall terminate and be of no further force or effect.

7.2.2. After the vacation of Wynn Drive, the Board, at its sole cost and expense, and with the City's cooperation, will prepare and file for Planning Commission approval a combination plat that will include Board's Land and the property that the Board owns at 102 Wynn Drive, which houses its campus.

7.3. Restoration of Seller's Remaining Property. After Closing, in connection with the vacation of Wynn Drive and the construction of the Road, the City shall, at the City's sole cost and expense, and with the cooperation of Seller, (i) design, engineer, and construct a new curb cut and access/entry driveway from the Road to Seller's Remaining Property in approximately the location shown on Exhibit "E" (the "Driveway Improvements"), (ii) remove existing parking lot on Seller's Remaining Property shaded on Exhibit "E", backfill the parking lot area not covered by the Driveway Improvements with topsoil and seed and straw the area, (iii) repair and restore any and all damaged or impaired improvements (including but not limited to lights, gutters, parking lots, electrical lines, sewers, water lines and utility lines) remaining on Seller's Remaining Property resulting from the vacation of Wynn Drive and the construction of the Road and Driveway Improvements, and (iv) obtain all required permits to perform the foregoing tasks. Prior to beginning construction of the Driveway Improvements, the City shall submit the plans and specifications to Seller for approval, such approval not to be unreasonably withheld or delayed. During that period of time while Seller's approval is pending, the City's performance period shall be tolled. For the avoidance of doubt, at no time after Closing and prior to the construction and public availability of the new public road described in Section 7.1 above, shall Seller be deprived of reasonable access to Seller's Remaining Property. If, during the Construction of the Road, any temporary easements over or across the City Property or Board Property is required for the benefit of Seller to utilize Seller's Remaining Property and use and operate the Driveway Improvements, the City and/or Board shall provide such easements to the Seller, at no cost or expense to Seller. If any temporary easements in, over, under, upon, or across the Seller Property or the Board's Property is required for the benefit of the City to perform as outlined herein, the Seller or Board shall provide such easements to the City, at no cost or expense to Seller or Board. All work described herein shall be completed within three hundred (300)

calendar days following Closing, subject to reasonable delays beyond the City's control. This Section shall survive the Closing.

ARTICLE 8. EXCLUDED LIABILITIES

Except as otherwise expressly provided herein, neither Buyer shall assume or pay for nor be liable for any of Seller's agreements, liabilities, debts, responsibilities or obligations with respect to the Property or otherwise, whether direct, fixed or contingent, and whether existing or arising at any time prior or subsequent to the Closing Date, except and only to the extent expressly assumed by either Buyer at Closing.

ARTICLE 9. DEFAULT; REMEDY

9.1. Buyer Default. If either Buyer fails or refuses to consummate the purchase of the Property pursuant to this Agreement at the Closing or fails to perform any of such Buyer's other obligations hereunder either prior to or at the Closing for any reason other than termination of this Agreement by such Buyer pursuant to a right so to terminate expressly set forth in this Agreement or Seller's failure to perform any of Seller's obligations under this Agreement, then Seller may terminate this Agreement at Seller's election by giving written notice thereof to both Buyers prior to or at the Closing, whereupon Title Company shall pay the defaulting Buyer's Option Money to Seller and Seller shall be entitled to retain the defaulting Buyer's Option Money as liquidated damages hereunder, and as its sole and exclusive remedy, it being agreed by the parties that actual damages would be difficult to ascertain and that the defaulting Buyer's Option Money shall constitute reasonable liquidated damages under the circumstances. The non-defaulting Buyer shall have the right to the return of its Option Money in such circumstance.

9.2. Seller Default. If Seller fails to perform any of its obligations hereunder or otherwise breaches any of the terms and conditions hereof, either Buyer shall have the right to the return of its Option Money and, in addition, shall have such other rights and remedies as may be afforded it by law or equity, including without limitation the right of specific performance.

ARTICLE 10. MISCELLANEOUS

10.1. Time. Time is of the essence of each provision of this Agreement.

10.2. Notices. Any notice, payment, demand or communication required or permitted to be given by any provision of this Agreement will be in writing and will be deemed to have been given (a) when delivered personally to the party designated to receive such notice, (b) when sent by facsimile transmission or e-mail transmission, (b) on the first Business Day following the day sent by overnight courier, or (d) on the third (3rd) Business Day after the same is sent by United States mail, postage and charges prepaid, directed to the following addresses or

to such other or additional addresses as any party might designate by written notice to the other party:

To Seller: 103 Wynn LLC
Attn: Robert Schoelch
1650 Des Peres Rd. – Suite 303
Saint Louis MO 63131
Phone: 314.835.1515
Fax: 314.835.1616
E-Mail: rschoelch@cdcco.com

To the City: City of Huntsville, Alabama Department of Urban
Development
Attn: Shane A. Davis, P.E.
Director of Urban Development
City of Huntsville
320 Fountain Circle
Huntsville, AL 35801
Phone: (256) 427-5310
Fax: (256) 427-5325
E-Mail: shane.davis@Huntsvilleal.gov

To the Board: Alabama State Board of Education
Calhoun Community College
Attn: Bryan Helms
P.O. Box 2216
Decatur, Alabama 35609-2216
Phone: (256) 306-2545
Fax: (256) 303-8401
E-Mail: jbh@calhoun.edu

With Copy To: Hand Arendall LLC
Attn: T. Bruce McGowin
11 North Water Street, Suite 30200
Mobile, Alabama 36602
Phone: (251) 694-6342
Fax: (251) 544-1623
E-Mail: bmcgowin@handarendall.com

10.3. Brokerage. Except for Graham & Co., for whose commission Seller is solely responsible, neither party has engaged the services of a real estate or other broker in connection with the sale contemplated herein in connection with the Property. Buyers and Seller each agree to defend, indemnify and hold the other harmless from any claim, including cost of legal fees incurred in defending same, for real estate brokerage commissions or other fees

asserted by any person as a result of dealings claimed to have been conducted with either Buyer or Seller, as applicable.

10.4. Governing Law. This Agreement is governed by and construed in accordance with the laws of the state in which the Property is located, without regard for its conflicts of law rules.

10.5. Assignment. This Agreement and the terms and provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the parties. Either Buyer may assign this Agreement to an affiliate of such Buyer. Upon such assignment, the assignee shall succeed to all rights, and shall assume all obligations, of such Buyer under this Agreement. Except as otherwise permitted by this Section, neither Seller nor any Buyer may assign this Agreement or any of their respective rights, duties or obligations hereunder without the prior written consent of the non-assigning party.

10.6. Amendment. Neither this Agreement nor any of the provisions hereof can be changed, waived, discharged or terminated, except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

10.7. Counterpart Execution. This Agreement may be executed in counterparts, each of which will be deemed an original document, but all of which taken together will constitute one agreement. This document will not be binding on or constitute evidence of a contract between the parties until such time as a counterpart of this document has been executed by each party and a copy thereof delivered to the other party to this Agreement.

10.8. Attorneys' Fees. If either party institutes an action or proceeding against the other relating to the provisions of this Agreement or any default hereunder, the unsuccessful party to such action or proceeding will reimburse the successful party therein for the reasonable expenses of attorneys' fees and disbursements and litigation expenses incurred by the successful party.

10.9. Severability. If any clause or provision of this Agreement is illegal, invalid or unenforceable under any present or future law, the remainder of this Agreement will not be affected thereby. It is the intention of the parties that if any such provision is held to be illegal, invalid or unenforceable, there will be added in lieu thereof a provision as similar in terms to such provision as is possible and be legal, valid and enforceable.

10.10. Entire Agreement. This Agreement constitutes the entire agreement between Buyers and Seller relating to the sale of the Property. This Agreement supersedes, in all respects, all prior written or oral agreements, if any, between the parties relating to the sale of the Property and there are no agreements, understandings, warranties or representations between Buyers and Seller except as set forth herein.

10.11. Electronic Signature. For purposes of negotiating, executing and amending this Agreement, any signed document transmitted by facsimile machine or scanned

email shall be treated in all manner and respects as an original document. The signature of any party thereon shall be considered for those purposes as an original signature, and the document transmitted shall be considered to have the same binding legal effect as an original signature on an original document. At the request of any party, a facsimile or scanned email document shall be re-executed by all parties in original form. No party may raise the use of a facsimile machine or scanned email, or the fact that any signature was transmitted through the use of a facsimile or scanned email as a defense to the enforcement of this Agreement.

10.12. City and Board Obligations Contingent. Seller acknowledges that each Buyer's obligation to conduct the Closing is conditioned upon the other Buyer's closing with Seller under this Agreement. In the event either Buyer terminates its obligations under this Agreement, the other Buyer shall also be deemed to have terminated, in which event this Agreement and the rights, duties and obligations of the parties hereunder shall terminate and be of no further force or effect.

10.13. No Joint Venture Among Buyers. Seller acknowledges and agrees that nothing in this Agreement shall be construed or interpreted to make the Buyers partners or joint venturers, or to make one an agent or representative of the other, or to afford any rights to Seller or any third party other than as expressly provided herein. Neither of the Buyers are authorized to bind the other to any contract, agreement or understanding. Further, neither Buyer shall be responsible for any of the obligations of the other under this Agreement or otherwise, each to be solely responsible for the performance of its respective obligations hereunder.

10.14. Memorandum of Agreement. Upon execution of this Agreement, the parties shall execute and deliver to the Title Company a Memorandum of Agreement in the form attached hereto as Exhibit "F" and direct the Title Company to record the Memorandum of Agreement in the public records of Madison County, Alabama.

ARTICLE 11. DEFINITIONS

Terms defined in the body of the Agreement have the meanings given to them in the body of the Agreement. The following terms have the meanings set forth below, which meanings shall be applicable equally to the singular and plural of the terms defined:

11.1. "Business Day" means any day other than a Saturday, a Sunday, or a federal holiday recognized by the Federal Reserve Bank of Atlanta. Wherever herein there is a day or time period established for performance and such day or the expiration of such time period is not a Business Day, then such time for performance automatically extends to the next following Business Day.

11.2. "Effective Date" means the date on which the last of Seller and Buyer, as applicable, executes this Agreement so that this Agreement has been fully executed by the parties hereto, as evidenced by the dates set forth below the respective signature blocks of Seller and Buyer set forth below.

11.3. “Governmental Authority” means any federal, state, county or municipal government, or political subdivision thereof, any governmental agency, authority, board, bureau, commission, department, instrumentality, or public body, or any court or administrative tribunal.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, this instrument has been executed by the parties on the dates hereafter.

SELLER:

103 WYNN LLC

By: _____
Name: _____
As Its: _____
Date of Execution: _____, 20__

CITY:

THE CITY OF HUNTSVILLE, ALABAMA

By: _____
Name: _____
As Its: _____
Date of Execution: _____, 2014

ATTEST:

City Clerk

BOARD:

ALABAMA STATE BOARD OF EDUCATION

By: _____
Name: _____
As Its: _____
Date of Execution: _____, 2014

EXHIBIT "A-1"
CITY PROPERTY LEGAL DESCRIPTION

That certain real property located in Madison County, Alabama, consisting of approximately 2.85 acres and more particularly shown as the "City Property" below:

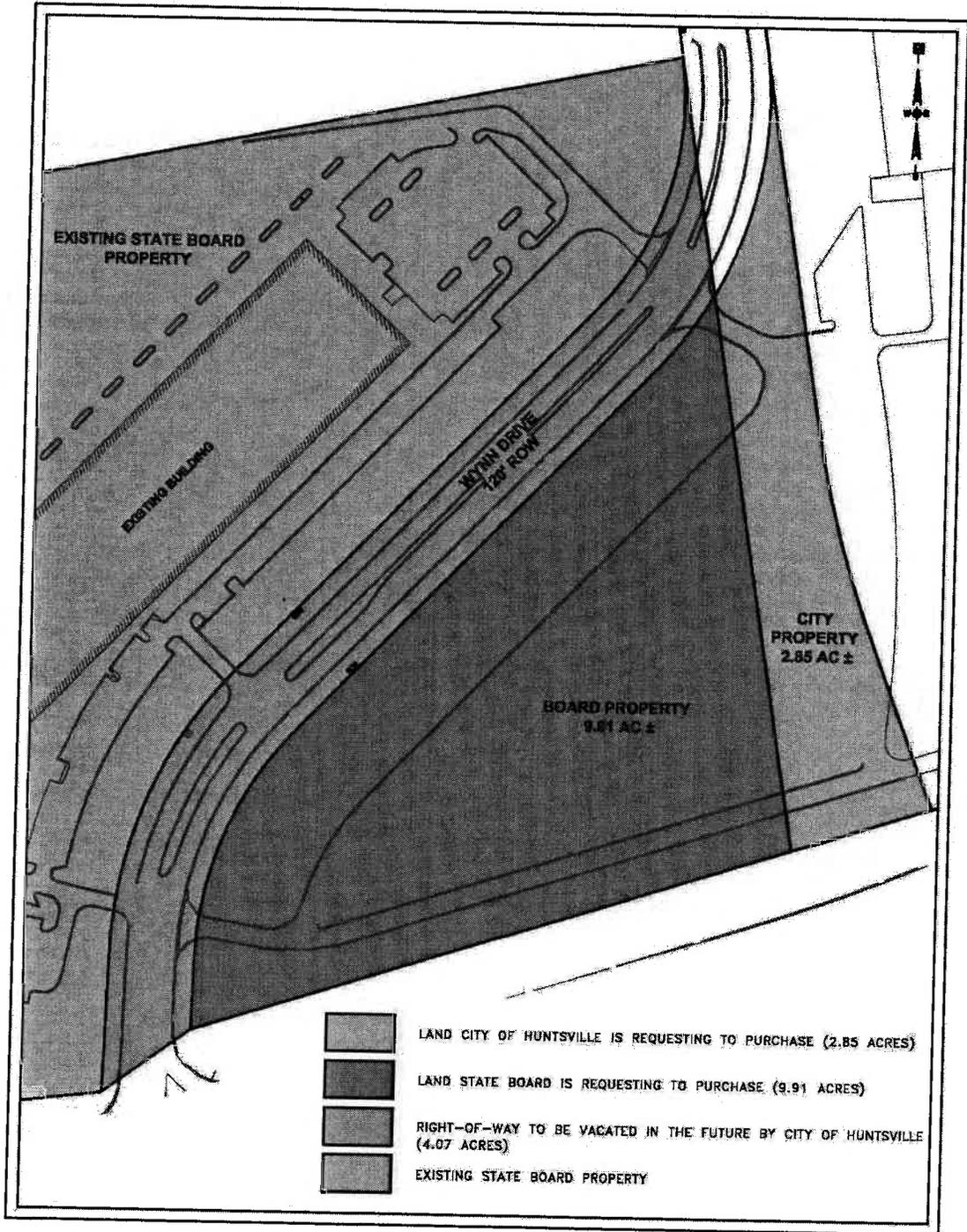


EXHIBIT "A-2"
BOARD PROPERTY LEGAL DESCRIPTION

That certain real property located in Madison County, Alabama, consisting of approximately 9.91 acres and more particularly shown as the "Board Property" below:

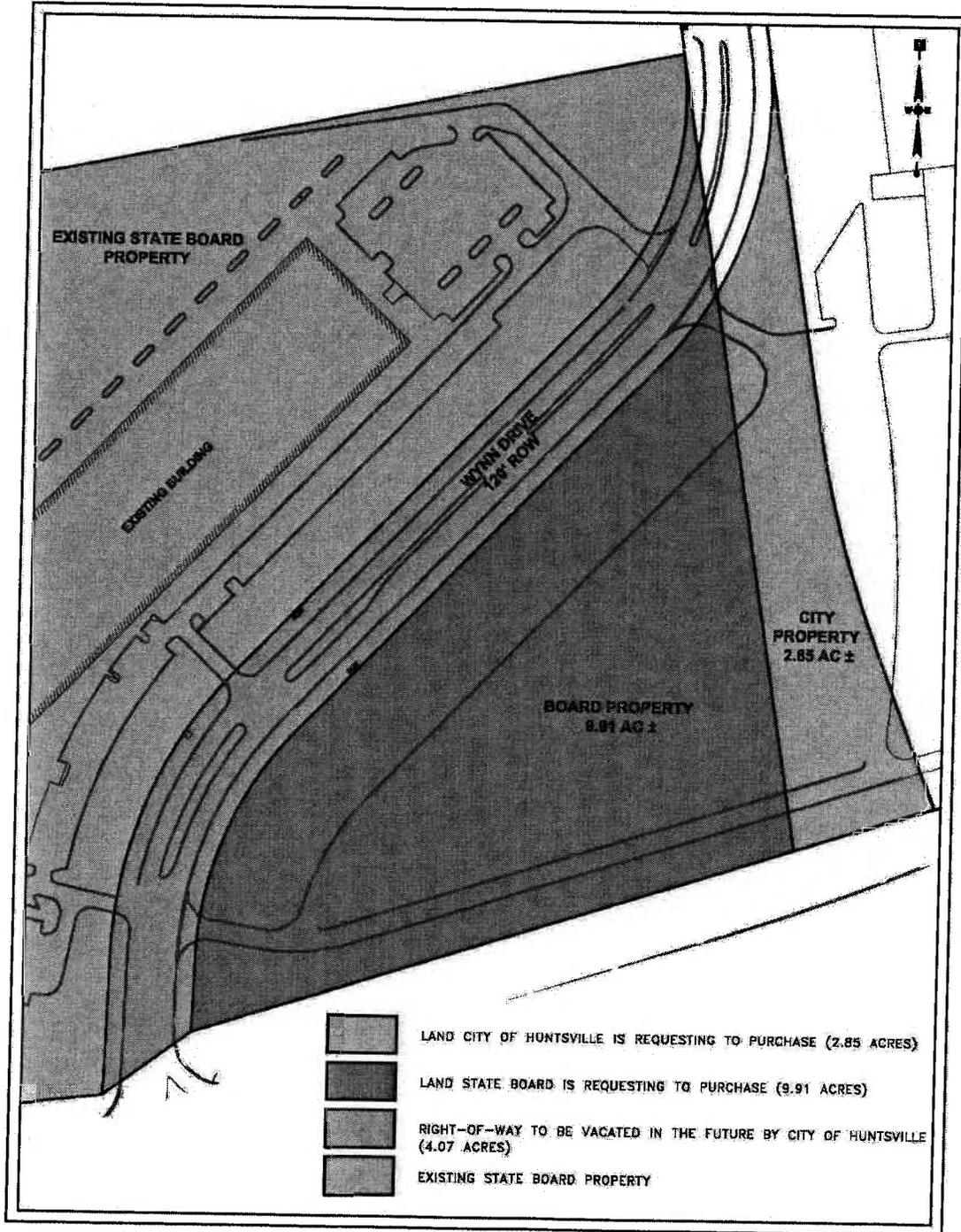


EXHIBIT "B"
SELLER DELIVERABLES

Originals or legible copies of the following property-related information:

- (a) ALTA surveys and legal descriptions of each parcel comprising the Property in insurable form.
- (b) Real estate tax bills for each parcel comprising the Property for the three most recently ended tax years and, the extent available, for the current tax year. Also, the most recent tax assessment for each parcel comprising the Property, any current or threatened betterment assessments, and complete files on any pending tax appeal proceedings.
- (c) A detailed listing of all capital expenditures on the Property made during the last three years.
- (d) Any environmental, asbestos, lead paint, engineering, soils and other physical reports of the Property in Seller's possession or obtainable by Seller.
- (e) Any appraisals of the Property completed within the past three years.
- (f) A schedule of all licenses, permits (including grading, building and other permits for any work currently in progress), certificates of occupancy, etc. for the Property currently in effect together with copies thereof and of all amendments thereto.
- (g) Utility bills for the Property for the past twenty-four months, which will be made available on site.
- (h) Complete files and details on any pending or threatened litigation at or affecting the Property.
- (i) A description of all loans currently secured by the Property, together with copies of the loan documents.
- (j) A list of names of all architects and engineers and all major subcontractors, materialmen and suppliers who have performed any services relative to or provided any materials to the Property in the past twenty-four (24) months.
- (k) Any and all documents evidencing or otherwise relating to any tax improvement district, public improvement district or other similar public, quasi-public and/or private district or authority to which the Property is subject.
- (l) All correspondence within the last three (3) years between Seller and any governmental authorities relating to the use or development of the Property.
- (m) All zoning and/or re-zoning applications for the Property submitted by Seller within the last three (3) years.

EXHIBIT "C"
GENERAL ASSIGNMENT

THIS GENERAL ASSIGNMENT (this "Assignment") is made as of the _____ day of _____, 2014, by _____ ("Seller"), to _____ ("Buyer").

WHEREAS, of even date herewith, Seller has conveyed to Buyer the real property described on Exhibit "A" attached hereto ("Real Property"), together with all improvements (the "Improvements") located thereon (the Real Property and Improvements are referred to herein collectively as the "Property"); and

WHEREAS, Seller and Buyer intend that Seller also convey to Buyer all of the Conveyed Property Rights (as hereinafter defined).

NOW, THEREFORE, Seller, for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, hereby agrees as follows:

Seller has GRANTED, BARGAINED, SOLD, CONVEYED and ASSIGNED, and by these present does hereby GRANT, BARGAIN, SELL, CONVEY and ASSIGN to Buyer all of Seller's right, title and interest in and to the following, but only to the extent same pertain to the Property ("Conveyed Property Rights"):

- (a) all surveys, engineering, soils, seismic, geological, environmental, reports, studies and certificates and other technical descriptions;
- (b) all warranties, guaranties and indemnities received from third parties, and all claims, demands and causes of action against third parties, but only to the extent they are for the benefit of, and applicable to, the Property or the owner thereof, including, without limitation, any warranties, guaranties, indemnities, contractual rights, claims, demands and causes of action pertaining to the development, construction, design or completion of the Property and/or the common areas, streets, utilities or other subdivision infrastructure;
- (c) all licenses, permits, governmental approvals, utility commitments, utility rights (including rights to capacity or service), drainage and detention rights, development rights or other similar rights, inclusive of any prepaid impact fees, impact fee credits or other similar development credits;
- (d) all rights under any plats (preliminary or final) of any portion of the Property or any rights-of-way abutting the Property or any portion thereof, including any boundary plats and any right-of-way plats, submitted, approved or recorded;

(e) all unpaid awards or proceeds, including awards in connection with insurance and any eminent domain taking; and

(f) all other rights, powers, privileges, options, or other benefits associated with, that pertain to, are attributable to, are appurtenant to, apply to, or which otherwise benefit the Property.

TO HAVE AND TO HOLD the Conveyed Property Rights unto Buyer and Buyer's successors and assigns forever.

This Assignment shall be binding on Seller, its successors and assigns, and shall inure to the benefit of Buyer, its successors and assigns.

This Assignment does not constitute an assumption of any liability or obligation by Buyer, nor shall it be deemed to impose on Buyer any liability or obligation. This Assignment is made WITHOUT RECOURSE. Furthermore, Seller assigns the Conveyed Property Rights only to the extent they may exist and in fact be assignable, and without any representation or warranty whatsoever.

Seller and Buyer will each cooperate with each other, their employees, and agents to facilitate the purpose and intent of this Assignment including, without limitation, the providing of information and documentation that may be reasonably required for the enforcement of the rights and interests assigned hereby.

EXECUTED as of the date first above written.

Seller:

103 WYNN LLC

By: _____
Name: _____
As Its: _____

EXHIBIT "D"
WYNN DRIVE LEGAL DESCRIPTION

That certain real property located in Madison County, Alabama, consisting of approximately 5.73 acres and more particularly shown as "Wynn Drive" below:

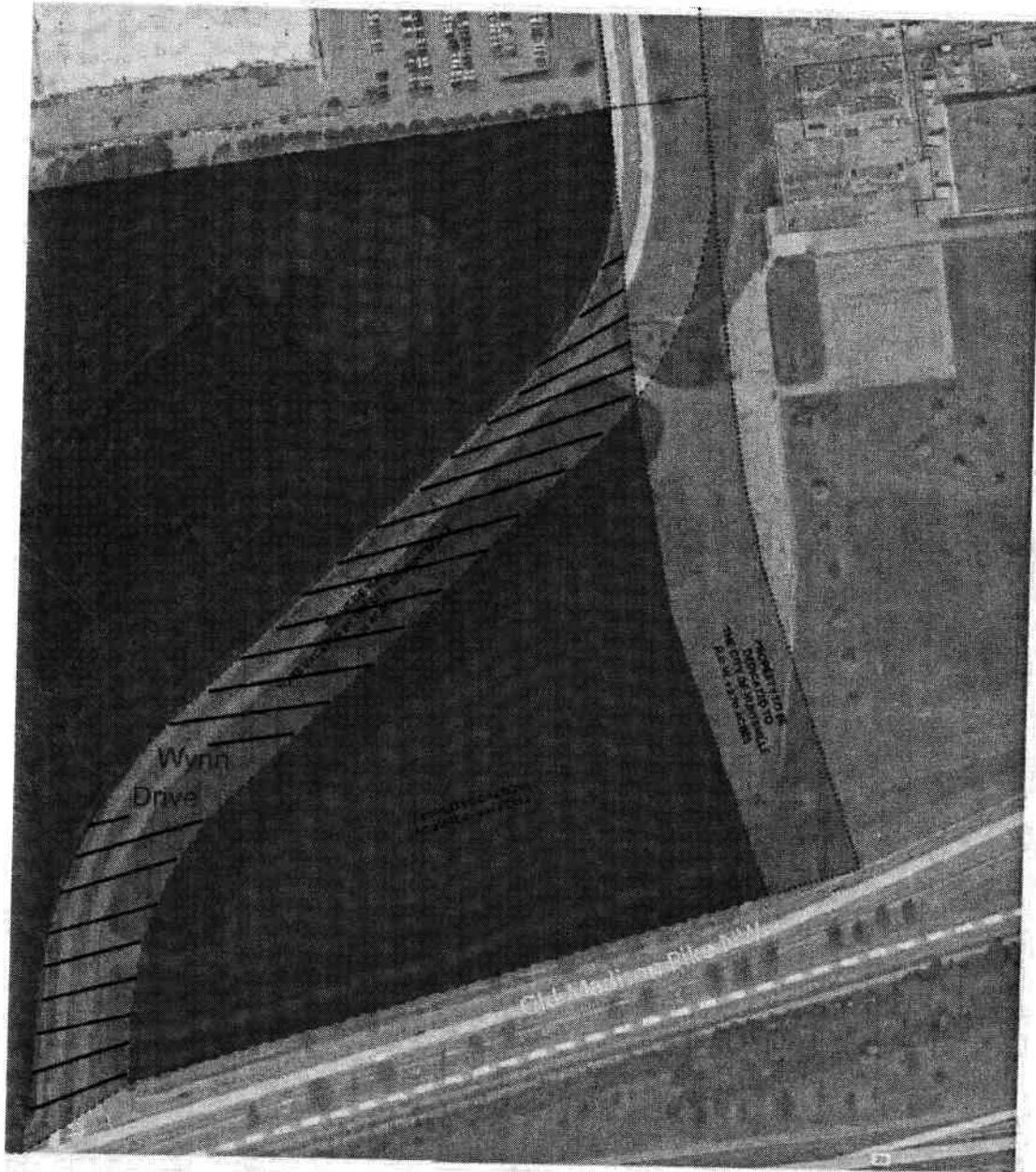


EXHIBIT "E"
DRIVEWAY IMPROVEMENTS AND
PARKING LOT TO BE REMOVED

OMI, Inc.

5151 Research Dr. NW, Suite A
Huntsville, AL 35805

New Entry
Remove Lot

FAX: (256) 837 - 7677

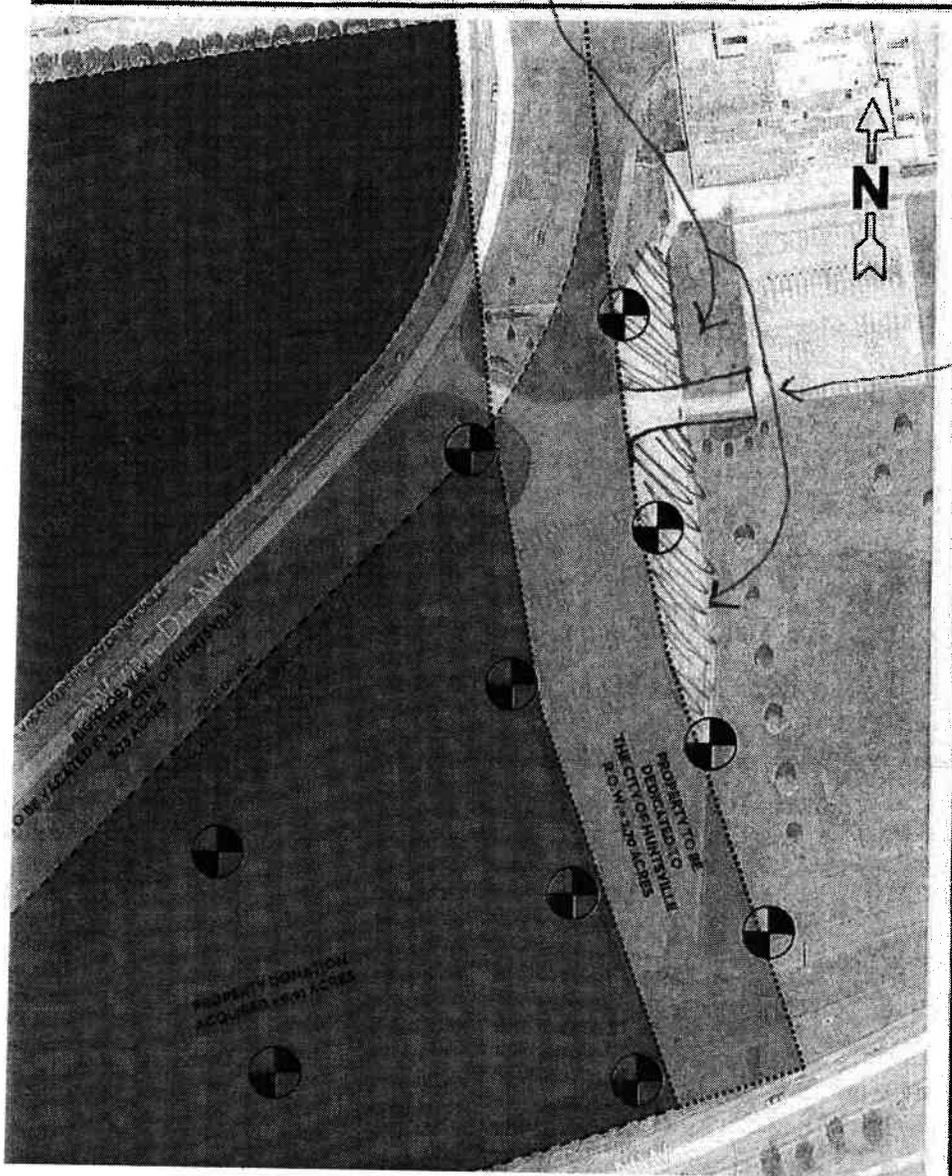


EXHIBIT "F"
FORM OF MEMORANDUM OF AGREEMENT

Prepared by and return to:
Jennifer L. Roselius, Esq.
Hand Arendall LLC
Post Office Box 123
Mobile, AL 36601

_____Space above This Line for Recording Data_____

STATE OF ALABAMA
COUNTY OF MADISON

Memorandum of Agreement
(Wynn Drive Property)

This Memorandum of Agreement (this "Memorandum") is made and entered into by and between **103 Wynn LLC**, a Missouri limited liability company ("Seller"), and the **Alabama State Board of Education**, an agency of the State of Alabama (the "Board") and the **City of Huntsville, Alabama**, an Alabama municipal corporation (the "City," and collectively with the Board, "Buyers").

Buyers and Seller have entered into that certain Purchase and Sale Agreement dated as of March ____, 2014 (the "Agreement"), and relating to that certain real property described on Exhibit "A" attached hereto (the "Property"). Buyers and Seller are executing and recording this Memorandum in the public records to provide public notice of their respective obligations under the Agreement. The Property is owned by Seller and is subject to all terms of the Agreement, including, without limitation, Seller's obligation to sell and convey portions of the Property to Buyers. This Memorandum shall automatically terminate and be of no further force or effect upon the first to occur of: (a) the conveyance by Seller to Buyers of the applicable portions of the Property; or (b) the recording of a termination of this Memorandum executed by Buyers and Seller in the public records of Madison County, Alabama.

{Remainder of Page Intentionally Left Blank}

In Witness Whereof, Buyers and Seller have caused this Memorandum to be executed by and through their respective duly authorized representatives.

SELLER:

103 WYNN LLC

By: _____
Name: _____
As Its: _____
Date of Execution: _____, 20__

CITY:

THE CITY OF HUNTSVILLE, ALABAMA

By: _____
Name: _____
As Its: _____
Date of Execution: _____, 20__

ATTEST:

City Clerk

BOARD:

ALABAMA STATE BOARD OF EDUCATION

By: _____
Name: _____
As Its: _____
Date of Execution: _____, 20__

STATE OF _____
COUNTY OF _____

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that _____, whose name as _____ of **103 Wynn LLC**, a Missouri limited liability company, 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 such instrument, s/he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

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

{SEAL}

NOTARY PUBLIC
My Commission Expires: _____

STATE OF ALABAMA
COUNTY OF _____

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that _____, whose name as _____ of **Alabama State Board of Education**, an agency of the State of Alabama, 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 such instrument, s/he, as such officer and with full authority, executed the same voluntarily for and as the act of said agency.

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

{SEAL}

NOTARY PUBLIC
My Commission Expires: _____

STATE OF ALABAMA
COUNTY OF _____

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that _____, whose name as _____ of **City of Huntsville, Alabama**, an Alabama municipal corporation, 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 such instrument, s/he, as such officer and with full authority, executed the same voluntarily for and as the act of said municipal corporation.

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

{SEAL}

NOTARY PUBLIC
My Commission Expires: _____

EXHIBIT "A"
To Memorandum of Agreement
Description of the Property

[to be inserted upon execution]

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 3/13/2014

Action Requested By:
Select...

Agenda Item Type
Resolution

Subject Matter:

Purchase Agreement

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into a Real Estate Purchase Agreement between the City of Huntsville, 103 Wynn Drive LLC and the Alabama State Board of Education for Wynn Drive Relocation, Project No. 65-14-SP18

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

Resolution authorizing the Mayor to enter into a Real Estate Agreement with 103 Wynn Drive LLC for future improvements to Wynn Drive between Technology Drive and Old Madison Pike for the following amounts: \$12,846.00 (Option) and \$256,920.00 (Purchase Price). Account No. 23-6500-0813-8517.

Associated Cost:

Budgeted Item: Select...

MAYOR RECOMMENDS OR CONCURS: Select...

Department Head: 

Date: 3/6/14

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Urban Development

Council Meeting Date: **3/13/2014**

Department Contact: **Lynn Majors**

Phone # **256-427-5201**

Contract or Agreement: **Purchase Agreement**

Document Name: **Wynn Drive Relocation, Project No. 65-14-SP18**

City Obligation Amount: **\$12,846.00** Option

Total Project Budget: **\$256,920.00** Purchase Price

Uncommitted Account Balance: **0**

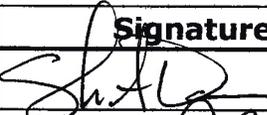
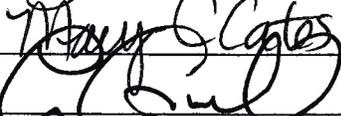
Account Number: **23-6500-0813-8517**

Procurement Agreements

Not Applicable	Not Applicable
-----------------------	-----------------------

Grant-Funded Agreements

Not Applicable	Grant Name:
-----------------------	--------------------

Department	Signature	Date
1) Originating		3/6/14
2) Legal		3/6/14
3) Finance		3/12/14
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		