

ORDINANCE NO. 484

2017-02300382850 1/8 \$35 00
Shelby Cnty Judge of Probate, AL
10/23/2017 09:24:11 AM FILED/CERT

AN ORDINANCE APPROVING THE PURCHASE OF REAL PROPERTY

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PELHAM, ALABAMA, AS FOLLOWS:

Section 1. It is hereby established and declared that the following described real property in Shelby County, Alabama, is needed for public or municipal purposes:

Approximately 240 Acres, located West of Interstate 65, Shelby County, Alabama

Section 2. The mayor is hereby authorized and directed, on behalf of the City of Pelham, to execute a Real Estate Sales Contract, pending the finalizing of the terms of said contract and pending final approval of the city attorney, between KRA Real Estate LLC (Grantor) and the City of Pelham (Grantee), conveying said property to the City of Pelham, Alabama, for and in consideration of the sum of \$3,250,000 to be paid upon delivery of the deed.

Section 3. That this Ordinance shall become effective as required by law on October 7, 2017.

THEREUPON Ron Scott, a council member moved and Beth McMillan, a council member seconded the motion that Ordinance No. 484 be given vote. The roll call vote on said motion was as follows:

Rick Hayes Council President	Yes _____
Ron Scott Council Member	Yes _____
Beth McMillan Council Member	Yes _____
Maurice Mercer Council Member	Yes _____
Mildred Lanier Council Member	Yes _____

Ordinance No. 484 passed by majority vote of all members of the Council and the Council President declared the same passed.

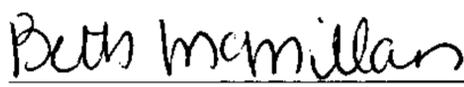
ADOPTED and approved this 2nd day of October 2017.



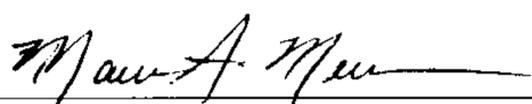
Rick Hayes, Council President



Ron Scott, Council Member



Beth McMillan, Council Member

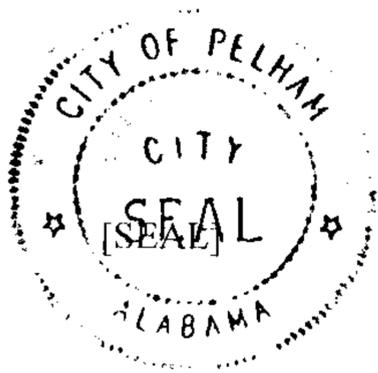


Maurice Mercer, Council Member

Mildred Lanier
Mildred Lanier, Council Member



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ATTEST

Tom Seale
Tom Seale, MMC, City Clerk/Treasurer

APPROVED

Gary W. Waters 10/2/2017
Gary W. Waters, Mayor Date

POSTING AFFIDAVIT

I, the undersigned qualified City Clerk/Treasurer of the City of Pelham, Alabama, do hereby certify that the above and foregoing **ORDINANCE NO. 484** was duly ordained, adopted, and passed by the City Council of the City of Pelham, Alabama at a regular meeting of such Council held on the 2nd day of October 2017 and duly published by posting an exact copy thereof on the 3rd day of October 2017 at four public places within the City of Pelham, including the Mayor's Office at City Hall, City Park, Library, Water Works and www.pelhamalabama.gov. I further certify that said ordinance is on file in the office of the City Clerk/Treasurer and a copy of the full ordinance may be obtained from the office of the City Clerk/Treasurer during normal business hours.

Tom Seale
Tom Seale, MMC, City Clerk/Treasurer



REAL ESTATE PURCHASE AGREEMENT

KRA REAL ESTATE, LLC (“Seller”) agrees to sell to the **CITY OF PELHAM, ALABAMA** (“Buyer”), and Buyer agrees to purchase from Seller, certain real estate located in Shelby County, Alabama, upon the following terms and conditions:

1. Sale and Purchase. Pursuant to this Agreement, Seller shall sell and Buyer shall purchase a tract of land, together with all improvements thereon, easements, and other rights appurtenant thereto (collectively, “Property”) located along US Highway 31, Shelby County Highway 52, and Interstate Highway 65 in Pelham and Alabaster, Alabama, and described on the attached Exhibit A hereto.

2. Purchase Price. The purchase price for the Property (the “Purchase Price”) is Three Million Two Hundred Fifty Thousand and no/100 Dollars (\$3,250,000.00). Buyer will pay to Seller the sum of \$10,000.00 (“Earnest Money”) upon execution hereof to be applied toward the purchase price at closing if not otherwise disbursed under the terms of this Agreement.

3. Survey. Seller shall furnish to Buyer within ten (10) days of the effective date of this Agreement any and all surveys of the Property which Seller may now have.

4. Title Insurance. Seller shall furnish title insurance on the Property, and the cost of such title insurance shall be paid by Seller.

5. Effective Date. The effective date of this Agreement is the date of signing by the last party to execute this Agreement, which shall be indicated next to the signature lines.

6. Deed. At Closing, Seller shall convey insurable marketable fee simple title to the Property, free and clear of all liens and encumbrances except as shown herein, to Buyer by general warranty deed in a form acceptable to Buyer.

7. Risk of Loss and Condemnation. Until Closing, Seller has the risk of loss or damage to the Property. If any loss or damage occurs prior to Closing, Buyer may, at its option, either (i) cancel this Agreement or (ii) accept the Property with the Purchase Price reduced by the cost of replacement or repair. If all or any part of the Property is condemned or any condemnation action or proceeding is commenced prior to Closing, Buyer may, at its option, either (a) cancel this Agreement or (b) complete the purchase, with all condemnation proceeds and claims being assigned to Buyer.

8. Taxes and Assessments. Any real property taxes, water rates, sewer charges and rents shall be prorated and adjusted on the basis of the actual days in the calendar year, Seller to



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have the last day, to the date of Closing. Taxes for all prior years shall be paid by Seller. If Closing occurs before the tax rate is fixed for the then-current year, taxes will be apportioned upon the basis of the tax rate for the preceding year applied to the latest assessed valuation, to be adjusted between the parties based on actual taxes for the year in which Closing occurs at the time actual taxes are determined. Because the tax parcels are carried on the tax rolls in the name of Seller, Seller warrants and agrees that so long as the Property remains part of such tax parcels, Seller shall pay all taxes on the tax parcels in a timely manner and shall not allow such taxes to become delinquent. Seller will provide to Buyer such real property tax information for the Property as Buyer requests. Any other taxes relating to the sale of the Property shall be paid by Seller at Closing, except for deed recording taxes, which shall be paid by Buyer at Closing, and both parties agree to execute any tax forms required.

9. Notice of Default. In the event either party is in default of any provision hereof, the non-defaulting party, as a condition precedent to its remedies, must give the defaulting party written notice of the default in strict accordance with the notice requirements of Section 18. The defaulting party shall have ten business days from receipt of such notice to cure the default. If the default is timely cured, this Agreement shall continue in full force and effect. If the default is not timely cured, the non-defaulting party may pursue its applicable remedies set forth in Sections 10 or 11.

10. Remedies of Seller. If Buyer defaults under this Agreement, Seller's sole and exclusive remedy shall be to retain the Earnest Money as liquidated damages and cancel this Agreement. The parties acknowledge that: (a) it would be impracticable to fix the actual damages suffered by Seller as a result of such default; and (b) the amount of the liquidated damages represents a fair and reasonable compensation to Seller for such default.

11. Remedies of Buyer. If Seller defaults under this Agreement, Buyer may, at its option, (a) cancel this Agreement and recover the earnest money, or (b) proceed with this Agreement and purchase the Property pursuant to this Agreement, or (c) pursue any other legal or equitable remedy, including without limitation a suit for specific performance.

12. Right of Entry and Inspection. At any time prior to Closing, at Buyer's sole expense, Buyer or its authorized agents may enter upon the Property for any lawful purpose, including making Inspections (as defined below) and erecting signs Buyer deems necessary. Buyer may select qualified professionals to make inspections (including tests, borings, surveys, studies, inspections, investigations and interviews of persons familiar with the Property) concerning the Property, including but not limited to tests of structures, wells, septic tanks, underground storage tanks, soils, geologic hazards, utility lines and systems and environmental hazards. Buyer shall keep the Property free of any liens, and repair any material physical damages to the Property arising from the inspections. If any inspections disclose matters unsatisfactory to Buyer, which Seller is unable or unwilling to correct at Seller's expense, Buyer may cancel this Agreement by giving written notice to Seller.



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13. Brokerage Fees. Seller will pay Highpointe Properties LLC a commission related to this Real Estate Purchase Agreement per an outside agreement between the seller and Highpointe Properties LLC. Both parties represent that no other brokers or brokerage fees are involved in this Agreement.

14. Seller's Warranties. Seller makes the following representations and warranties which are true and accurate as of the effective date of this Agreement and as of Closing:

(a) Seller has no knowledge of any violations of city, county, state, federal, building, land use, fire, health, safety, environmental, hazardous materials or other governmental or public agency codes, ordinances, regulations, or orders with respect to the Property, or any lands adjacent to the Property.

(b) No litigation is pending, threatened or likely with respect to the Property, Seller's interest therein, or which would inhibit Buyer obtaining clear title to the Property.

(c) Seller has no knowledge of any facts concerning the Property that would adversely affect the ability of Buyer to develop or use the Property for public purposes.

(d) To the best of Seller's knowledge, the Property is not contaminated with, nor threatened with contamination from Seller or outside sources by, any chemical, material or substance to which exposure is prohibited, limited or regulated by any federal, state, county, local or regional authority or which is known to pose a hazard to health and safety and the Property has never been used by Seller or others for a landfill, dump site, underground improvements, storage of hazardous or regulated substances, or by a manufacturer of any product or for any other industrial use, nor is the Property subject to any wetlands or other environmental limitation.

(e) There are no unrecorded leases, arrangements, agreements, understandings, options, contracts, or rights of first refusal affecting or relating to the Property in any way.

(f) Except to the extent this Agreement provides otherwise, the Property will remain in the condition existing as of the execution of this Agreement until Closing.

(g) Each individual signing for Seller has the authority to enter into the agreements set forth herein.

15. Environmental Contamination. In the event that Buyer learns prior to Closing that the Property is affected by contamination, then Buyer may in its sole discretion elect to terminate this Agreement or proceed to Closing notwithstanding such contamination.



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16. Contingencies. This Agreement is expressly conditioned on approval by vote of the Buyer's governing body in accordance with its rules of procedure and all applicable statutes and regulations.

17. Information. Within ten (10) days after the effective date of this Agreement, Seller shall provide Buyer with copies of all surveys, site plans, studies, engineering reports, environmental studies, and matters similar to the inspections described in Section 12, in Seller's possession or available to Seller relating to the Property and shall disclose in writing any other reports of which Seller is aware. If this Agreement is canceled, the information provided will be returned to Seller; otherwise, Buyer may retain the information. Seller shall disclose any material changes with respect to any information contained in this Agreement which occur prior to Closing.

18. Notices. All notices and communications required or permitted to be given hereunder shall be in writing and hand delivered or mailed by certified or regular mail, postage prepaid, or by Federal Express, UPS, or similar overnight delivery service, addressed as follows:

If to Seller:

KRA Real Estate, LLC
1300 South Miami Avenue
Unit 4405
Miami, FL 33130
Attn: Kenneth R. Adams

If to Buyer:

City of Pelham, Alabama
P.O. Box 1419
3162 Pelham Parkway
Pelham, AL 35124
Attn: Mayor Gary Waters

Notice shall be deemed to have been given upon receipt or refusal.

19. Closing. Closing shall occur at a place and time mutually agreed upon by the parties, but in no event later than ninety days after the Effective Date.

20. Closing Costs. Notwithstanding anything to the contrary contained herein, Closing costs shall be paid as follows:

By Seller (Seller hereby authorizing closing attorney to deduct the following expenses from the Seller's proceeds due at Closing):

(a) Expenses of placing title in proper condition.



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- (b) Seller's separate attorney's fee, if any.
- (c) Property taxes as provided herein.
- (d) Title insurance premium.
- ~~(e) One-half of survey expense (if any).~~
- (f) One-half of closing attorney's fee.

ka *ka*
If Purchaser choose to Get
Additional Surveys it will be at
Purchasers Expense.

By Buyer:

- (a) Recording fees and recording taxes.
- (b) One-half of survey expense (if any).
- (c) One-half of closing attorney's fee.
- (d) Environmental study cost.
- (e) Buyer's separate attorney's fee, if any.

21. Time of Essence. Time is of the essence of this Agreement.

22. Entire Agreement. This Agreement contains the entire agreement between Seller and Buyer, and there are no other terms, conditions, promises, undertakings, statements or representations, either written or oral or express or implied, concerning the sale contemplated by this Agreement.

23. Headings. The Section headings are for convenience of reference only and do not modify or restrict any provisions hereof and shall not be used to construe any provisions.

24. Modifications and Waiver. This Agreement may be amended only by an instrument in writing signed by both Seller and Buyer. This Agreement may be terminated only in accordance with the terms of this Agreement or by an instrument in writing signed by both Seller and Buyer. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision, nor shall any waiver be a continuing waiver. Except as expressly provided in this Agreement, no waiver shall be binding unless executed in writing by the party making the waiver.

25. Successors. This Agreement shall inure to the benefit of and bind the parties hereto and their respective executors, heirs, administrators, successors and assigns.

26. Attorney's Fees; Court Costs. In any action or proceeding arising out of this Agreement, each party shall bear its own attorney's fees, and the prevailing party shall be entitled to recover only court costs from the non-prevailing party incurred by such party in enforcing its rights hereunder. In the event of a legal dispute, the laws of the State of Alabama shall prevail.

27. Survival. All warranties, indemnities, representations and covenants herein shall survive Closing.



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28. Dates of Performance. If any date for performance of any obligation hereunder falls on a Saturday, Sunday or nationally established holiday, the time for performance of such obligation shall be extended until the next business day following such date.

29. Enforceability. If any provision of this Agreement is held to be illegal, invalid or unenforceable, such provision shall be fully severable. This Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof.

30. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which, together, shall constitute one and the same instrument.

31. Confidentiality. Seller agrees that it shall keep the transaction evidenced by this Agreement and each of its terms confidential and shall release no information to any third party concerning this Agreement without the express written consent of Buyer which may be given or withheld in Buyer's sole and absolute discretion.

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

Seller:

Buyer:

KRA REAL ESTATE, LLC

CITY OF PELHAM, ALABAMA

By Kenn R Adams 10/13/17
Kenneth R. Adams, Member date

By Gary Waters 10/17/17
Gary Waters, Mayor date

Witness:

Attest:

KRA REAL ESTATE, LLC

CITY OF PELHAM, ALABAMA

By Connor Farmer 10/13/17
Connor Farmer date

By Tom Seale 10/17/2017
Tom Seale, City Clerk/Treasurer date

