

**Vestavia Hills
City Council Agenda
December 26, 2012
5:00 PM**

1. Call to Order
2. Roll Call
3. Invocation – Jim Sharp
4. Pledge of Allegiance
5. Announcements and Guest Recognition
6. City Manager’s Report
7. Councilors’ Reports
8. Financial Reports – Melvin Turner III, Finance Director
9. Approval Of Minutes –December 10, 2012 (Regular Meeting)

Old Business

10. Ordinance Number 2427 – An Ordinance Establishing And Creating The Alcohol Abuse Education Program And The Traffic Safety Education Program For The Municipal Court Of The City Of Vestavia Hills, Alabama

New Business

11. Resolution Number 4382 – A Resolution Accepting A Bid For A Transport Unit
12. Resolution Number 4383 - A Resolution Authorizing The Mayor And City Manager To Enter Into A Contract With Owens Landscape Group

First Reading (No Action Taken At This Meeting)

13. Resolution Number 4384 - A Resolution Ordering The Demolition Of A Building Or Structure Located At 3317 Mountainside Road, Vestavia Hills, Alabama, Parcel Id# 28-23-2-4-10-RR-0, In Compliance With Sections 11-40-30 Through 11-40-36, Sections 11-53b-1 Through 11-53b-16, Inclusive, Of The *Code Of Alabama*, And In Compliance With Ordinance Number 2382 Of The City Of Vestavia Hills, Alabama; And Calling For Said Demolition To Be Performed By The City Of Vestavia Hills And Directing The City Attorney And The City Clerk To Cause The Cost Of Such Demolition To Be Charged

- Against The Land On Which The Building Or Structure Exists As A Municipal Lien Or Cause Such Cost To Be Recovered In A Suit At Law Against The Owner Or Owners
14. Resolution Number 4385 - A Resolution Ordering The Demolition Of A Building Or Structure Located At 2733 Rocky Ridge Road, Vestavia Hills, Alabama, Parcel Id# 28-29-1-1-1-RR-2, In Compliance With Sections 11-40-30 Through 11-40-36, Sections 11-53b-1 Through 11-53b-16, Inclusive, Of The *Code Of Alabama*, And In Compliance With Ordinance Number 2382 Of The City Of Vestavia Hills, Alabama; And Calling For Said Demolition To Be Performed By The City Of Vestavia Hills And Directing The City Attorney And The City Clerk To Cause The Cost Of Such Demolition To Be Charged Against The Land On Which The Building Or Structure Exists As A Municipal Lien Or Cause Such Cost To Be Recovered In A Suit At Law Against The Owner Or Owners
 15. Resolution Number 4381 – Annexation – 90 day – 4918 Cahaba River Road; Shannon Waltchack; Len Shannon, Representing
 16. Ordinance Number 2426 – An Ordinance Authorizing And Directing The Sale Of Real Estate Situated At 1112 Montgomery Highway In The City Of Vestavia Hills, Alabama, Commonly Referred To As The Old Library Property And More Particularly Described In Exhibit A And The Execution And Delivery Of A Real Estate Purchase And Sale Agreement (*public hearing scheduled for January 14, 2013*)
 17. Citizens Comments
 18. Motion For Adjournment

CITY OF VESTAVIA HILLS

CITY COUNCIL

MINUTES

DECEMBER 10, 2012

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

MEMBERS PRESENT:

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

OTHER OFFICIALS PRESENT:

Randy Robertson, City Manager
Patrick H. Boone, City Attorney
Rebecca Leavings, City Clerk
Christopher Brady, City Engineer
Dan Rary, Police Chief
Melvin Turner, III, Finance Director
George Sawaya, Deputy Treasurer
Fred Baughman, Economic Dev. Director

Invocation was given by Dennis Anderson, Vestavia Hills Baptist Church, followed by the Pledge of Allegiance.

ANNOUNCEMENTS, GUEST RECOGNITION

- None.

CITY MANAGER REPORTS

- Mr. Robertson stated that the Holiday in the Hills tree lighting and parade in Liberty Park were held last week and were a tremendous success with a lot of good planning involved.
- The Municipal Center will be closed December 24 and 25 for Christmas holidays as well as December 31 and January 1 for New Year's holidays.
- The City Council's next regular meeting will be on Wednesday, December 26 due to the closure of the Municipal Center for the holidays.

- The Ordinance to allow traffic court in the City will allow the program to begin in January for scheduling purposes with the actual class beginning in March.
- The architectural firms that are vying for the opportunity to design the new Municipal Complex for the City will be returning with their beginning design ideas on the 18th of December.
- NAIOP breakfast will be held in the Library Community Room on January 24, 2013 with a spotlight on the LEED certified library as well as the US 31 Redevelopment Study.
- December 13, 2012 will commemorate the 2nd anniversary of the opening of the Library in the Forest.
- Mr. Robertson turned the floor over to Chief Dan Rary.
 - Chief Rary gave a Certificate of Recognition to Lt. Kevin York for the immense amount of equipment, vehicles, etc., that he has procured from the Federal Government and Military for City use. Overall, Lt. York has managed to secure well over \$2 million worth of equipment, etc., for the City to use. Mr. Ammons indicated that Lt. York has proudly stayed up late a night just for the opportunity to obtain this equipment for the City and we are all proud of his efforts.

COUNCILOR REPORTS

- Mr. Pierce thanked everyone involved in the planning and the activities for the Holiday in the Hills celebration. It has been a wonderful combined effort of all involved.
- Mayor Zaragoza stated that the parade which is held in Liberty Park was longer and better this year and continues to grow with each passing year.
- Mr. Sharp indicated that the Planning Commission had driven by and viewed the possible location for a garage facility and stated that at first glance, the area looks like a good location.
- Mr. Henley stated that the School Board adopted the new school calendar and, in other business, adopted a Code of Conduct which will be known to the Board members and attached to the application for new members.

APPROVAL OF MINUTES

The minutes of the November 26, 2012 (Regular Meeting) were presented for approval.

MOTION Motion to dispense with the reading of the minutes of the November 26, 2012 (Regular Meeting) and approve them as presented was by Mr. Pierce and second by Mr. Henley. Roll Call vote as follows:

Mr. Pierce – yes

Mr. Henley – yes

Mr. Sharp – yes

Mr. Ammons – yes

Mayor Zaragoza – yes

Motion carried.

NEW BUSINESS (REQUESTING UNANIMOUS CONSENT)

MOTION Motion for unanimous consent for immediate consideration and action on Resolution Number 4378 and 4379 was by Mr. Pierce and second was by Mr. Sharp. Roll call vote as follows:
Mr. Pierce – yes Mr. Henley – yes
Mr. Sharp – yes Mr. Ammons – yes
Mayor Zaragoza – yes Motion carried.

RESOLUTION NUMBER 4378

Resolution Number 4378 – A Resolution To Appoint A Member To The Vestavia Hills Library Board

MOTION Motion to adopt Resolution Number 4378 was by Mr. Sharp and second was by Mr. Henley.

Mayor Zaragoza stated that Ashley Hicks was selected to fill the upcoming vacancy on the Vestavia Hills Library Board. He introduced her and gave a brief background of her experience and talents.

Ms. Hicks thanked the Council for the opportunity.

MOTION Question called on a roll call vote:
Mr. Pierce – yes Mr. Henley – yes
Mr. Sharp – yes Mr. Ammons – yes
Mayor Zaragoza – yes Motion carried.

RESOLUTION NUMBER 4379

Resolution Number 4379 – A Resolution To Appoint A Member To The Vestavia Hills Park And Recreation Board

MOTION Motion to adopt Resolution Number 4379 was by Mr. Ammons and second was by Mr. Pierce.

Mr. Ammons stated that Tommy Coggin was selected to fill the upcoming vacancy of the Park and Recreation Board. He gave a brief background of Mr. Coggin’s qualifications and experience. Unfortunately, Mr. Coggin was unable to attend the meeting.

MOTION Question called on a roll call vote:
Mr. Pierce – yes Mr. Henley – yes

Mr. Sharp – yes
Mayor Zaragoza – yes

Mr. Ammons – yes
Motion carried.

OLD BUSINESS

ORDINANCE NUMBER 2424

Ordinance Number 2424 – Rezoning – 740 Sussex Drive; Rezone from Jefferson County Unknown to Vestavia Hills R-2, Residential; Joe and Paula Fiore, Owners; Ray Weygand, Weygand Surveyors, Representing

MOTION Motion to adopt Ordinance Number 2424 was by Mr. Pierce and second was by Mr. Ammons.

Ray Weygand, Weygand Surveyors, and Joe Fiore, owner, were in attendance regarding this request.

Mr. Weygand and Ms. Leavings explained this is a request to zone property that shows no zoning classification to Vestavia Hills R-2. Ms. Leavings explained that the property owners wish to subdivide the property to add two lots adjacent to Tyler Road but a zoning classification needs to be assigned to the property first. All properties surround this with the exception of Viridian, are zoned R-2 and the staff recommended that zoning for this property.

Mr. Sharp reported that the Planning Commission voted unanimously to recommend approval of this request.

Mayor Zaragoza opened the floor for a public hearing.

Joe Fiore, 740 Sussex Drive, asked why there couldn't be three lots. Ms. Leavings explained that the property is too narrow to allow three R-2 lots.

There being no one else present to address the Council concerning this request, the Mayor closed the public hearing and called for the question.

MOTION Question called on a roll call vote:

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

Mr. Henley – yes
Mr. Ammons – yes
Motion carried.

RESOLUTION NUMBER 4374

Resolution Number 4374 – A Resolution Accepting A Quote From MG&A For Erosion Control And Grassing At Sicard Hollow

MOTION Motion to adopt Resolution Number 4374 was by Mr. Ammons and second was by Mr. Sharp.

Mr. Robertson explained that this Resolution remediates an erosion problem that has been occurring at Sicard Hollow Field.

Mr. Davis answered various questions posed by the Council concerning remediation of the problem that caused the erosion, whether or not it was design issues and if the remediation will solve the issue.

The Mayor indicated that the expenditure was \$42,450 which was unbudgeted and opened the floor for a public hearing. There being no one to address the request before the Council, the Mayor closed the public hearing and called for the question.

MOTION Question called on a roll call vote:
Mr. Pierce – yes Mr. Henley – yes
Mr. Sharp – yes Mr. Ammons – yes
Mayor Zaragoza – yes Motion carried.

RESOLUTION NUMBER 4375

Resolution Number 4375 – A Resolution Authorizing The Mayor And City Manager To Enter Into An Agreement With Alabama Department Of Transportation For Project CMAQ-PE12(), Preliminary Engineering Project To Design Sidewalks Along Massey Road, Montgomery Highway And Columbiana Road

MOTION Motion to adopt Resolution Number 4375 was by Mr. Pierce and second was by Mr. Sharp.

Mr. Robertson explained that this Resolution would provide for the preliminary design and engineering for sidewalks on Massey Road between Montgomery Highway and Columbiana Road.

Mr. Brady explained that this is a multi-phased project which eventually will include some remediation of the road as well as sidewalks. The City's anticipated match in this will be \$32,000.

The Mayor indicated that the expenditure was unbudgeted and opened the floor for a public hearing. There being no one to address the request before the Council, the Mayor closed the public hearing and called for the question.

MOTION Question called on a roll call vote:
Mr. Pierce – yes Mr. Henley – yes
Mr. Sharp – yes Mr. Ammons – yes

Mayor Zaragoza – yes

Motion carried.

RESOLUTION NUMBER 4276

Resolution Number 4276 – A Resolution Authorizing The Mayor And City Manager To Enter Into An Agreement With ALDOT For Project Number DE-AL104(916); Vestavia Hills Pedestrian Walkway; Supplement Number 1 (Postponed From March 12, 2012 Meeting)

MOTION Motion to adopt Resolution Number 4276 was by Mr. Sharp and second was by Mr. Pierce.

The Mayor indicated that this Resolution was presented last March and postponed based on attorney advice. The agreements have been revised and are now being brought back to the Council for consideration. He indicated that the next Resolution is the same type agreement.

The Mayor opened the floor for a public hearing. There being no one to address the request before the Council, the Mayor closed the public hearing and called for the question.

MOTION Question called on a roll call vote:

Mr. Pierce – yes

Mr. Henley – yes

Mr. Sharp – yes

Mr. Ammons – yes

Mayor Zaragoza – yes

Motion carried.

RESOLUTION NUMBER 4270-A

Resolution Number 4270-A – A Resolution Authorizing The Mayor And City Manager To Enter Into An Agreement With ALDOT For Project Number HPP-A124() Pedestrian Walkway Over US-31; Supplement Number 1 (Postponed From March 12, 2012 Meeting)

MOTION Motion to adopt Resolution Number 4270-A was by Mr. Pierce and second was by Mr. Henley.

The Mayor indicated that this Resolution is they same type contract as the previous one.

The Mayor opened the floor for a public hearing. There being no one to address the request before the Council, the Mayor closed the public hearing and called for the question.

MOTION Question called on a roll call vote:
Mr. Pierce – yes Mr. Henley – yes
Mr. Sharp – yes Mr. Ammons – yes
Mayor Zaragoza – yes Motion carried.

NEW BUSINESS

RESOLUTION NUMBER 4361-A

**Resolution Number 4361-A – A Resolution Amending Resolution Number 4361 -
Changing City Officials Designated To Sign Checks At Pinnacle Bank
For The Library Account**

MOTION Motion to adopt Resolution Number 4361-A was by Mr. Pierce and second was by Mr. Ammons.

Ms. Leavings explained that the Council changed signatures on all City financial accounts at the November 5th meeting and it was later discovered that this particular account contains signatures from the Library Director and the Library Board because it is a Library donation account. Therefore, this Resolution will change the signatures on the account to those standard signatures of the City with these other three as additional signers.

MOTION Question called on a roll call vote:
Mr. Pierce – yes Mr. Henley – yes
Mr. Sharp – yes Mr. Ammons – yes
Mayor Zaragoza – yes Motion carried.

RESOLUTION NUMBER 4377

**Resolution Number 4377 - A Resolution Accepting A Bid For Janitorial Services At
The Civic Center**

MOTION Motion to adopt Resolution Number 4377 was by Mr. Ammons and second was by Mr. Henley.

Mr. Robertson stated that bids were sent out for janitorial services for the City and a recap of the responses are included in the Council packets. References of the lowest bidder were checked out finding no problems, so the recommendation is to award the contract to the lowest bidder Professional Management of Alabama.

Mr. Ammons pointed out that this contract will replace two employees who formerly worked at the Civic Center.

Mr. Robertson stated that that is correct and the funds are budgeted.

MOTION Question called on a roll call vote:
Mr. Pierce – yes Mr. Henley – yes
Mr. Sharp – yes Mr. Ammons – yes
Mayor Zaragoza – yes Motion carried.

NEW BUSINESS (REQUESTING UNANIMOUS CONSENT)

MOTION Motion for unanimous consent for immediate consideration and action on Resolution Number 4376 was by Mr. Pierce and second was by Mr. Ammons. Roll call vote as follows:
Mr. Pierce – yes Mr. Henley – yes
Mr. Sharp – yes Mr. Ammons – yes
Mayor Zaragoza – yes Motion carried.

RESOLUTION NUMBER 4376

Resolution Number 4376 - A Resolution Authorizing The Mayor And City Manager To Enter Into An Agreement For Architectural Services To Design A Fleet Maintenance Facility For The City Of Vestavia Hills

MOTION Motion to adopt Resolution Number 4376 was by Mr. Sharp and second was by Mr. Henley.

Mr. Robertson explained that this Resolution is for architectural services to design a fleet maintenance building for Cahaba Heights and for Wald Park. He stated that Barry Davis, architect, submitted a quote and then reduced it and he recommends approval of this proposal.

Discussion ensued with the Council regarding whether or not to pursue both facility designs when the Park and Recreation Board was studying a possible redesign and long-term plan for Wald Park.

Mr. Robertson stated the agreement would still have to come back to the Council for approval when finalized.

Mayor Zaragoza opened the floor for a public hearing. There being no one present to address the Council regarding the proposal, the Mayor closed the public hearing and called for the question.

MOTION Question called on a roll call vote:
Mr. Pierce – yes Mr. Henley – yes
Mr. Sharp – yes Mr. Ammons – yes
Mayor Zaragoza – no Motion carried.

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

Mr. Ammons stated that the following Resolutions and/or Ordinances will be presented at a public hearing at the Council’s next regularly scheduled meeting of December 26, 2012 at 5 PM.

- Ordinance Number 2427 – An Ordinance Establishing And Creating The Alcohol Abuse Education Program And The Traffic Safety Education Program For The Municipal Court Of The City Of Vestavia Hills, Alabama
- Ordinance Number 2426 – An Ordinance Authorizing And Directing The Sale Of Real Estate Situated At 1112 Montgomery Highway In The City Of Vestavia Hills, Alabama, Commonly Referred To As The Old Library Property And More Particularly Described In Exhibit A And The Execution And Delivery Of A Real Estate Purchase And Sale Agreement (*public hearing scheduled for January 14, 2013*)

CITIZENS COMMENTS

None.

MOTION Motion to adjourn the meeting at 6:30 PM was by Mr. Pierce. Mr. Ammons seconded the motion. Roll call vote as follows:
Mr. Pierce – yes Mr. Henley – yes
Mr. Sharp – yes Mr. Ammons – yes
Mayor Zaragoza – yes Motion carried.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

ORDINANCE NUMBER 2427

AN ORDINANCE ESTABLISHING AND CREATING THE ALCOHOL ABUSE EDUCATION PROGRAM AND THE TRAFFIC SAFETY EDUCATION PROGRAM FOR THE MUNICIPAL COURT OF THE CITY OF VESTAVIA HILLS, ALABAMA.

THIS ORDINANCE NUMBER 2427 is approved and adopted by the City Council of the City of Vestavia Hills, Alabama on this the 26th day of December, 2012.

WITNESSETH THESE RECITALS:

WHEREAS, the Legislature of the State of Alabama enacted Title 12-14-1(a), *Code of Alabama, 1975*, which authorizes municipalities to establish a Municipal Court; and

WHEREAS, Title 12-14-2, *Code of Alabama, 1975*, provides that:

“(a) The municipality shall provide appropriate facilities and necessary supportive personnel for the municipal court and may provide for probation services, clerks and municipal employees designated as magistrates.

(b) Municipalities shall furnish prosecutorial services in municipal courts and in appeals from such judgments and orders.”; and

WHEREAS, Title 12-14-3, *Code of Alabama, 1975*, provides that:

“The municipal court shall have the number of judges and shall hold court at times and places provided by the municipal governing body.”; and

WHEREAS, Title 12-14-13, *Code of Alabama, 1975*, provides that:

(a) Municipal courts may suspend execution of sentence and place of defendant on probation for varying periods of time, not to exceed two years...

(d) The court shall determine and may, at any time, modify the conditions of probation and may require the probationer to comply with the following or any other conditions:..

(9) To attend defensive driving schools, alcohol countermeasure programs or courses where available and support his dependents to the best of his ability.”; and

WHEREAS, the City Council of the City of Vestavia Hills, Alabama, pursuant to the above legal authority, enacted Ordinance Number 397 on December 27, 1977, which established The Municipal Court for the City of Vestavia Hills, Alabama; and

WHEREAS, Section 6 of Ordinance Number 397 sets forth the powers of the Court and reads in pertinent part as follows:

“F. The Municipal Judge shall have the authority to continue the case from time to time to permit the fine and costs to be paid, remit fines, costs and fees, impose intermittent sentences, establish work release programs, require attendance of educational, corrective or rehabilitative programs, suspend driving privileges for such times and under such conditions as provided by law and order hearings to determine the competency of the defendant to stand trial; provided further, that the judge may enter an order authorizing the defendant to drive under the conditions set forth in the order.”; and

WHEREAS, the City wishes to create and establish an alcohol countermeasure program and a defensive driving school as described in Title 12-14-13(d)(9), *Code of Alabama, 1975*.

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

1. There is hereby established an Alcohol Abuse Educational Program to be known as the Highway Intoxication Seminar, which shall be under the supervision of the Clerk of the Municipal Court. Each person attending the Seminar shall be charged no more than Three Hundred Dollars (\$300.00) for evaluation and/or registration. Such fees are to be assessed by the Judge of the Municipal Court as appropriate, unless the same is waived by the Municipal Judge or by the Clerk of Municipal Court in such cases where the individual is being referred by an outside agency.

2. There is hereby established a Traffic Safety Educational Program, which shall be under the supervision of the Clerk of the Municipal Court. Each person attending the Seminar shall be charged not more than One Hundred and Fifty Dollars (\$150.00) for registration. Such fees are to be assessed by the Judge of the Municipal Court as appropriate, unless the same is waived by the Municipal Judge or by the Clerk of Municipal Court in such cases where the individual is being referred by an outside agency.

3. There is hereby established an Advisory Committee consisting of the Presiding Municipal Judge or his designee, the Chief of Police or his designee, and the City Attorney or his designee.

4. The Clerk of the Municipal Court shall be responsible for scheduling of classes, instructors and facilitators and setting reasonable fees for the payment of the instructors and facilitators. The Clerk of Municipal Court shall adopt rules and regulations for the operation of the established educational programs, criteria for acceptance and completion and established fees for the appropriate program. These rules and regulations, policy and procedures, and fee list shall be readily available for public inspection.

5. All monies collected as a result of the operation of the Alcohol Abuse Education Program and the Traffic Safety Education Program in the form of registration fees, evaluation fees and/or tuition fees shall be maintained in a separate account with the City Finance Department to be distributed as follows:

(a) to fully cover the cost of services provided by the previously mentioned education programs;

(b) an amount equivalent to Fifty-five Dollars (\$55.00) per individual participant to the City's "Court and Correction Fund";

(c) an amount equivalent to Ten Dollars (\$10.00) per applicant to the "Municipal Court Judicial Administrative Fund"; and

(d) all remaining monies to be used for the purpose of providing various other traffic safety education and awareness programs to the Vestavia Hills community through the Traffic Safety Office of the Vestavia Hills Police Department or any other police activities. The collection and use of these monies shall be under the supervision of the Police Chief and Finance Director.

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

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

DONE, ORDERED, ADOPTED and APPROVED this the 26th day of December, 2012.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2427 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 26th day of December, 2012 as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills New Merkle House, Vestavia Hills Civic Center and Vestavia Hills Library in the Forest this the _____ day of _____, 2012.

Rebecca Leavings
City Clerk

PATRICK H. BOONE
ATTORNEY AND COUNSELOR AT LAW
NEW SOUTH FEDERAL SAVINGS BUILDING, SUITE 705
215 RICHARD ARRINGTON, JR. BOULEVARD NORTH
BIRMINGHAM, ALABAMA 35203-3720
—
TELEPHONE (205) 324-2018
FACSIMILE (205) 324-2295

November 21, 2012

By Electronic Mail

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

In Re: Ordinance to Establish Alcohol Abuse Education Program
and Traffic Safety Education Program

Dear Mr. Robertson:

I forward suggested draft of an Ordinance for the City Council to consider if it elects to establish and create an Alcohol Abuse Education Program and Traffic Safety Education Program.

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

Sincerely,



Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp
Enclosure
cc: City Clerk Rebecca Leavings

RESOLUTION NUMBER 4382

**A RESOLUTION ACCEPTING A BID FOR A RESCUE UNIT FOR
THE VESTAVIA HILLS FIRE DEPARTMENT**

WHEREAS, the City of Vestavia Hills received and opened bids for a rescue unit on November 27, 2012; and

WHEREAS, three (3) bids were received; and

WHEREAS, the Fire Chief, in a memorandum dated December 17, 2012, recommended the acceptance of Excellence, Inc., in the amount of \$200,331.68; and

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

1. The bid package submitted by Excellence, Inc., in the amount of \$200,331.68 is hereby accepted; and
2. This Resolution Number 4382 shall become effective immediately upon adoption and approval.

DONE, ORDERED, ADOPTED AND APPROVED this the 26th day of December, 2012.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

**VESTAVIA HILLS FIRE DEPARTMENT
513 MONTGOMERY HIGHWAY
VESTAVIA HILLS, ALABAMA 35216
(205) 978-0225
(205) 978-0205 (FAX)**

**JAMES R. ST. JOHN
FIRE CHIEF**

MEMORANDUM

TO: Randy Robertson, City Manager
FROM: Chief St. John
DATE: December 17, 2012
RE: Rescue Unit bid recommendation

The FY 2013 Capital Purchases Budget includes \$210,000 to replace Rescue 34. The following responses were received in reply to our invitation to bid:

1. Braun Industries, Inc. bid \$201,568.00 and took 100 exceptions to our specifications.
2. Excellance, Inc. bid \$200,331.68 and took no exceptions. The bid included five “clarifications” that primarily related to the availability of options on the Ford F-450 chassis.
3. Peach State Ambulance, Inc. bid \$174,801.00 and took 42 exceptions. 15 exceptions were related to the frame and construction and no descriptions of the exceptions or any equivalencies were provided. Additionally, exceptions were taken to most compartment specifications. The compartment specs ensure standardization among our rescue units and replicate the configuration of the two most recently purchased rescue units.

Because of the number and nature of exceptions taken by the low bidder, I recommend accepting the bid from Excellance, Inc.

RESOLUTION NUMBER 4383

**A RESOLUTION AUTHORIZING THE MAYOR AND CITY
MANAGER TO ENTER INTO A CONTRACT WITH OWENS
LANDSCAPE GROUP FOR LANDSCAPING SERVICES AT THE
VESTAVIA HILLS LIBRARY IN THE FOREST**

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

1. The Mayor and City Manager are hereby authorized to enter into a contract with Owens Landscape Group for landscaping services at the Vestavia Hills Library in the Forest for an amount not to exceed \$697.00 per month; and
2. A copy of said contract is attached to and incorporated into this Resolution Number 4383 as if written fully therein; and
3. This Resolution Number 4383 shall become effective immediately upon adoption and approval.

DONE, ORDERED, ADOPTED and APPROVED this the 26th day of
December, 2012.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk



7341 Cahaba Valley Road
 PO Box 381957
 Birmingham, AL 35238
 Ph. (205) 991-3981 Fax. (205) 991-0076

LANDSCAPE MANAGEMENT PROPOSAL

Vestavia Hills Library in the Forest
 Customer Address: 1112 Montgomery Highway
 Vestavia Hills, Alabama 35216

Date: 12.19.2012

Description of Services Performed:

Maintenance Program:

Turf Areas

Mowing and trimming of turf
 Mechanically edge hard lines bi-weekly
 Mechanically blow debris from operations

Ornamental Beds:

Prune shrubs 3 times annually
 Mechanically edge bed lines bi-weekly
 Weed landscape areas

Other Services:

Round up in bed & along hard surfaces
 Leaf clean-up in fall
 Lift canopies on planted trees to 10'
 Police landscaped areas during each service visit

Optional Services

Pine Straw bed areas- (Approximately 300 bales of pine straw can be installed at a cost of \$1,800.00)
 Shredded pine bark mulch- (Approximately 50 cu. yds. can be installed in bed areas for \$2,000.00)
 Red dyed mulch can be installed for \$55.00 per cubic yard
 Insecticide/Fungicides as needed at an additional cost
 Over seeding warm season turf grass with winter rye
 Core aeration to turf areas
 De-thatching of turf areas

Chemical Program:

Four (4) turf fertilizations per year
 Two (2) turf pre-emergent applied to control weeds
 Two (2) post-emergent applied
 Two (2) pre-emergent applied to ornamental beds in early fall
 Two (2) fertilization of trees, shrubs & groundcover in spring and fall
 Spot fire ant treatments

Contract Period: 1/1/2013 to 12/31/2013
 52 maintenance visits per year

Total Annual Cost \$8364.00
Monthly \$697.00

The contract will be automatically renewed each year at which time either party may cancel the contract with a 30 day written notice. The contract will be billed in twelve equal monthly payments at the first of each month. In the event this contract is terminated prior to the end of the contract date you will either receive a refund or make an additional lump sum payment, depending upon the amount of revenue earned. Annual interest rate of 18% applies to any unpaid balance beyond 30 days of invoice. Owner shall pay reasonable attorney fees if collection procedures are necessary. This proposal is valid for up to 60 days after proposal date.

Client Signature

Date

Authorized OPLC Signature

Date

Landscape Maintenance Fees and Fee Schedule

The following is a schedule of fees for the services provided each month during the year. The monthly fee set forth in the schedule of fees can be billed on a monthly basis or under an equal monthly installment-billing plan. The schedule of fees is to be used in determining the amount of revenue we have earned for the services that are provided during each month. Should the contract be cancelled for any reason prior to the one year anniversary, you will be billed for all revenue earned through the cancellation date. For your convenience, we will invoice you in twelve (12) equal monthly installments.

Schedule of Percentage of Revenues Earned:

<u>Month</u>	<u>Percentage</u>	<u>Month</u>	<u>Percentage</u>
January	4%	July	10%
February	4%	August	10%
March	8%	September	10%
April	10%	October	10%
May	10%	November	9%
June	10%	December	5%

Landscape Maintenance Specifications

Warm Season Turf

All turf will be cut as needed throughout the growing season. All mowers will have sharpened blades, which will provide the cleanest cut thereby providing the best appearance. In accordance with correct horticulture procedures, we will take care only to remove no more than 1/3 of the leaf blade at a cutting. Any turf areas that cannot be cut by mowers, such as slopes and around poles, will be cut with line trimmers. Mechanical edging of curbs, sidewalks, and planting beds will be performed once every other week.

All landscape debris generated by these operations will be blown clean at the end of each service visit.

In addition to lowering the turf in the fall the first cut of the season will be at the lowest height permitted by the terrain. This will remove as much of the dormant turf as possible.

Initials _____

Warm Season Turf Fertilizations Program

In order to promote a fast and even green up of the turf in the spring, an application of fertilizer will be applied in March/April.

The *second* and *third* fertilizations will be applied between April 15 and August 15. Each of these will apply nitrogen to the turf areas plus provide additional nutrients to maintain healthy turf.

The *forth* application of turf fertilizer will occur in September. This application will provide the turf with valuable nutrients that promote root growth and winter hardiness through out the dormant season.

Warm Season Turf Herbicides

The first turf pre-emergent will be applied in February/March to control summer annual weeds and crabgrass. The second application in October/November will be applied to prevent winter annual weeds.

Applications of post-emergent herbicides will be applied throughout the season to control any broadleaf or grassy weeds.

Insect and Disease Program (At an Additional Cost)

The Integrated Pest Management Program (IPM) will provide protection from wide spread insect and disease infestation without the over use of strong chemicals. The property will receive continuous scouting for increased insect and disease activity. If a potential problem occurs, we will treat the problem areas with the correct chemical program.

Fire ant mounds will be treated individually with a granular insecticide.

Weed Control

The initial pre-emergent herbicide application will be applied in February/March in all landscaped mulched areas to prevent the germination of weeds. A second post-emergent application will be applied in early fall to prevent winter annual weeds.

All beds will be weeded on a continual basis by hand weeding or through the application of a non-selective herbicide.

All hard surface weeds will be sprayed with a non-selective herbicide during the weekly service to assure the property is as weed free as possible.

Initials _____

Tree, Shrub and Groundcover Maintenance

Tree Pruning

Trees will be limbed up and maintained along walkways and roadways to a height of 10 feet. Sucker growth will be removed during regular service visits. Other tree work, if needed, may be performed at a separate cost.

Crape Myrtle

Crape Myrtles will be allowed to grow to their natural form and height. Cross branches will be removed in February. Severe pruning will only be done in cases of safety or visibility issues at an additional cost.

Shrub Pruning

All shrubs that require a tight and manicured appearance will be pruned 3 times annually *as required by the plant growth habit*. Renewal pruning, if desired, may be performed at an additional cost.

Fertilization

All trees, shrubs and groundcover will be fertilized in the spring/early summer to promote healthy and vigorous plants. Any supplemental fertilization that is needed to correct the plant color will be applied at an additional cost.

Leaf Clean-up

Any leaves that have fallen on the turf will be mulched as the turf is being cut and or lowered in the fall. Leaves will be removed from the bed areas when heavy build up has occurred. Areas that receive heavy foot traffic will be blown clean during each visit.

Optional Services

Pine Straw/ Mulch

The cost for application of Pine straw/Mulch *IS NOT* included in the base contract price. All bed lines will be defined to form a crisp and smooth bed edge.

Floriculture Program

Owens Landscape Group can design a full floriculture program for your property. Our floriculture program includes the installation as well as a comprehensive fertilization and maintenance program for your color beds. The cost *IS NOT* included in the base contract price and will be a separate proposal and invoice

Any pine straw, mulch and/or flowers may be rolled into the contract and the total amount divided into twelve (12) equal monthly payments. If the pine straw/mulch and/or flowers have been installed and the payment is included over the term of the contract, the client will owe the remaining price of the unbilled pine straw /mulch and or flowers should the contract be terminated early.

Initials _____

Supplemental Watering

Owens Professional Landscape Group's proposal *does not* include the responsibility of hand watering of any of the plant material. However this service can be provided as an addition to the contract when approved by both parties.

Irrigation Monitoring & Repairs

Owens Professional Landscape Group employees will monitor the moisture condition of the property. If there are irrigation adjustments or repairs that are needed we will let the property manager know. Although this is helpful in determining moisture deficiencies, it does not take the place of regular irrigation inspections.

Irrigation Inspection

Owens Professional Landscape Group can provide monthly irrigation inspections, consisting of a separate crew operating every clock to determine if all zones and heads are working properly. Repairs to the irrigation system will be made on a time-and-materials basis after receiving signed approval by the Owner/Property Manager. This monthly service during the growing season *IS NOT* included in the base contract price.

Core Aeration of Turf Areas

Owens Landscape Group can provide core aeration to your turf areas at an additional cost. Core aeration benefits include a healthy and lush turf as well as a stronger and deeper root zone. Other benefits include better drainage, better drought tolerance, disease resistance, weed resistance, decreased thatch, better water and nutrient uptake.

De-thatching of Turf Areas

Owens Landscape Group can provide the de-thatching of your turf areas at an additional cost. Thatch is a tightly intermingled organic layer of dead and living shoots, stems, and roots that accumulate just above the soil surface. Thatch accumulation is mostly due to over fertilization, over watering and soil compaction. Benefits of de-thatching include better water and air movement in your root system reducing the constant need for irrigation and major decreases in disease and insect activity in your turf.

Initials _____

RESOLUTION NUMBER 4384

A RESOLUTION ORDERING THE DEMOLITION OF A BUILDING OR STRUCTURE LOCATED AT 3317 MOUNTAINSIDE ROAD, VESTAVIA HILLS, ALABAMA, PARCEL ID# 28-23-2-4-10-RR-0, IN COMPLIANCE WITH SECTIONS 11-40-30 THROUGH 11-40-36, SECTIONS 11-53B-1 THROUGH 11-53B-16, INCLUSIVE, OF THE CODE OF ALABAMA, AND IN COMPLIANCE WITH ORDINANCE NUMBER 2382 OF THE CITY OF VESTAVIA HILLS, ALABAMA; AND CALLING FOR SAID DEMOLITION TO BE PERFORMED BY THE CITY OF VESTAVIA HILLS AND DIRECTING THE CITY ATTORNEY AND THE CITY CLERK TO CAUSE THE COST OF SUCH DEMOLITION TO BE CHARGED AGAINST THE LAND ON WHICH THE BUILDING OR STRUCTURE EXISTS AS A MUNICIPAL LIEN OR CAUSE SUCH COST TO BE RECOVERED IN A SUIT AT LAW AGAINST THE OWNER OR OWNERS

WHEREAS, the appropriate Municipal Officials determined that the condition of the building or structure located at 3317 Mountainside Road, Vestavia Hills, Alabama, Parcel I.D. Number 28-23-2-4-10-RR-0 is in such a condition as to make it dangerous to the life, health, property, morals, safety, or general welfare of the public or the occupants.

WHEREAS, contemporaneously with the filing of “Finding of Public Nuisance, Notice and Order to Remedy and Notice of Lis Pendens” on Donald Paul Stewart; Mortgage Electronic Registration System,s Inc., (A/K/A Mers); Southtrust Mortgage Corp.; Amsouth Bank (N/K/A Regions Bank); Annie Stewart; State Farm Insurance; Jefferson County Sewer Service Office; Birmingham Water Works, a copy of same was sent via certified mail, properly addressed and postage prepaid to:

A. All person or persons, firm, association, or corporation last assessing the subject property for state taxes to the address on file in the Jefferson County Tax Collector’s Office;

B. The record property owner or owners (including any owner or owners of an interest in the subject property) as shown from a search of records of the Office of the Judge of Probate of Jefferson County, Alabama, at the owner or owners’ last known address and at the address of the subject property;

C. All mortgagees of record as shown from a search of the records of the Office of the Judge of Probate of Jefferson County, Alabama, to the address set forth in the mortgage or, if no address for the mortgagee is set forth in the mortgage, to the address determined to be the correct address by the appropriate Municipal Officials;

D. All lien holders of record as shown from a search of the records of the Office of the Judge of Probate of Jefferson County, Alabama to the address set forth in the statement of lien or, if no address for the lien holder is set forth in the statement of lien, to the address determined to be the correct address by the appropriate Municipal Officials; and

E. Such other persons who are otherwise known to the City Clerk or to the appropriate Municipal Officials who could have an interest in the subject property;

WHEREAS, contemporaneously with the filing of the “Finding of Public Nuisance, Notice and Order to Remedy, and Notice of Lis Pendens”, a copy of the same was posted at or within three feet of an entrance to the building on the subject property and posted in three public places located within the City of Vestavia Hills: 1) Vestavia Hills Municipal Center, 2) Vestavia Hills Library in the Forest, and 3) Vestavia Hills Civic Center.

WHEREAS, notice that the appropriate Municipal Officials have made a finding that the subject property is a dangerous building because it is unsafe to the extent that it is a public nuisance and is subject to demolition and that a public hearing would be held on a certain date was also given to all interested parties and to the public at large by publication in the *Alabama Messenger*.

BE IT RESOLVED by the City Council of the City of Vestavia Hills, Alabama while in regular session on Monday, January 14, 2013 at 5:00 p.m. as follows:

Section 1. A Public Hearing was held on January 14, 2013 at 5:00 p.m. and after due deliberation, the City Council of the City of Vestavia Hills, Alabama finds that the structure standing at 3317 Mountainside Road, Vestavia Hills, Alabama, Parcel ID# 28-23-2-4-10-RR-0 is unsafe to the extent of becoming a public nuisance to the citizens of the City of Vestavia Hills, Alabama and is due to be condemned and demolished in compliance with Sections 11-40-30 through 11-40-36 and Sections 11-53B-1 through 11-53B-16, inclusive, of the *Code of Alabama* (1975), and Ordinance Number 2382 of the City of Vestavia Hills, Alabama;

Section 2. That said demolition is to be performed by the City of Vestavia Hills; and

Section 3. That the City Attorney and the City Clerk are hereby directed to cause the cost of such demolition to be charged against the land on which the building or structure is located and shall constitute a lien on the property for the amount of the assessment or cause such cost to be recovered in a suit at law against the owner or owners.

ADOPTED this the 14th day of January, 2013.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION OF CITY CLERK

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, Rebecca Leavings, City Clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true and correct copy of a Resolution duly and legally adopted by the City Council of the City of Vestavia Hills, Alabama, on the _____ day of _____, 2013 while in regular session on Monday, January 14, 2013, and the same appears of record in the minute book of said date of said City.

Witness my hand and seal of office this _____, 20__.

Rebecca Leavings, City Clerk

1200 PARK PLACE TOWER ■ 2001 PARK PLACE NORTH ■ BIRMINGHAM, ALABAMA 35203
(205) 324-4400 ■ Facsimile: (205) 322-1163

October 31, 2012

VIA HAND DELIVERY

Ms. Rebecca Leavings
City Clerk
City of Vestavia Hills
513 Montgomery Highway
Vestavia Hills AL 35216

RE: Lis Pendens


Dear Becca:

Please find enclosed five copies of the filed-stamped Lis Pendens notice for the demolition of real property located at 3317 Mountainside Road. One copy of this notice is for your file. The other four copies need to be posted in the following locations within three days of today:

1. 3317 Mountainside Road.
2. Vestavia Hills Municipal Center.
3. Vestavia Hills Library in the Forest.
4. Vestavia Hills Civic Center.

Should you have any questions or need any additional information, please let me know.

Very truly yours,



Kelly Thrasher Fox

Enclosures

cc: Mark T. Waggoner, Esq. (via electronic mail)
Benjamin S. Goldman, Esq. (via electronic mail)

IN THE PROBATE COURT OF JEFFERSON COUNTY, ALABAMA

CITY OF VESTAVIA HILLS, ALABAMA)
)
 v.)
)
 DONALD PAUL STEWART;)
 MORTGAGE ELECTRONIC REGISTRATION)
 SYSTEMS, INC. (A/K/A MERS);)
 SOUTHTRUST MORTGAGE CORP.;)
 AMSOUTH BANK (N/K/A REGIONS BANK);)
 ANNIE STEWART;)
 STATE FARM INSURANCE;)
 JEFFERSON COUNTY SEWER SERVICE)
 OFFICE;)
 BIRMINGHAM WATER WORKS)
)
 Lot 3, Block 3, according to the Map of Second)
 Addition to Shades Cahaba Estates, as recorded)
 in Map Book 30, page 36, in the Office of the)
 Judge of Probate of Jefferson County, Alabama)


20121031001191560 1/11
Bk: LR201218 Pg: 22580
Jefferson County, Alabama
I certify this instrument filed on:
10/31/2012 09:30:29 AM NOTICE
Judge of Probate- Alan L. King

**FINDING OF PUBLIC NUISANCE, NOTICE AND ORDER TO REMEDY,
AND NOTICE OF LIS PENDENS**

TAKE NOTICE that:

COMES NOW, the City of Vestavia Hills, Alabama (“the City”), by and through its Appropriate Municipal Officials, its City Clerk, and its Attorney to provide notice pursuant to Ordinance No. 2382 of the City that the Appropriate Municipal Officials have made a finding that a building located within the City is a dangerous building because it is unsafe to the extent that it is a public nuisance and subject to demolition. The building is located on the following described property, to wit, which will be described hereafter as “the Subject Property”:

STREET ADDRESS:

3317 Mountainside Road, Vestavia Hills, AL 35243

LEGAL DESCRIPTION:

Lot 3, Block 3, according to the Map of Second Addition to Shades Cahaba Estates, as recorded in Map Book 30, page 36, in the Office of the Judge of Probate of Jefferson County, Alabama

PARCEL IDENTIFICATION NUMBER:

28-23-2-4-10-RR-0

The City provides further notice as follows:

1. In *Ellis v. City of Montgomery*, the United States District Court for the Middle District of Alabama stated that, in cases such as this where a municipality seeks the demolition of building by use of its police powers, “A simple *lis pendens* filing after sending notice to the current owner of a property would place subsequent purchasers on record notice that demolition could occur.” *Ellis v. City of Montgomery*, 460 F.Supp.2d 1301, 1307 (M.D. Ala. 2006). Here, the City is invoking the procedure recommended by the District Court.

2. By the filing of this Notice, the City is not claiming any right, title, or interest in the subject property. Rather, the purpose of this Notice is to put all interested parties on notice of the City’s intent to exercise its authority provided by law and specifically by the City’s ordinances.

3. Ordinance No. 2382 of the City is “An Ordinance to Amend the Official Policies and Procedures of the City of Vestavia Hills, Alabama, Regarding Unsafe Structures and Dangerous Buildings.” The below-signed Appropriate Municipal Officials are the persons designated to exercise the authority and perform the duties delegated by Ordinance No. 2382.

4. The Appropriate Municipal Officials find that the building located on the Subject Property is a “dangerous building” within the meaning of Ordinance No. 2382 because of the following defects:

- (1) The building has improperly distributed loads upon the floors or roofs, or in which the same are overloaded, or has insufficient strength to be reasonably safe for the purpose used;

- (2) The building has been damaged by fire, wind, earthquake, flood, sinkhole, deterioration, neglect, abandonment, vandalism, or any other cause so as to have become dangerous to life, health, property, morals, safety, or general welfare of the public or the occupants;
- (3) The building has become or is so damaged, dilapidated, decayed, unsafe, unsanitary, lacking in maintenance, vermin or rat infested, containing filth or contamination, lacking proper ventilation, lacking sufficient illumination, or so utterly fails to provide the amenities essential to decent living that it is unfit for human habitation, or is likely to cause sickness or disease, so as to work injury to the life, health, property, morals, safety, or general welfare of the public or the occupants;
- (4) The building has light, air, heating, cooling, and sanitation facilities which are inadequate to protect the life, health, property, morals, safety, or general welfare of the public or the occupants;
- (5) The building does not provide minimum safeguards to protect or warn occupants in the event of fire;
- (6) The building is so damaged, decayed, dilapidated, structurally unsafe, or of such fault construction or unstable foundation that partial or complete collapse is possible;
- (7) The building, or any portion thereof, is clearly unsafe for its use or occupancy;
- (8) The building is neglected, damaged, dilapidated, unsecured, or abandoned so as to become an attractive nuisance to children who might play in or on the building, structure, part of building or structure, party wall, or foundation to their danger, has become a harbor for vagrants, criminals, or immoral persons, or enables persons to resort to the building, structure, part of building or structure, party wall, or foundation for committing a nuisance or an unlawful act; and
- (9) The building has a portion remaining on a site after the demolition or destruction of the same or is abandoned so as to constitute such building, structure, part of building or structure, party wall, or foundation as an attractive nuisance or hazard to the public.

5. The Appropriate Municipal Officials find that the building on the Subject Property is substantially damaged or decayed, or deteriorated from its original value or structure (not including the value of the land).

6. Notice is hereby given to remedy the unsafe or dangerous condition by demolition of the building on the Subject Property within forty-five (45) days of the date of this Notice to the Appropriate Municipal Officials' satisfaction. In the event the owner does not comply within the time specified herein to the Appropriate Municipal Officials' satisfaction, the demolition shall be accomplished by the City and the cost thereof assessed against the Subject Property and such cost shall constitute a lien against the Subject Property.

7. The Appropriate Municipal Officials find that the building on the Subject Property is in such condition as to make it dangerous to the life, health, property, morals, safety, or general welfare of the public or the occupants. Therefore, the Appropriate Municipal Officials order that the building on the Subject Property be and remain vacated until demolished.

8. A public hearing as provided for by Section 5-146(a) set forth in Ordinance No. 2382 shall be held on the finding of the Appropriate Municipal Officials in the Council Chambers at the Vestavia Hills Municipal Center, 513 Montgomery Highway, Vestavia Hills, AL 35216, on the 14th day of January 2013, at 5:00 p.m. At that time, the City Council shall hold a public hearing to receive any objections to the finding by the Appropriate Municipal Officials that the building or structure is unsafe to the extent of becoming a public nuisance. A written request for a public hearing is not necessary. At the public hearing, the City Council shall also receive any written objections to the finding by the Appropriate Municipal Officials. Any such written objection must be submitted to the City Clerk prior to the start of the City Council meeting at which the public hearing is held. No action shall be taken on the finding of the Appropriate Municipal Officials until determination thereon is made by the City Council. Upon holding the hearing, the City Council shall determine whether or not the building or structure is unsafe to the extent that it is a public nuisance. If it is determined by the

the City Council that the building or structure is unsafe to the extent that it is a public nuisance, the City Council shall order demolition of the building at the expense of the City and assess the expenses of the move or demolition on the land on which the building stands or to which it is attached. Any person aggrieved by the decision of the City Council at the hearing may, within ten (10) days thereafter, appeal to the Circuit Court of Jefferson County, Alabama, Birmingham Division, upon filing with the Clerk of the Circuit Court of Jefferson County, Alabama, Birmingham Division, notice of the appeal and bond for security of costs in the form and amount to be approved by the Circuit Clerk. For further particulars, see Ordinance No. 2382.

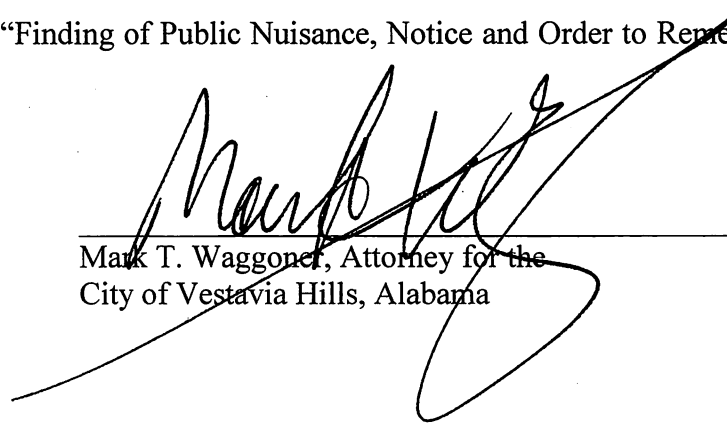
9. A failure by the Vestavia Hills City Council to act on the findings of the Appropriate Municipal Officials within ninety (90) days from the date of this “Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*” shall constitute an abdication of the Appropriate Municipal Officials’ findings. However, this shall in no way prevent the City from reinitiating the proceedings authorized by Ordinance No. 2382 at any time so long as all the requirements of Ordinance No. 2382 are satisfied anew. Furthermore, this does not require that the ordered demolition take place within ninety (90) days from the date of this “Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*.” A failure by the City to accomplish the demolition of the building within one hundred eighty (180) days of the passage of the resolution by the City Council ordering the same shall constitute an abdication of the City Council’s order unless certain conditions further explained in Ordinance No. 2382 are satisfied. For further particulars, see Ordinance No. 2382. Anyone interested in the status of these proceedings should inquire with the Vestavia Hills City Clerk at (205) 978-0184 or at 513 Montgomery Highway, Vestavia Hills, AL 35216.

10. It is unlawful for any person, or for any agent, servant or employee of such person, to obstruct or interfere with the Appropriate Municipal Officials in carrying out the purposes of Ordinance No. 2382.

11. It is unlawful for any person, or for any agent, servant or employee of such person, to mutilate, destroy, tamper with this “Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*.”

12. It is unlawful for any person to enter, access, or be upon the building that the Appropriate Municipal Officials have ordered to be vacated pursuant to this “Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*” except for the purposes of demolishing the same.

13. It is unlawful for any person who has received this “Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*” to sell, transfer, mortgage, lease, encumber, or otherwise dispose of the building that is the subject of the same to another until such person shall first furnish the grantee, transferee, mortgagee, or lessee a true copy of this “Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*” and shall furnish to the Appropriate Municipal Officials a signed and notarized statement from the grantee, transferee, mortgagee, or lessee acknowledging the receipt of this “Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*” and fully accepting the responsibility without condition for making the corrections or repairs required by this “Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*.”



Mark T. Waggoner, Attorney for the
City of Vestavia Hills, Alabama

OF COUNSEL:

Hand Arendall LLC
2001 Park Place North, Suite 1200
Birmingham, AL 35203
E-mail: mwaggoner@handarendall.com
Phone: (205) 324-4400
Fax: (205) 322-1163


VERIFICATION OF THE APPROPRIATE MUNICIPAL OFFICIALS

We, the undersigned, Keith Blanton and Greg Gilchrist state as follows: We are the Building Official and Fire Marshal, respectively, for the City of Vestavia Hills, Alabama, and for purposes of administering Ordinance No. 2382, we are the "Appropriate Municipal Officials." We hereby offer the findings made in this "Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*," make such orders as are offered herein, and provide such notice as is specified herein.

DONE this the 31st day of October, 2012.



Keith Blanton, Building Official and
Appropriate Municipal Official
City of Vestavia Hills, Alabama



Greg Gilchrist, Fire Marshal and
Appropriate Municipal Official
City of Vestavia Hills, Alabama

This Instrument Prepared By:

Mark T. Waggoner
Hand Arendall LLC
2001 Park Place North, Suite 1200
Birmingham, AL 35203
E-mail: mwaggoner@handarendall.com
Phone: (205) 324-4400
Fax: (205) 322-1163

CERTIFICATE OF SERVICE

Contemporaneously with the filing of this “Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*,” a copy of the same has been sent via certified mail, properly addressed and postage prepaid to all of the following persons on this the 31st day of October, 2012:

A. The person or persons, firm, association, or corporation last assessing the Subject Property for state taxes to the address on file in the Jefferson County Tax Collector’s Office:

Donald Stewart
3317 Mountainside Road
Vestavia Hills, AL 35243

B. The record property owner or owners (including any owner or owners of an interest in the Subject Property) as shown from a search of the records of the office of the Judge of Probate of Jefferson County, Alabama, at the owner or owners’ last known address and at the address of the Subject Property:

Donald Stewart
3317 Mountainside Road
Vestavia Hills, AL 35243

Donald Stewart
c/o Stephen Goldstein
P. O. Box 1735
Oneonta, AL 35121

C. All mortgagees of record as shown from a search of the records of the office of the Judge of Probate of Jefferson County, Alabama, to the address set forth in the mortgage or, if no address for the mortgagee is set forth in the mortgage, to the address determined to be the correct address by the Appropriate Municipal Official:

MERS as nominee for SouthTrust Mortgage Corp.
c/o CT Corporation Systems
2 North Jackson St., Suite 605
Montgomery, AL 36104

MERS as nominee for SouthTrust Mortgage Corp.
P. O. Box 2026
Flint, MI 48501-2026

SouthTrust Mortgage Corp.
c/o CSC Lawyers Incorporating Service Inc.
150 South Perry St.
Montgomery, AL 36104

SouthTrust Mortgage Corp.
210 Wildwood Parkway, Suite 100
Birmingham, AL 35209

AmSouth Bank (N/K/A Regions Bank)
c/o CSC Lawyers Incorporating Service Inc.
150 South Perry St.
Montgomery, AL 36104

AmSouth Bank (N/K/A Regions Bank)
341 Summit Boulevard
Birmingham, AL 35243

D. All lien holders of record as shown from a search of the records of the office of the Judge of Probate of Jefferson County, Alabama to the address set forth in the statement of lien or, if no address for the lien holder is set forth in the statement of lien, to the address determined to be the correct address by the Appropriate Municipal Official:

There are no lien holders of record.

E. Such other persons who are otherwise known to the City Clerk or to the Appropriate Municipal Official who could have an interest in the Subject Property:

Annie Stewart
c/o Stephen Goldstein
P. O. Box 1735
Oneonta, AL 35121

State Farm Insurance
Centralized Catastrophe Services
PO Box 44083
Jacksonville, FL 32231-4083
Attn: Chris Lucas
State Farm Claim #01-x281-150

State Farm Insurance
Centralized Catastrophe Services
PO Box 44083
Jacksonville, FL 32231-4083
Attn: Cooper Bennett

State Farm Claim #01-x281-150

Jefferson County Sewer Service Office
Room 800
Jefferson County Courthouse
716 Richard Arrington Jr. Blvd. North
Birmingham, AL 35203
Attention: Alicia

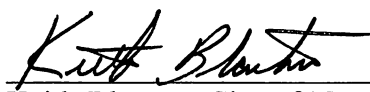
Birmingham Water Works
Room 800
Jefferson County Courthouse
716 Richard Arrington Jr. Blvd. North
Birmingham, AL 35203
Attention: Monike Johnson

No other person is otherwise known to the City Clerk or to the Appropriate Municipal Official to have an interest in the Subject Property.

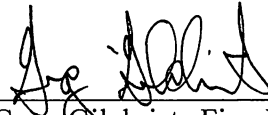
Contemporaneously with the filing of this "Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*," a copy of the same has been posted at or within three feet of an entrance to the building on the Subject Property.

Contemporaneously with the filing of this "Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*," a copy of the same has been posted in three public places located within the City: 1.) at Vestavia Hills Municipal Center, 2.) at the Vestavia Hills Library in the Forest, and 3.) at the Vestavia Hills Civic Center.

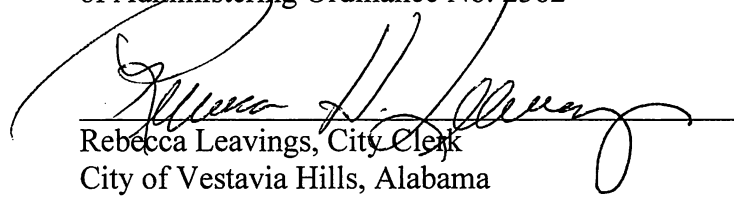
Notice that the Appropriate Municipal Official has made a finding that the Subject Property is a dangerous building because it is unsafe to the extent that it is a public nuisance and is subject to demolition and that a public hearing will be held on the date assigned herein will also be given to all interested parties and to the public at large by publication in the *Alabama Messenger*.



Keith Blanton, City of Vestavia Hills, Alabama Building
Official and Appropriate Municipal Official for Purposes
of Administering Ordinance No. 2382



Greg Gilchrist, Fire Marshal for City of Vestavia Hills,
Alabama and Appropriate Municipal Official for Purposes
of Administering Ordinance No. 2382



Rebecca Leavings, City Clerk
City of Vestavia Hills, Alabama

482117

20121031001191560 11/11
Bk: LR201218 Pg: 22580
Jefferson County, Alabama
10/31/2012 09:30:29 AM NOTICE
Fee - \$46.00

Total of Fees and Taxes-\$46.00
HATCHERK

Chase (OH1-8021)
800 Brookside Boulevard
Westerville, OH 43081-2822



November 27, 2012

06491-01NF1A 332-000000000000
Jefferson County Municipal Courts
513 montgomery Hyw
Vestavia Hills, AL 35216



We are not able to act on your notice

Property Address: 3317 Mountain Side Road
Birmingham, AL 35243-0000

Dear Vestavia Hills Code Enforcement Representative:

We recently received a municipal code violation notice from your office regarding the property referenced above. Please see the following information on the notice of violation received.

- 3317 Mountain Side Rd
- October 31, 2012

We are unable to take action at this time on the matter of your notice, but we will forward the information to the borrower(s). We reserve the right to be notified of future violations.

Your prompt attention to this matter is greatly appreciated. If you have any questions, please call us at one of the telephone numbers listed below.

Sincerely,

Chase
888-310-1506
800-582-0542 TDD / Text Telephone
614-776-8688 Fax
Cpc.Violations@Chase.com
www.chase.com

HR502

RESOLUTION NUMBER 4385

A RESOLUTION ORDERING THE DEMOLITION OF A BUILDING OR STRUCTURE LOCATED AT 2733 ROCKY RIDGE ROAD, VESTAVIA HILLS, ALABAMA, PARCEL ID# 28-29-1-1-1-RR-2, IN COMPLIANCE WITH SECTIONS 11-40-30 THROUGH 11-40-36, SECTIONS 11-53B-1 THROUGH 11-53B-16, INCLUSIVE, OF THE *CODE OF ALABAMA*, AND IN COMPLIANCE WITH ORDINANCE NUMBER 2382 OF THE CITY OF VESTAVIA HILLS, ALABAMA; AND CALLING FOR SAID DEMOLITION TO BE PERFORMED BY THE CITY OF VESTAVIA HILLS AND DIRECTING THE CITY ATTORNEY AND THE CITY CLERK TO CAUSE THE COST OF SUCH DEMOLITION TO BE CHARGED AGAINST THE LAND ON WHICH THE BUILDING OR STRUCTURE EXISTS AS A MUNICIPAL LIEN OR CAUSE SUCH COST TO BE RECOVERED IN A SUIT AT LAW AGAINST THE OWNER OR OWNERS

WHEREAS, the appropriate Municipal Officials determined that the condition of the building or structure located at 2733 Rocky Ridge Road, Vestavia Hills, Alabama, Parcel I.D. Number 28-29-1-1-1-RR-2 is in such a condition as to make it dangerous to the life, health, property, morals, safety, or general welfare of the public or the occupants.

WHEREAS, contemporaneously with the filing of “Finding of Public Nuisance, Notice and Order to Remedy and Notice of Lis Pendens” on Donald Paul Stewart; Mortgage Electronic Registration System,s Inc., (A/K/A Mers); Southtrust Mortgage Corp.; Amsouth Bank (N/K/A Regions Bank); Annie Stewart; State Farm Insurance; Jefferson County Sewer Service Office; Birmingham Water Works, a copy of same was sent via certified mail, properly addressed and postage prepaid to:

A. All person or persons, firm, association, or corporation last assessing the subject property for state taxes to the address on file in the Jefferson County Tax Collector’s Office;

B. The record property owner or owners (including any owner or owners of an interest in the subject property) as shown from a search of records of the Office of the Judge of Probate of Jefferson County, Alabama, at the owner or owners’ last known address and at the address of the subject property;

C. All mortgagees of record as shown from a search of the records of the Office of the Judge of Probate of Jefferson County, Alabama, to the address set forth in the mortgage or, if no address for the mortgagee is set forth in the mortgage, to the address determined to be the correct address by the appropriate Municipal Officials;

D. All lien holders of record as shown from a search of the records of the Office of the Judge of Probate of Jefferson County, Alabama to the address set forth in

the statement of lien or, if no address for the lien holder is set forth in the statement of lien, to the address determined to be the correct address by the appropriate Municipal Officials; and

E. Such other persons who are otherwise known to the City Clerk or to the appropriate Municipal Officials who could have an interest in the subject property;

WHEREAS, contemporaneously with the filing of the “Finding of Public Nuisance, Notice and Order to Remedy, and Notice of Lis Pendens”, a copy of the same was posted at or within three feet of an entrance to the building on the subject property and posted in three public places located within the City of Vestavia Hills: 1) Vestavia Hills Municipal Center, 2) Vestavia Hills Library in the Forest, and 3) Vestavia Hills Civic Center.

WHEREAS, notice that the appropriate Municipal Officials have made a finding that the subject property is a dangerous building because it is unsafe to the extent that it is a public nuisance and is subject to demolition and that a public hearing would be held on a certain date was also given to all interested parties and to the public at large by publication in the *Alabama Messenger*.

BE IT RESOLVED by the City Council of the City of Vestavia Hills, Alabama while in regular session on Monday, January 14, 2013 at 5:00 p.m. as follows:

Section 1. A Public Hearing was held on January 14, 2013 at 5:00 p.m. and after due deliberation, the City Council of the City of Vestavia Hills, Alabama finds that the structure standing at 2733 Rocky Ridge Road, Vestavia Hills, Alabama, Parcel ID# 28-29-1-1-1-RR-2 is unsafe to the extent of becoming a public nuisance to the citizens of the City of Vestavia Hills, Alabama and is due to be condemned and demolished in compliance with Sections 11-40-30 through 11-40-36 and Sections 11-53B-1 through 11-53B-16, inclusive, of the *Code of Alabama* (1975), and Ordinance Number 2382 of the City of Vestavia Hills, Alabama;

Section 2. That said demolition is to be performed by the City of Vestavia Hills; and

Section 3. That the City Attorney and the City Clerk are hereby directed to cause the cost of such demolition to be charged against the land on which the building or structure is located and shall constitute a lien on the property for the amount of the assessment or cause such cost to be recovered in a suit at law against the owner or owners.

ADOPTED this the 14th day of January, 2013.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION OF CITY CLERK

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, Rebecca Leavings, City Clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true and correct copy of a Resolution duly and legally adopted by the City Council of the City of Vestavia Hills, Alabama, on the _____ day of _____, 2013 while in regular session on Monday, January 14, 2013, and the same appears of record in the minute book of said date of said City.

Witness my hand and seal of office this _____, 20__.

Rebecca Leavings, City Clerk

1200 PARK PLACE TOWER ■ 2001 PARK PLACE NORTH ■ BIRMINGHAM, ALABAMA 35203
(205) 324-4400 ■ Facsimile: (205) 322-1163

November 20, 2012

VIA HAND DELIVERY

Ms. Rebecca Leavings
City Clerk
City of Vestavia Hills
513 Montgomery Highway
Vestavia Hills AL 35216

RE: Lis Pendens

Dear Becca:

Please find enclosed five copies of the filed-stamped Lis Pendens notice for the demolition of real property located at 2733 Rocky Ridge Road. One copy of this notice is for your file. The other four copies need to be posted in the following locations within three days of today:

1. 2733 Rocky Ridge Road.
2. Vestavia Hills Municipal Center.
3. Vestavia Hills Library in the Forest.
4. Vestavia Hills Civic Center.

Should you have any questions or need any additional information, please let me know.

Very truly yours,



Kelly Thrasher Fox

Enclosures

cc: Mark T. Waggoner, Esq. (via electronic mail)
Benjamin S. Goldman, Esq. (via electronic mail)

IN THE PROBATE COURT OF JEFFERSON COUNTY, ALABAMA

CITY OF VESTAVIA HILLS, ALABAMA)
v.)
ALECK T. GULAS;)
THEODORE A. GULAS;)
SERVIS FIRST BANK;)
IKE GULAS;)
ROCKY RIDGE FIRE DISTRICT;)
JEFFERSON COUNTY SEWER SERVICE)
OFFICE;)
BIRMINGHAM WATER WORKS)
Lots 1 and 2, according to the Survey of Lloyds)
Subdivision, as recorded in Map Book 150, page)
41, in the Office of the Judge of Probate of)
Jefferson County, Alabama)



20121120001259400 1/10
Bk: LR201219 Pg: 10931
Jefferson County, Alabama
I certify this instrument filed on
11/20/2012 11:49:14 AM LN
Judge of Probate- Alan L. King

FINDING OF PUBLIC NUISANCE, NOTICE AND ORDER TO REMEDY,
AND NOTICE OF LIS PENDENS

TAKE NOTICE that:

COMES NOW, the City of Vestavia Hills, Alabama ("the City"), by and through its
Appropriate Municipal Officials, its City Clerk, and its Attorney to provide notice pursuant to
Ordinance No. 2382 of the City that the Appropriate Municipal Officials have made a finding that a
building located within the City is a dangerous building because it is unsafe to the extent that it is a
public nuisance and subject to demolition. The building is located on the following described
property, to wit, which will be described hereafter as "the Subject Property":

STREET ADDRESS:

2733 Rocky Ridge Road, Vestavia Hills, AL 35243

LEGAL DESCRIPTION:

Lots 1 and 2, according to the Survey of Lloyds Subdivision, as
recorded in Map Book 150, page 41, in the Office of the Judge of
Probate of Jefferson County, Alabama

PARCEL IDENTIFICATION NUMBER:

28-29-1-1-1-RR-2

The City provides further notice as follows:

1. In *Ellis v. City of Montgomery*, the United States District Court for the Middle District of Alabama stated that, in cases such as this where a municipality seeks the demolition of building by use of its police powers, “A simple *lis pendens* filing after sending notice to the current owner of a property would place subsequent purchasers on record notice that demolition could occur.” *Ellis v. City of Montgomery*, 460 F.Supp.2d 1301, 1307 (M.D. Ala. 2006). Here, the City is invoking the procedure recommended by the District Court.

2. By the filing of this Notice, the City is not claiming any right, title, or interest in the subject property. Rather, the purpose of this Notice is to put all interested parties on notice of the City’s intent to exercise its authority provided by law and specifically by the City’s ordinances.

3. Ordinance No. 2382 of the City is “An Ordinance to Amend the Official Policies and Procedures of the City of Vestavia Hills, Alabama, Regarding Unsafe Structures and Dangerous Buildings.” The below-signed Appropriate Municipal Officials are the persons designated to exercise the authority and perform the duties delegated by Ordinance No. 2382.

4. The Appropriate Municipal Officials find that the building located on the Subject Property is a “dangerous building” within the meaning of Ordinance No. 2382 because of the following defects:

- (1) Exclusive of the foundation, the building shows thirty-three (33) percent, or more, of damage or deterioration of one (1) or more supporting members, or fifty (50) percent of damage or deterioration of the non-supporting enclosing or outside walls or covering;
- (2) The building has been damaged by fire, wind, earthquake, flood, sinkhole, deterioration, neglect, abandonment, vandalism, or any other cause so as to have become dangerous to life, health, property, morals, safety, or general welfare of the public or the occupants;

- (3) The building has become or is so damaged, dilapidated, decayed, unsafe, unsanitary, lacking in maintenance, vermin or rat infested, containing filth or contamination, lacking proper ventilation, lacking sufficient illumination, or so utterly fails to provide the amenities essential to decent living that it is unfit for human habitation, or is likely to cause sickness or disease, so as to work injury to the life, health, property, morals, safety, or general welfare of the public or the occupants;
- (4) The building has light, air, heating, cooling, and sanitation facilities which are inadequate to protect the life, health, property, morals, safety, or general welfare of the public or the occupants;
- (5) The building does not provide minimum safeguards to protect or warn occupants in the event of fire;
- (6) The building contains unsafe equipment, including any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers, or other equipment on the premises or within the structure which is in such disrepair or condition that such equipment is a hazard to the life, health, property, morals, safety, or general welfare of the public or the occupants;
- (7) The building, or any portion thereof, is clearly unsafe for its use or occupancy;
- (8) The building is neglected, damaged, dilapidated, unsecured, or abandoned so as to become an attractive nuisance to children who might play in or on the building, structure, part of building or structure, party wall, or foundation to their danger, has become a harbor for vagrants, criminals, or immoral persons, or enables persons to resort to the building, structure, part of building or structure, party wall, or foundation for committing a nuisance or an unlawful act; and
- (9) The building is, because of its condition, unsafe, unsanitary, or dangerous to the life, health, property, morals, safety, or general welfare of the public or the occupants.

5. The Appropriate Municipal Officials find that the building on the Subject Property is substantially damaged or decayed, or deteriorated from its original value or structure (not including the value of the land).

6. The Appropriate Municipal Officials find that the building on the Subject Property cannot be reasonably repaired so that it will no longer exist in violation of the terms of Ordinance No. 2382.

7. Notice is hereby given to remedy the unsafe or dangerous condition by demolition of the building on the Subject Property within forty-five (45) days of the date of this Notice to the Appropriate Municipal Officials' satisfaction. In the event the owner does not comply within the time specified herein to the Appropriate Municipal Officials' satisfaction, the demolition shall be accomplished by the City and the cost thereof assessed against the Subject Property and such cost shall constitute a lien against the Subject Property.

8. The Appropriate Municipal Officials find that the building on the Subject Property is in such condition as to make it dangerous to the life, health, property, morals, safety, or general welfare of the public or the occupants. Therefore, the Appropriate Municipal Officials order that the building on the Subject Property be and remain vacated until demolished.

9. A public hearing as provided for by Section 5-146(a) set forth in Ordinance No. 2382 shall be held on the finding of the Appropriate Municipal Officials in the Council Chambers at the Vestavia Hills Municipal Center, 513 Montgomery Highway, Vestavia Hills, AL 35216, on the 14th day of January 2013, at 5:00 p.m. At that time, the City Council shall hold a public hearing to receive any objections to the finding by the Appropriate Municipal Officials that the building or structure is unsafe to the extent of becoming a public nuisance. A written request for a public hearing is not necessary. At the public hearing, the City Council shall also receive any written objections to the finding by the Appropriate Municipal Officials. Any such written objection must be submitted to the City Clerk prior to the start of the City Council meeting at which the public hearing is held. No action

shall be taken on the finding of the Appropriate Municipal Officials until determination thereon is made by the City Council. Upon holding the hearing, the City Council shall determine whether or not the building or structure is unsafe to the extent that it is a public nuisance. If it is determined by the City Council that the building or structure is unsafe to the extent that it is a public nuisance, the City Council shall order demolition of the building at the expense of the City and assess the expenses of the move or demolition on the land on which the building stands or to which it is attached. Any person aggrieved by the decision of the City Council at the hearing may, within ten (10) days thereafter, appeal to the Circuit Court of Jefferson County, Alabama, Birmingham Division, upon filing with the Clerk of the Circuit Court of Jefferson County, Alabama, Birmingham Division, notice of the appeal and bond for security of costs in the form and amount to be approved by the Circuit Clerk. For further particulars, see Ordinance No. 2382.

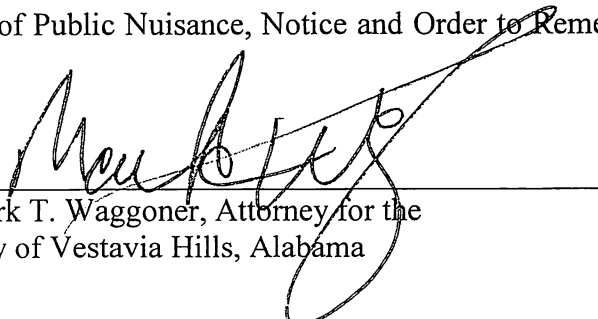
10. A failure by the Vestavia Hills City Council to act on the findings of the Appropriate Municipal Officials within ninety (90) days from the date of this “Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*” shall constitute an abdication of the Appropriate Municipal Officials’ findings. However, this shall in no way prevent the City from reinitiating the proceedings authorized by Ordinance No. 2382 at any time so long as all the requirements of Ordinance No. 2382 are satisfied anew. Furthermore, this does not require that the ordered demolition take place within ninety (90) days from the date of this “Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*.” A failure by the City to accomplish the demolition of the building within one hundred eighty (180) days of the passage of the resolution by the City Council ordering the same shall constitute an abdication of the City Council’s order unless certain conditions further explained in Ordinance No. 2382 are satisfied. For further particulars, see Ordinance No. 2382. Anyone interested in the status of these proceedings should inquire with the Vestavia Hills City Clerk at (205) 978-0184 or at 513 Montgomery Highway, Vestavia Hills, AL 35216.

11. It is unlawful for any person, or for any agent, servant or employee of such person, to obstruct or interfere with the Appropriate Municipal Officials in carrying out the purposes of Ordinance No. 2382.

12. It is unlawful for any person, or for any agent, servant or employee of such person, to mutilate, destroy, tamper with this “Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*.”

13. It is unlawful for any person to enter, access, or be upon the building that the Appropriate Municipal Officials have ordered to be vacated pursuant to this “Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*” except for the purposes of demolishing the same.

14. It is unlawful for any person who has received this “Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*” to sell, transfer, mortgage, lease, encumber, or otherwise dispose of the building that is the subject of the same to another until such person shall first furnish the grantee, transferee, mortgagee, or lessee a true copy of this “Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*” and shall furnish to the Appropriate Municipal Officials a signed and notarized statement from the grantee, transferee, mortgagee, or lessee acknowledging the receipt of this “Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*” and fully accepting the responsibility without condition for making the corrections or repairs required by this “Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*.”



Mark T. Waggoner, Attorney for the
City of Vestavia Hills, Alabama

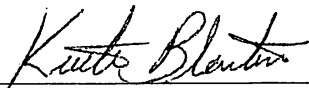
OF COUNSEL:

Hand Arendall LLC
2001 Park Place North, Suite 1200
Birmingham, AL 35203
E-mail: mwaggoner@handarendall.com
Phone: (205) 324-4400 Fax: (205) 322-1163

VERIFICATION OF THE APPROPRIATE MUNICIPAL OFFICIALS

We, the undersigned, Keith Blanton and Greg Gilchrist state as follows: We are the Building Official and Fire Marshal, respectively, for the City of Vestavia Hills, Alabama, and for purposes of administering Ordinance No. 2382, we are the “Appropriate Municipal Officials.” We hereby offer the findings made in this “Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*,” make such orders as are offered herein, and provide such notice as is specified herein.

DONE this the 20th day of November, 2012.



Keith Blanton, Building Official and
Appropriate Municipal Official
City of Vestavia Hills, Alabama



Greg Gilchrist, Fire Marshal and
Appropriate Municipal Official
City of Vestavia Hills, Alabama

This Instrument Prepared By:

Mark T. Waggoner
Hand Arendall LLC
2001 Park Place North, Suite 1200
Birmingham, AL 35203
E-mail: mwaggoner@handarendall.com
Phone: (205) 324-4400
Fax: (205) 322-1163

CERTIFICATE OF SERVICE

Contemporaneously with the filing of this “Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*,” a copy of the same has been sent via certified mail, properly addressed and postage prepaid to all of the following persons on this the 20th day of November, 2012:

A. The person or persons, firm, association, or corporation last assessing the Subject Property for state taxes to the address on file in the Jefferson County Tax Collector’s Office:

Aleck T. Gulas
2043 Country Ridge Circle
Vestavia Hills, AL 35243

B. The record property owner or owners (including any owner or owners of an interest in the Subject Property) as shown from a search of the records of the office of the Judge of Probate of Jefferson County, Alabama, at the owner or owners’ last known address and at the address of the Subject Property:

Theodore A. Gulas
2043 Country Ridge Circle
Vestavia Hills, AL 35243

Theodore A. Gulas
2733 Rocky Ridge Road
Vestavia Hills, AL 35243

C. All mortgagees of record as shown from a search of the records of the office of the Judge of Probate of Jefferson County, Alabama, to the address set forth in the mortgage or, if no address for the mortgagee is set forth in the mortgage, to the address determined to be the correct address by the Appropriate Municipal Official:

Servis First Bank
P.O. Box 1508
Birmingham, AL 35201-1508

D. All lien holders of record as shown from a search of the records of the office of the Judge of Probate of Jefferson County, Alabama to the address set forth in the statement of lien or, if no address for the lien holder is set forth in the statement of lien, to the address determined to be the correct address by the Appropriate Municipal Official:

There are no lien holders of record.

E. Such other persons who are otherwise known to the City Clerk or to the Appropriate Municipal Official who could have an interest in the Subject Property:

Ike Gulas
2031 2nd Avenue North
Birmingham, AL 35203

Rocky Ridge Fire District
2911 Metropolitan Way
Vestavia Hills, AL 35243

Jefferson County Sewer Service Office
Room 800
Jefferson County Courthouse
716 Richard Arrington Jr. Blvd. North
Birmingham, AL 35203
Attention: Alicia

Birmingham Water Works
Room 800
Jefferson County Courthouse
716 Richard Arrington Jr. Blvd. North
Birmingham, AL 35203
Attention: Monike Johnson

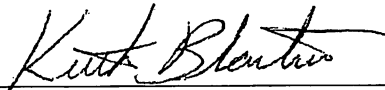
No other person is otherwise known to the City Clerk or to the Appropriate Municipal Official to have an interest in the Subject Property.

Contemporaneously with the filing of this “Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*,” a copy of the same has been posted at or within three feet of an entrance to the building on the Subject Property.

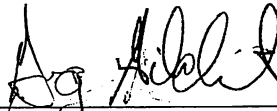
Contemporaneously with the filing of this “Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*,” a copy of the same has been posted in three public places located

within the City: 1.) at Vestavia Hills Municipal Center, 2.) at the Vestavia Hills Library in the Forest, and 3.) at the Vestavia Hills Civic Center.

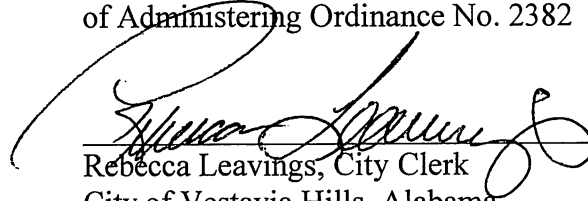
Notice that the Appropriate Municipal Official has made a finding that the Subject Property is a dangerous building because it is unsafe to the extent that it is a public nuisance and is subject to demolition and that a public hearing will be held on the date assigned herein will also be given to all interested parties and to the public at large by publication in the *Alabama Messenger*.



Keith Blanton, City of Vestavia Hills, Alabama Building Official and Appropriate Municipal Official for Purposes of Administering Ordinance No. 2382



Greg Gilchrist, Fire Marshal for City of Vestavia Hills, Alabama and Appropriate Municipal Official for Purposes of Administering Ordinance No. 2382



Rebecca Leavings, City Clerk
City of Vestavia Hills, Alabama

20121120001259400 10/10
Bk: LR201219 Pg: 10931
Jefferson County, Alabama
11/20/2012 11:49:14 AM LN
Fee - \$43.00

Total of Fees and Taxes-\$43.00
LYNN

RESOLUTION NUMBER 4381

**A RESOLUTION PROPOSING THE ANNEXATION
OF CERTAIN TERRITORY TO THE CORPORATE
LIMITS OF THE CITY OF VESTAVIA HILLS,
ALABAMA.**

WHEREAS, there has been a petition filed with the City Clerk of the City of Vestavia Hills, Alabama, and herein presented to the City Council of the City of Vestavia Hills, Alabama, dated November 26, 2012, wherein all owners of certain property contiguous to the City Limits of the City of Vestavia Hills, Alabama, ask that their property be annexed to the City of Vestavia Hills, Alabama; and

WHEREAS, said Petition has been presented to the City Council of the City of Vestavia Hills, Alabama, on the 14th day of January, 2013; and

WHEREAS, it would be to the best interest of the City of Vestavia Hills, Alabama, and to the citizens thereof to consider annexation of said territory and bringing it within the corporate limits of this Municipality; and

WHEREAS, said petitioners must comply with Act #604, 1970 Alabama Legislature regarding Fire Districts (property owners are to be responsible for fire dues if they are within another Fire District at the time of the annexation petition).

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

1. That the said Petition shall be published one (1) time in *The Birmingham News*, a newspaper of general circulation in Vestavia Hills, Jefferson County, Alabama, on the 16th day of January, 2013.

2. That on the 25th day of March, 2013, in the Vestavia Hills Municipal Center, a public hearing will be held to determine the truths of the matter set forth in said petition and to consider any protests or objections filed in writing with the City Clerk prior to such hearing, to determine whether it is in the public interest or not that said property be annexed to the City of Vestavia Hills, Alabama, and to consider adoption of an Ordinance annexing the territory described in said petition to this Municipality.

3. That this Resolution shall become known and referred to as Resolution Number 4381 by the City Council of the City of Vestavia Hills, Alabama, and as annexation of the following described property by the City Council of the City of Vestavia Hills, Alabama:

4918 Cahaba River Road
Shannon-Waltchack, LLC, Owner(s)

More particularly described as follows:

Part of the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 34, Township 18 South, Range 2 West, situated in Jefferson County, Alabama, more particularly described as follows:

Begin at the SE corner of said $\frac{1}{4}$ - $\frac{1}{4}$ section and run then Westerly along the South line thereof for a distance of 240 feet to the point of beginning of the tract here described:

From the point of beginning thus obtained, continue Westerly along the South line of said $\frac{1}{4}$ - $\frac{1}{4}$ section for a distance of 162.60 feet; thence turn an angle of 92 degrees 03' 30" to the right and run Northwardly for a distance of 234.16 feet to a point of intersection with a curve, said curve having a radius of 1,186.48 feet and subtending a central angle of 04 degrees 44' 10" to the tangent of said curve forming an angle of 81 degrees 36' 30" to the right from the last described course when extended Northwardly through the point of intersection of said curve, run thence Eastwardly along said curve an along the Southerly line of the right of way of U.S. Highway 280 for a distance of 98.08 feet; thence turn an angle of 88 degrees 05' 30" to the right angle measured to tangent of said curve and run Southwardly for a distance of 255.33 feet, more or less, to the point of beginning.

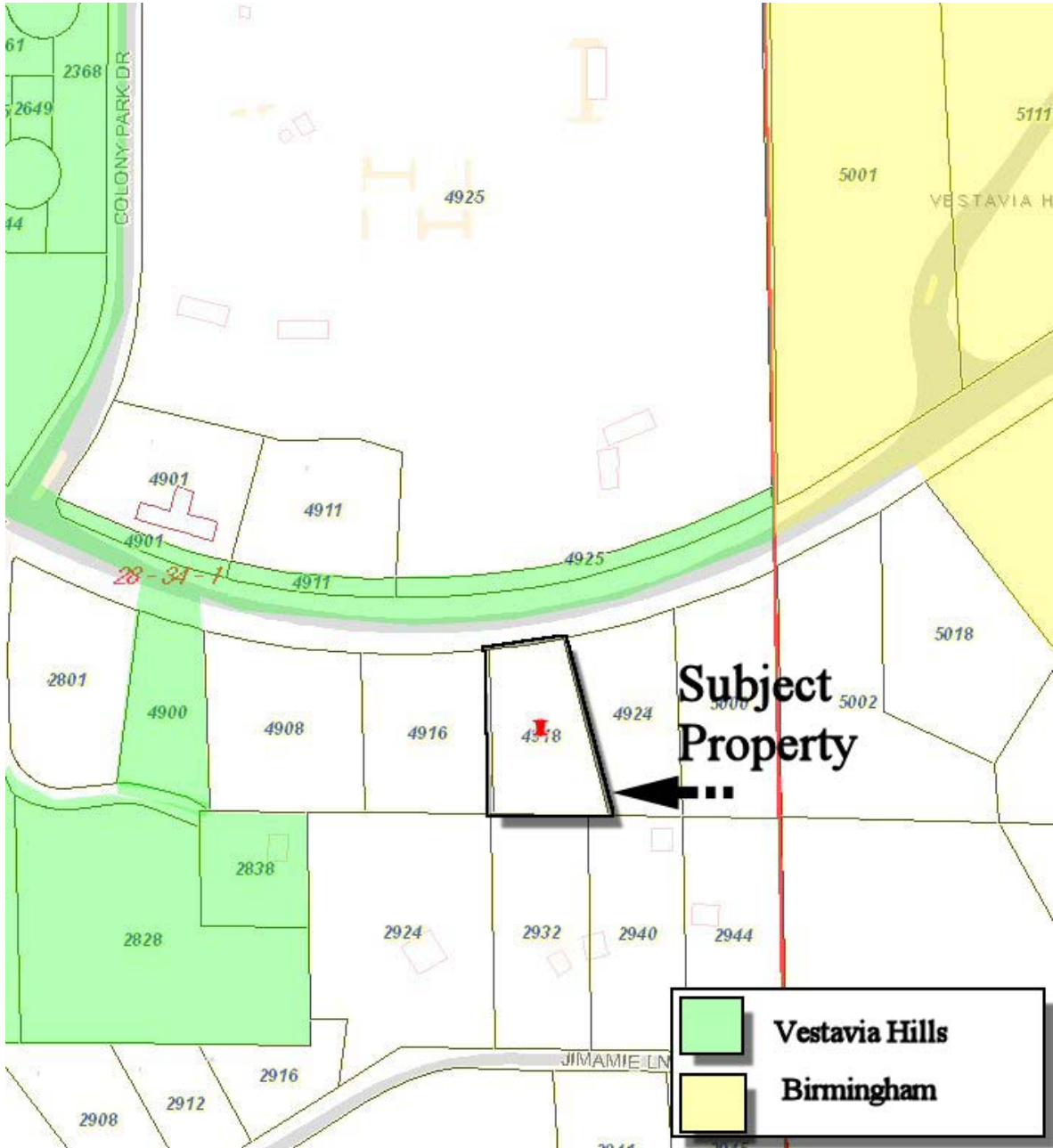
APPROVED and ADOPTED this the 14th day of January, 2013.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

**4918 Cahaba River Road
Shannon-Waltcheck LLC**



Serving the citizens of Jefferson County, Alabama

Tax Assessor - Parcel ID for Legal Information

Inquiries to Tax Assessor recordings

[Return to Electronic Courthouse Search Home](#)

Tax Assessor County Tax Inquiry - Tax Year - 2011-			
Mailing Address			
BISIGNANI TAB & GREER W 2477 VALLEYDALE RD BIRMINGHAM AL / 352442087			
Site Address			
4918 CAHABA RIVER RD 35243 Fire District (ESN): #504 ROCKY RIDGE F.D.			
Legal Discription			
COM SE COR OF NE 1/4 OF NE 1/4 SEC 34 TP 18 R2W TH W 240 FT TO POB TH CON'T W 162.6 FT TH N 234.2 FT TH NE 98.1 FT TH SW			
Miscellaneous Information			
Section:	34	Parcel:	28-34-1-2-3-RR-1
Township:	18S	Map Book:	0
Range:	2W	Map Page:	0
Tax Year:	2011		
Land Value:	\$111000.00	Tax District:	001
Improvements Value:	\$6300.00	Sub District:	0
Total Value:	\$117300.00	Deed Book:	200109
		Deed Page: 9455	Deed Date: 20010726
Land Use Information			
Land Use One:	RESIDENCE-SINGLE FAMILY		
Land Use Two:	UNAVAILABLE		
Class One:	2		
Class Two:			

Disclaimer: All values are subject to change. If you feel that there is a technical error on the site, please [contact us](#). For general information, please call the office of interest:

The Board of Equalization	(205) 325-5566
Tax Assessor's Office	(205) 325-5505
Tax Collector's Office	(205) 325-5500

EXHIBIT "D"

**ANNEXATION RECOMMENDATION
FROM
VESTAVIA HILLS ANNEXATION COMMITTEE**
(To Be completed by the Annexation Committee)

Date: 9/26/12

Petitioner: Len Shanna for Shanna Waltehnock, LLC

Property Address/Location: 4918 Calumet River Rd
Blair AC 35243

The Annexation Committee of the City of Vestavia Hills recommends the APPROVAL of the above request for annexation for the following reason(s):

Approval

- Contiguous to the city limits
- Fills in gap in city limits
- Compatible land use with existing land use in area
- Will provide acceptable development opportunity
- Expands commercial tax base
- Will provide additional jobs
- Streets and drainage system are in substantial compliance
- No hazardous debris or materials noted
- Other _____

Comment: _____

Disapproval

- _____ Not contiguous
- _____ Incompatible land use with existing land use in area
- _____ Commercial use potentially harmful
- _____ Other _____

Comment: _____



Chairman GEORGE PIERCE
12-12-12

EXHIBIT "C"

CITY OF VESTAVIA HILLS
Department Review of Proposed Annexation
(To Be completed by City Staff)

The following properties have requested to be annexed into the City. Please review this request and then forward it to the next department on the list as soon as is reasonably possible. Please forward completed form to the City Clerk's office not later than 5:00 PM on Thursday,

Location: 4918 Cahaba River Rd

Engineering: Date: 11/29/12 Initials: CB

Comments: no problems noted

Police Department: Date: 11-29-12 Initials: [Signature]

Comments: N/P

Fire Department: Date: 12/10/12 Initials: [Signature]

Comments: _____

Public Works: Date: 11/29/12 Initials: CB

Comments: no problems noted

STATE OF ALABAMA

Jefferson COUNTY

PETITION FOR ANNEXATION TO THE
CITY OF VESTAVIA HILLS, ALABAMA

Date of Petition: 11/26/12

To the Honorable Mayor and City Council of the City of Vestavia Hills, Alabama:

We, the undersigned owners of the properties set out in red outline in Exhibit "A" attached hereto, which properties are contiguous to the City limits of the City of Vestavia Hills, Alabama, under the authority of Act No. 32 of the Special Session of the Alabama Legislature of 1964, do hereby petition the City of Vestavia Hills, Alabama, that the properties set out in red outline in Exhibit "A" attached, situated in _____ County, Alabama, be annexed to the City of Vestavia Hills, Alabama. The metes and bounds description of the boundary of the property of the undersigned proposed to be annexed is also set out on said Exhibit "A" and a map showing in red the property proposed for annexation by this petition is also attached and made a part hereof.

The undersigned petitioners do further petition that the Honorable Mayor and City Council of the City of Vestavia Hills, Alabama, set a date for the hearing of this petition and any objections in writing to the petition or protest, on a date certain and that no less than ninety (90) days before said date certain for said hearing on this petition, that a notice of said hearing along with this petition be published in a newspaper of general circulation in Jefferson County, Alabama.

We, the undersigned petitioners do also ask that the Honorable Mayor and City Council of the City of Vestavia Hills, Alabama, do all things necessary and requisite to comply with the terms of Act No. 32 of the Special Session of the Alabama Legislature of 1964.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals, or caused these presents to be executed by their duly authorized representatives, with full authority.

SIGNATURE(S)

DESCRIPTION OF PROPERTY

<u>Lea</u>	Lot	Block	Survey
_____	_____	_____	_____
_____	Lot	Block	Survey
_____	_____	_____	_____
_____	Lot	Block	Survey
_____	_____	_____	_____

(Use reverse side hereof for additional signatures and property descriptions, if needed).

STATE OF ALABAMA

Jefferson COUNTY

Ler Shannon being duly sworn says: I am one of the persons who signed the above petition, and I certify that said petition contains the signatures of all the owners of the described property.

Lea
Signature of Certifier

Subscribed and sworn before me this the 24 day of September, 2012.

Wendy J. Apple
Notary Public

My commission expires: 10-15-12

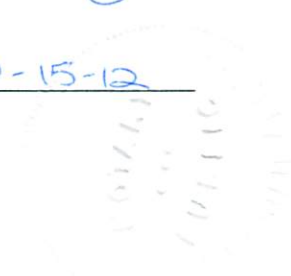


EXHIBIT "A"

LOT: _____

BLOCK: _____

SURVEY: _____

RECORDED IN MAP BOOK _____, PAGE _____ IN THE
PROBATE OFFICE OF _____ COUNTY, ALABAMA.

COUNTY ZONING: C-P

COMPATIBLE CITY ZONING: _____

LEGAL DESCRIPTION (METES AND BOUNDS):

A Heched

EXHIBIT "B"

VESTAVIA HILLS BOARD OF EDUCATION

1204 Montgomery Highway
Vestavia Hills AL 35216

(To be completed by the City)

Date of Annexation Petition _____ Action Taken: Grant _____
Deny _____
Resolution: Date: _____ Number: _____
Overnight Ordinance: Date: _____ Number: _____
90 Day Final Ordinance: Date: _____ Number: _____

(To be completed by Homeowner)

Name(s) of Homeowner(s): Shannon -Waldbeck, LLC -raw land
Address: 4918 Cahaba River Rd
City: B'ham State: AL Zip: 35243

Information on Children:

**Plan to Enroll In
Vestavia Hills School?**

	Name(s)	Age	School Grade	Yes	No
1.	<u>MA</u>				
2.					
3.					
4.					
5.					
6.					

Approximate date for enrolling students in Vestavia Hills City Schools if above response is "yes": _____

Exhibit "E"
(to be completed by the clerk's office)

Assessed value of home by _____ County Tax Assessor:

Anticipated date of annexation: _____

Number of months before placed on tax roll: _____

Estimated annexation contribution: \$ _____

City portion (20.55 mils) \$ _____

School Portion (28.75 mils)* \$ _____

**(residential properties only)*



Proposed Annexation and Re-Zoning

For the Property Located At
4918 Cahaba River Rd.
Birmingham, AL 35243

Proposed By:

Len Shannon III
Shannon Waltchack, LLC
120 18th Street South
Birmingham, AL 35233
www.shanwalt.com



Table of Contents

- Overview of Request
- Vicinity Map
- Site Plan
- Survey
- Aerial Photographs
- Proposed Building Design
- Utility Letters

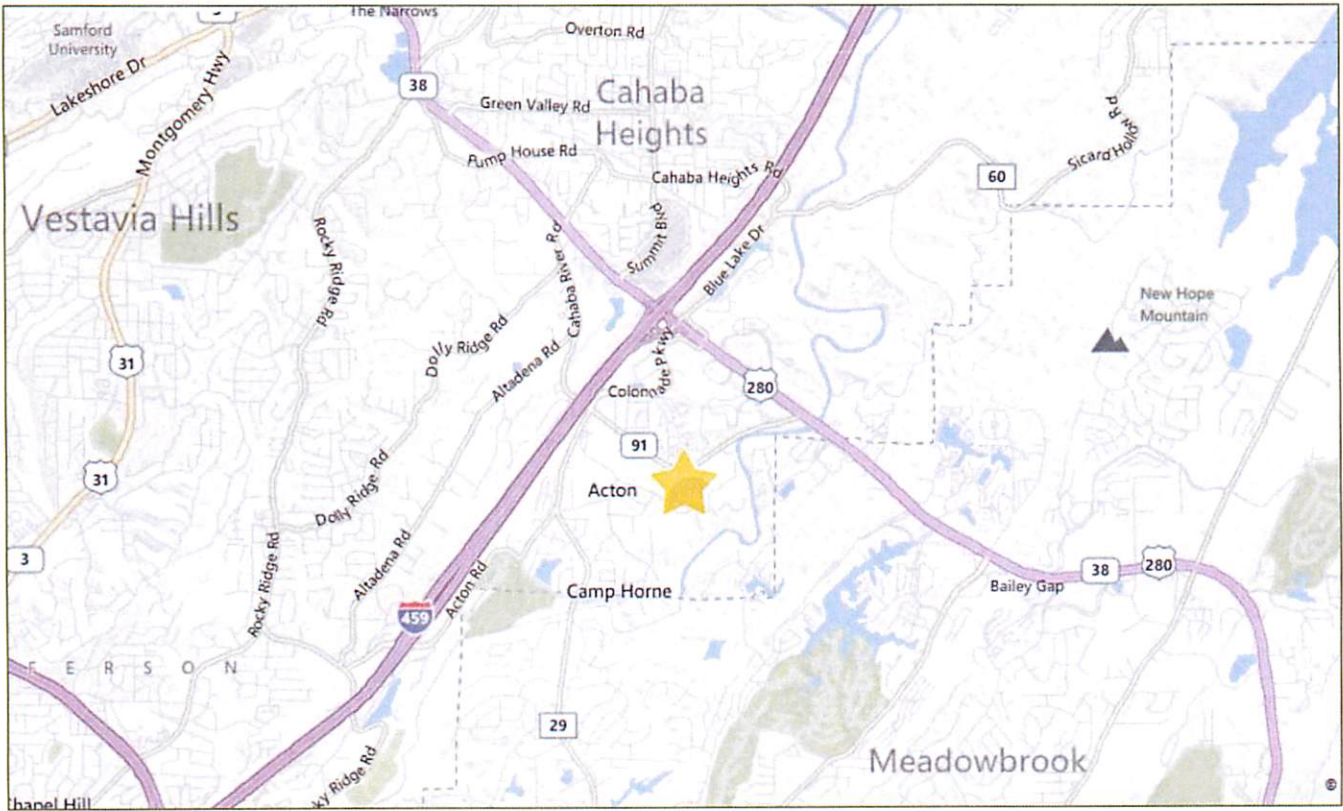


Overview of Request

- Owner:** Shannon Waltchack, LLC currently owns the property, but the development will be owned 50% by Shannon Waltchack and 50% by the future tenant, Centurion Labs.
- Property:** Property is located on Cahaba River Rd., just east of Patchwork Farms.
- Proposal:** To construct a commercial building, being approximately 7,200 square feet for office and storage.
- Architecture:** There is a diverse array of architectural themes along Cahaba River Road. We plan to construct a commercial building, but one that has residential elements to blend with the architectural themes in the immediate block.
- Parking:** Our tenant will only have four employees (offices) and the rest of the building will be temperature controlled storage for medical products since they sell to wholesalers. No customers will be coming to the office.
- Lighting:** Minimal exterior lighting is proposed.
- Dumpster:** Future Tenant will not need a dumpster.
- Tenant:** Centurion Labs is owned by Trey Duel who lives in Vestavia on Caldwell Mill Rd. Centurion Labs sells prescription products and supplements to drug wholesalers.



VICINITY MAP



SHANNON · WALTCHACK

120 18th Street South, Suite 101 / Birmingham, AL 35233 o: 205.977.9797 f: 205.977.9793 w: shanwalt.com



REF. SHEET:
DESCRIPTION: CONCEPTUAL LAYOUT PLAN

► CAHABA RIVER ROAD PROPOERTY
BIRMINGHAM, AL

Co.1

CONCEPTUAL DRAWING
GMC #
DATE: 03.15.2012
DRAWN BY: ---

2701 1st Ave South, Suite 100 | Birmingham, AL 35233
Tel 205.879.4462 | GMCNETWORK.COM

LEGEND

- ASP ASPHALT
- BLDG BUILDING
- CALC CALCULATED
- MEASD MEASURED
- CH CHORD
- LONG LONG CHORD
- DELTA DEFLECTION
- ESMT EASEMENT
- HW HEADWALL
- MN MINIMUM
- MH MANHOLE
- OH OVERHANG
- POR PORCH
- R RADIUS
- R.O.W. RIGHT OF WAY
- SAN SANITARY
- STM STORM
- UTL UTILITY
- AC ACRES
- S.F. SQUARE FEET
- C CENTERLINE
- A/C AIR CONDITIONER
- POLE POLE
- ANCHOR ANCHOR
- FENCE FENCE
- OVERHEAD UTILITY WIRE OVERHEAD UTILITY WIRE
- PAVT PAVEMENT
- WITH WITH
- TAN TANGENT
- RES RESIDENCE
- OLGT LIGHT
- COV COVERED
- DECK DECK
- CONCRETE CONCRETE
- WALL WALL
- COLUMN COLUMN

SCALE: 1"=40'
State of Alabama
Jefferson County)

"Closing Survey"

I, Laurence D. Weygand, a registered Engineer-Land Surveyor, or Ray Weygand, a registered Land Surveyor, certify to the purchaser of this property at this time, that I have surveyed the land shown and described hereon; that there are no rights-of-way, easements, or joint driveways over or across said land visible on the surface except as shown; that there are no electric or telephone wires (excluding wires which serve premises only) or structures or supports therefor, including poles, anchors and guy wires, on or over said premises except as shown; that I have consulted the Federal Insurance Administration Flood Hazard Boundary Map and found that this property is not located in a special flood hazard area; that there are no encroachments on said lot except as shown and that improvements are located as shown. I hereby state that all parts of this survey and drawing have been completed in accordance with the current requirements of the Standards of Practice for Surveying in the State of Alabama to the best of my knowledge, information and belief. Note: (a) No title search of the public records has been performed by this firm and land shown hereon was not abstracted for easements and/or rights-of-way, recorded or unrecorded. The parcel shown hereon is subject to setbacks, easements, zoning, and restrictions that may be found in the public records of said county and/or city. (b) All bearings and/or angles, and distances are deed/record map and actual unless otherwise noted. (c) Underground portions of foundations, footings, or other underground structures, utilities, cemeteries or burial grounds, were not located unless otherwise noted. We do not look for underground sewers or flip manhole covers. (d) The shown north arrow is based on an assumed bearing from a well defined line. (e) This survey is not transferable and is only good for 6 years and only good to the person/co. that pays for it at time of survey. (f) Easements not shown on record map are not shown above.

Legal Description:

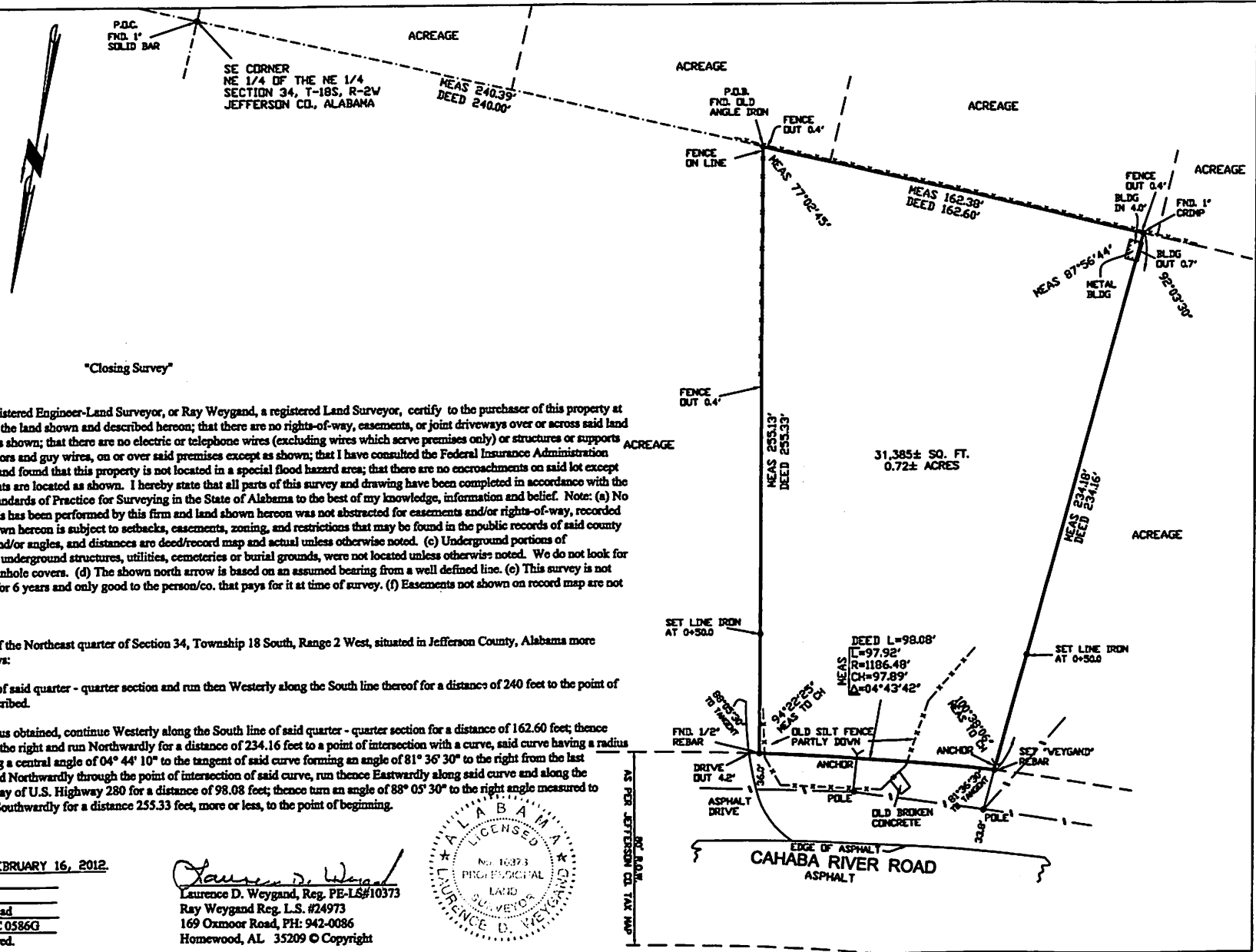
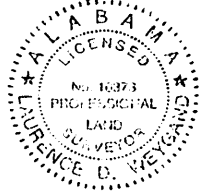
Part of the Northeast quarter of the Northeast quarter of Section 34, Township 18 South, Range 2 West, situated in Jefferson County, Alabama more particularly described as follows:

Begin at the Southeast corner of said quarter - quarter section and run then Westerly along the South line thereof for a distance of 240 feet to the point of beginning of the tract here described.

From the point of beginning thus obtained, continue Westerly along the South line of said quarter - quarter section for a distance of 162.60 feet; thence turn an angle of 92° 03' 30" to the right and run Northwardly for a distance of 234.16 feet to a point of intersection with a curve, said curve having a radius of 1,186.48 feet and subtending a central angle of 04° 44' 10" to the tangent of said curve forming an angle of 81° 36' 30" to the right from the last described course when extended Northwardly through the point of intersection of said curve, run thence Eastwardly along said curve and along the Southerly line of the right of way of U.S. Highway 280 for a distance of 98.08 feet; thence turn an angle of 88° 05' 30" to the right angle measured to tangent of said curve and run Southwardly for a distance 255.33 feet, more or less, to the point of beginning.

According to my survey of: FEBRUARY 16, 2012
Order No.: 41342
Purchaser: _____
Address: Cahaba River Road
Flood Zone: "X" Map# 01073C 0586G
Survey invalid if not sealed in red.

Laurence D. Weygand
Laurence D. Weygand, Reg. PE-LS#10373
Ray Weygand Reg. L.S. #24973
169 Oxmoor Road, PH: 942-0086
Homewood, AL 35209 © Copyright



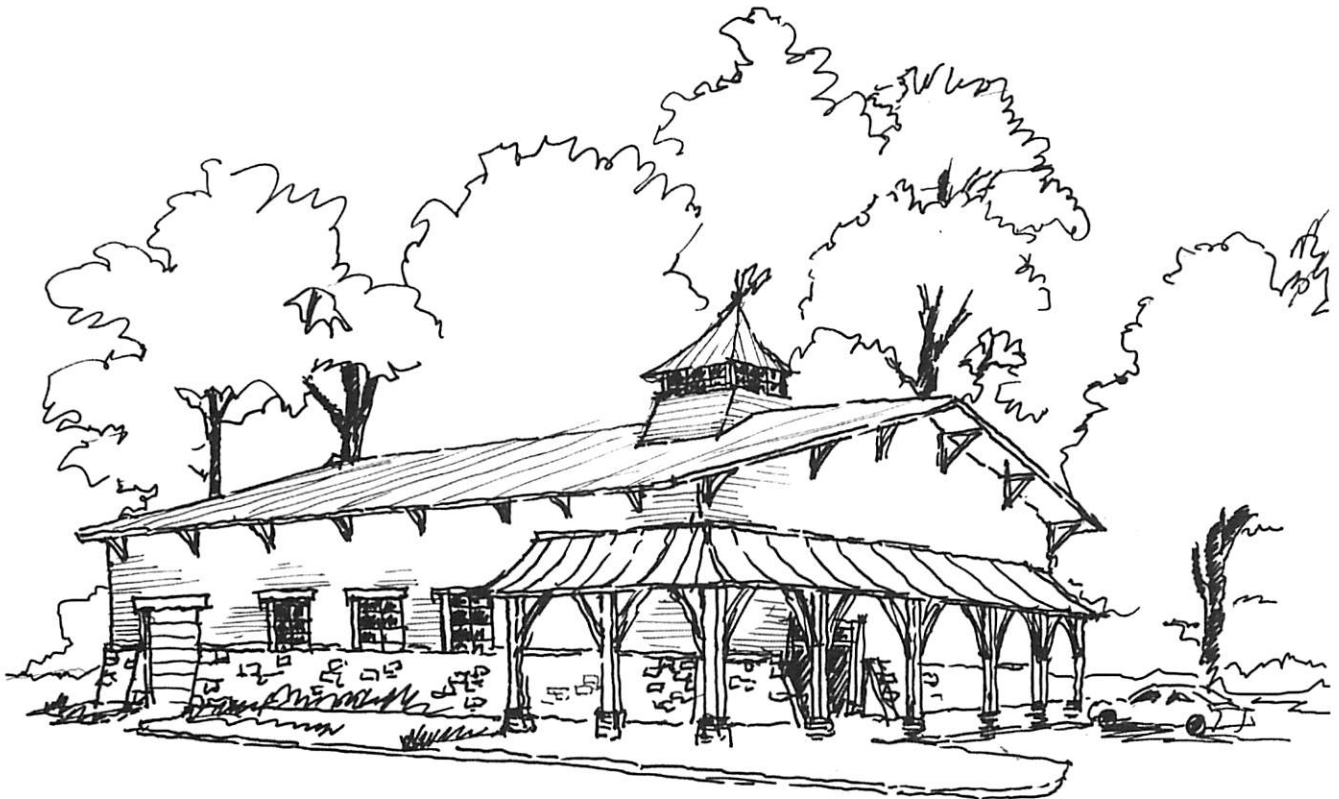
AERIAL 1



AERIAL 2



PROPOSED BUILDING DESIGN



CAHABA RIVER ROAD

CONCEPTUAL SKETCH | MAY 14, 2012

 CHRISTOPHER
ARCHITECTS



SHANNON · WALTCHACK

120 18th Street South, Suite 101 / Birmingham, AL 35233 o: 205.977.9797 f: 205.977.9793 w: shanwalt.com



March 13, 2012

Re: 4918 Cahaba River Road

Dear Ms. Ali Wilburn
Shannon Waltchack

Thank you for your request regarding gas availability to serve your proposed project located at 4918 Cahaba River Rd, Birmingham, Alabama 35243.

Alagasco has existing natural gas facilities in the area mentioned above and service can be extended to serve your project. Any extension of gas service would be governed by our Rules and Regulations as approved by the Alabama Public Service Commission. In some cases, these rules dictate that the customer is responsible for some of the costs incurred in extending our facilities to serve the customer.

We would appreciate the opportunity to supply your gas requirements. For future service availability inquiries please call 1(800) 292-4010 so that Market Solutions may discuss your project plans, answer any questions that you may have and make a determination as to whether any costs apply.

Please let us know if we may be of further assistance.

Sincerely,

ALABAMA GAS CORPORATION

A handwritten signature in black ink, appearing to read 'Mandy Schwarting', with a long horizontal flourish extending to the right.

Mandy Schwarting
Manager
New Growth Planning



THE BIRMINGHAM
WATER WORKS BOARD

March 22, 2012

#618

Shannon Waltchack, LLC
ATTENTION: Ali Wilburn
Suite 101
120 18th Street, South
Birmingham, AL, 35233

Dear Mr. Wilburn:

You may present this letter to interested parties as evidence that The Water Works and Sewer Board of the City of Birmingham has an existing 8" water main along Cahaba River Road which is available for service to properties with direct frontage on said roadway situated in the NE ¼ of the NE ¼ of Section 34, Township 18 South, Range 2 West, located in unincorporated Jefferson County, Alabama.

Water mains are owned, operated and maintained by the Water Board as a part of our normal distribution system. Minimum one-inch (1") service connections to the water mains may be authorized in accordance with our Rules and Regulations, upon proper application to our System Development Department.

In the event existing water mains will not accommodate the fire and domestic flow requirements as stipulated by the governing fire department, the property owner will be required to upgrade the Water Board's existing water lines at the property owner's expense in order for the Board to approve extension of service to proposed developments.

Our distribution system is designed and constructed to meet the requirements of the Alabama Department of Environmental Management, Water Division – Water Supply Program. Properties will be supplied from water mains with a pressure gradient of 817' above mean sea level.

If you have questions or need further information, please contact Mr. Derrick Maye, Senior Project Coordinator at 244-4259; or you may reach him via email at derrick.maye@bwwb.org.

Very truly yours,

Stacy Johnson
Superintendent – System Development

DM/ap

DP: 479-2

G:\Engineering & Maintenance Division\System Development\AP2012 DOCUMENTS\WA LETTERS\MAYE\Shannon Waltchack WA ltr re 4918 Cahaba River Road 3 22 12.doc



GOODWYN | MILLS | CAWOOD

March 15, 2012

Len Shannon
Shannon Waltchack
120 18th Street South, Suite 101
Birmingham, Alabama 35233

RE: 4918 Cahaba River Road | Sewer Availability

via: e-mail & USPS

Dear Mr. Shannon:

As you are aware there is no public sanitary sewer available adjacent to the property at 4918 Cahaba River Road. However, the site has been evaluated for its suitability for onsite treatment. During this evaluation it was found that a raised mound septic system would be an acceptable form of onsite sanitary sewer treatment for this particular site. Please let me know if you have any questions or comments.

Sincerely:
GOODWYN, MILLS AND CAWOOD, INC.

J. Coleman Williams, P.E.
Project Manager

GOODWYN, MILLS AND CAWOOD, INC.

2701 1st Avenue South, Suite 100

Birmingham, AL 35233

Tel 205.879.4462 Fax 205.879.4493

GMCNETWORK.COM

ARCHITECTURE ENGINEERING ENVIRONMENTAL GEOTECHNICAL INTERIOR DESIGN LANDSCAPE PLANNING SURVEYING TRANSPORTATION

ORDINANCE NUMBER 2426

AN ORDINANCE AUTHORIZING AND DIRECTING THE SALE OF REAL ESTATE SITUATED AT 1112 MONTGOMERY HIGHWAY IN THE CITY OF VESTAVIA HILLS, ALABAMA, COMMONLY REFERRED TO AS THE OLD LIBRARY PROPERTY AND MORE PARTICULARLY DESCRIBED IN EXHIBIT A AND THE EXECUTION AND DELIVERY OF A REAL ESTATE PURCHASE AND SALE AGREEMENT.

THIS ORDINANCE NUMBER 2426 is approved and adopted by the City Council of the City of Vestavia Hills, Alabama on this the 14th day of January, 2013.

WITNESSETH THESE RECITALS:

WHEREAS, Title 11-40-1, *Code of Alabama, 1975*, declares municipalities corporate and gives them the power to contract and be contracted with; and

WHEREAS, Title 11-43-56, *Code of Alabama, 1975*, provides that the City Council shall have the management and control of the finances and all of the property, real and personal, belonging to the City; and

WHEREAS, Title 11-47-20, *Code of Alabama, 1975*, provides that the City Council may, by ordinance to be entered on its minutes, direct the disposal of any real property not needed for public or municipal purposes and direct the mayor to make title thereto, and a conveyance made by the mayor in accordance with such ordinance invests the grantee with the title of the municipality; and

WHEREAS, Title 11-43A-28, *Code of Alabama, 1975*, provides that the City Manager shall be the head of the administrative branch of the government of the City of Vestavia Hills and shall be responsible to the City Council for the proper administration of all municipal affairs; and

WHEREAS, Title 11-43A-48, *Code of Alabama, 1975*, provides that all contracts for the City of Vestavia Hills shall be made and approved by ordinance and signed in the name of the City of Vestavia Hills by the Mayor and countersigned by the City Manager; and

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

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

“§36-25A-7. Executive sessions.

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

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

WHEREAS, the City of Vestavia Hills, Alabama is the owner of a parcel of land situated at 1112 Montgomery Highway in the City of Vestavia Hills, Jefferson County, Alabama constituting of approximately 1.66± acres, sometimes referred to as the “old Library property,” which said property is more particularly described in Exhibit A and shall hereinafter be referred to as “the Property;” and

WHEREAS, the Property has an appraised value of \$1,500,000.00 as of June 23, 2009; and

WHEREAS, the City Council hereby acknowledges receipt of an offer of HES Investments, LLC to purchase the property represented by a written real estate Purchase and Sale Agreement for a total sales price in the amount of \$750,000.00; and

WHEREAS, a copy of the real estate Purchase and Sale Agreement (hereinafter referred to as “Agreement”) is attached hereto, marked as Exhibit B and incorporated into this Ordinance Number 2426 by reference as though set out fully herein; and

WHEREAS, the City Council of the City of Vestavia Hills, Alabama (“City Council”) approved and adopted Resolution Number 4371 on November 15, 2012 all in accordance with Article IV, §94.01 of the *Constitution of Alabama, 1901* (hereinafter

referred to as “Amendment Number 772”), which provides, among other things, as follows:

“2. A public hearing will be held by the Vestavia Hills City Council on Monday, January 14, 2013, at the Vestavia Hills Municipal Center located at 513 Montgomery Highway in the City of Vestavia Hills, Alabama beginning at 5:00 p.m. as required by Article IV, §94.01 of the *Constitution of Alabama 1901*.

6. The City Clerk is hereby directed to take any and all steps necessary to publish notice of the public hearing on January 14, 2013, at 5:00 p.m. in *The Birmingham News* at least seven (7) days prior to the public meeting as aforesaid. The notice shall include all matters as required in Article IV, §94.01 of the *Constitution of Alabama 1901*.

WHEREAS, the sale and closing of the Property will be considered at a public hearing to be held on Monday, January 14, 2013, at the Vestavia Hills Municipal Center located at 513 Montgomery Highway in the City of Vestavia Hills, Alabama beginning at 5:00 p.m.,” and

WHEREAS, the notice required by Amendment Number 772 was published in the December 19, 2012 edition of *The Birmingham News*; and

WHEREAS, Title 11-45-8(b), *Code of Alabama, 1975*, provides that if an ordinance is published by posting, then in such event said ordinance shall take effect five days thereafter; and

WHEREAS, the City has found and determined by the approval and adoption of this Ordinance Number 2426 that the execution and delivery of the Agreement will promote economic development and the public interests and general welfare of the City of Vestavia Hills, Alabama.

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

1. The City Council of the City of Vestavia Hills, Alabama finds and determines that the property more particularly described in Exhibit A is not needed for municipal or public purposes.

2. The City Council, by the approval and adoption of Ordinance Number 2426, finds and determines that if a recognized company (“Company”), approved by the City in its sole discretion, shall have first agreed in writing with the City to open and operate a commercial retail sales business on the Property that will generate annual

municipal sales tax revenues in an amount sufficient to satisfy the City, in its sole discretion, that selling the Property for \$750,000.00:

- (a) meets the requirements of Amendment Number 772; and
- (b) promotes economic development; and
- (c) promotes the public interest and general welfare;

then in such events, the City will close the sale all in accordance with the terms, provisions and conditions of the Purchase and Sale Agreement designated as Exhibit B and attached hereto.

3. A copy of the real estate Purchase and Sale Agreement (hereinafter referred to as the “Agreement”) is attached hereto, marked as Exhibit B and incorporated into this Ordinance Number 2426 by reference as though set out fully herein.

4. The Mayor and the City Manager are hereby authorized and directed to execute and deliver the real estate Purchase and Sale Agreement for and on behalf of the City of Vestavia Hills, Alabama.

5. Anything contained in this Ordinance Number 2426 to the contrary notwithstanding, the sale of the Property pursuant to the real estate Purchase and Sale Agreement shall not be closed unless and until the terms, provisions and conditions of the Agreement have been satisfied, performed, completed and done, including specifically, but not limited to:

(a) The closing of the sale must be approved and validated by a judgment rendered by a Jefferson County Circuit Court Judge after a hearing on the merits; and

(b) A recognized company (“Company”) shall have first agreed in writing with the City to open and operate a commercial retail sales business on the Property that will generate annual municipal sales tax revenue in an amount sufficient to satisfy the City, in its sole discretion, that selling the subject property for \$750,000.00 meets the requirements of Article IV §94.01, *Constitution of Alabama of 1901*. If the City approves the Company, then in such event the approval shall be done by the enactment of a resolution at a public meeting. If the City disapproves the Company, then in such event the City shall not close the sale of the Property and the Contract shall automatically terminate, be null and void and have no legal force and effect.

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

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

DONE, ORDERED, APPROVED and ADOPTED this the 14th day of January, 2013.

CITY OF VESTAVIA HILLS, ALABAMA

By _____
Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance #2426 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 14th day of January, 2013 as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills New Merkle House, Vestavia Hills Civic Center and Vestavia Hills Library in the Forest this the 15th day of January, 2013.

Rebecca Leavings
City Clerk

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is entered into on or as of this _____ day of _____, 2012 by and between **The City of Vestavia Hills, Alabama** (the "Seller"), and **HES Investments, LLC**, an Alabama limited liability company or its assigns (the "Purchaser").

Recitals

A. Seller is the owner of that certain parcel of improved real property, being known as the old Vestavia Hills library property comprised of 1.66 acres and an approximate 22,000 square foot, three story building, located at 1112 Montgomery Highway in Vestavia Hills, Alabama, as depicted on the attached Exhibit A and made a part hereof (the "Property").

B. Purchaser desires to purchase the Property, and Seller desires to sell the Property, pursuant to the terms and conditions of this Agreement.

Agreement

NOW, THEREFORE, in consideration of the above Recitals and other good and valuable consideration, including the mutual covenants and promises herein contained, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby agree as follows:

1. Purchase Price; Closing Date. The purchase price for the Property shall be \$750,000.00 (the "Purchase Price"), to be paid as hereinafter provided. The closing of the sale and purchase of the Property (the "Closing") shall occur on the Closing Date, as defined in paragraph 5.

2. Earnest Money; Inspection Period. No later than three (3) business days after the Effective Date (defined in Section 24 hereof), Purchaser shall pay to Seller immediately available funds in the amount of \$10,000.00 (the "Earnest Money"), to be held and disbursed by the Seller in accordance with the terms of this Agreement. Commencing on the Effective Date, Purchaser shall have **120** days (the "Inspection Period") to perform such inspections as Purchaser deems necessary to evaluate the Property, at Purchaser's sole expense. Purchaser shall indemnify and hold Seller harmless from any and all claims, damages and losses, including attorney fees, arising from such inspections. If Purchaser deems any inspection unsatisfactory, for any reason or no reason, Purchaser shall have the right to terminate this Agreement prior to the end of the Inspection Period, by written notice to Seller received prior to the end of the Inspection Period, and receive a full refund of the Earnest Money. If Purchaser does not terminate this Agreement prior to the end of the Inspection Period, all inspections shall be deemed satisfactory, and the parties shall proceed to Closing.

3. Application of Earnest Money. Unless this Agreement is terminated prior to the end of the Inspection Period, the Earnest Money shall become non-refundable and shall be applied to the Purchase Price to be paid by Purchaser at Closing.

4. Possession. Seller shall deliver possession of the Property to Purchaser on the Closing Date.

5. Place and Date of Closing. The Closing shall be on or before the date which is 30 days following the end of the Inspection Period provided the sale has been validated by the Circuit Court of Jefferson County, Alabama. The actual date of Closing is referred to herein as the "Closing Date." Time shall be of the essence with respect to the Closing Date.

6. Conveyance. Seller shall convey to Purchaser good and marketable fee simple title to the Property by general warranty deed.

7. Costs and Fees. Purchaser shall pay all other costs and fees related to closing including any updated survey, appraisal, environmental audits, title, mortgage tax, recording fees, etc. Seller and Purchaser shall pay the fees of their own attorneys for services related to the preparation and negotiation of this Agreement and the sale and purchase of the Property. All taxes will be prorated as of the day of closing.

Seller agrees to provide its most recent survey of the Property to Seller, together with other readily accessible reports, easements and other agreements relating to the Property now in Seller's possession, all within five (5) business days from the Effective Date.

8. Intentionally Deleted

9. Representations and Warranties of Seller. To induce Purchaser to enter into this Agreement, Seller makes the following representations and warranties, all of which are true as of the date hereof (unless otherwise specified) and shall also be true as of the Closing Date:

(a) Seller has full power and authority to enter into this Agreement and to perform all of its obligations hereunder.

(b) The execution and delivery of this Agreement and the performance by Seller of its obligations hereunder have been duly authorized by all requisite action, except for validation of the sale by a court order rendered by a Judge in the Tenth Judicial Circuit of Alabama after conducting a hearing for that purpose and the approval by the City of the Company (as defined in Section 25, Closing Condition Four) submitted by Purchaser.

(c) That unless excepted herein, Seller has not received notification from any lawful authority regarding any assessments, pending public improvements, repairs, replacement, or alterations to the Property that have not been satisfactorily made. Seller warrants that there is no unpaid indebtedness on the Property except as described in this Agreement. Seller warrants it is the fee owner of the Property or is authorized to execute this document for the fee owner.

(d) Seller has no actual knowledge that the Property has in the past been used or is presently used for the handling, storage, manufacturing, refining, transportation or disposal of "toxic material", "hazardous substances" or "hazardous waste". The terms "hazardous wastes", "hazardous substances", and "toxic material" include, without limitation, any flammable explosives, radioactive materials, hazard materials, hazardous wastes, hazardous or toxic substances or related materials defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USC §960, et seq.), the Hazardous Materials Transportation Act, as amended (42 USC §1801 et seq), the Resource Conservation and Recovery Act, as amended (42 USC §9601 et seq.), the regulations

adopted and publications promulgated pursuant to the foregoing and any other federal, state or local environmental law, ordinance, rule or regulation. Furthermore, Seller has not received a summons, citation, directive, letter or other communication, written or oral, from any governmental authority as to any of the above environmental concerns.

(e) Seller shall neither market the Property for sale nor enter into a “back-up” contract with any other party for said Property throughout the term of this Agreement.

At Closing, Seller shall be deemed to have represented and warranted to Purchaser that Seller’s representations and warranties as stated herein are true and correct as of the Closing. Purchaser shall have the right, at its expense, to have a Phase 1 ESA performed on the Property.

THESE WARRANTIES SHALL SURVIVE THE DELIVERY OF THE DEED.

10. Documents for Closing.

(a) Seller, at Seller’s sole cost and expense, shall deliver or cause to be delivered to Purchaser the following documents (the “Closing Documents”):

(i) the Deed;

(ii) a certificate of non-foreign status to insure Seller’s compliance with Foreign Investment in Real Property Tax Act (“FIRPTA”) (Section 1445 of the Internal Revenue Code of 1986, as amended) in the form attached hereto as Exhibit C;

(iii) such additional documents and instruments as the title company may reasonably require to transfer Seller’s interest in the Property pursuant to the terms of this Agreement, each of which shall be in form and substance reasonably satisfactory to Seller.

(b) At the Closing, Purchaser shall deliver, or cause to be delivered, to Seller in accordance with the terms of this Agreement, the Purchase Price less the Earnest Money and prorations.

11. Default; Remedies. If Purchaser fails to perform its obligations under this Agreement within the time specified, Seller shall have the right to retain the Earnest Money as liquidated damages as its sole and exclusive remedy. If Seller fails to perform any of the covenants of this Agreement, then the Earnest Money paid by Purchaser shall be returned to Purchaser and thereupon Seller shall be released from any and all liability under the terms of this Agreement, or, alternatively, Purchaser may seek the remedy of specific performance so long as such action is filed within thirty (30) days of the alleged breach and or pursue any other remedies afforded to it under the law. If either party fails to comply with all of the terms, covenants and conditions of this Agreement, the prevailing party in any lawsuit will be entitled to all expenses, including a reasonable attorney’s fee, incurred as a result of such failure.

12. Condemnation and Destruction. If, on the Closing Date, all or any reasonably substantial portion of the Property is the subject of a pending or contemplated taking by eminent domain which has not been consummated or if the Property has been materially damaged or destroyed, Seller shall notify Purchaser of such fact and Purchaser shall have the option to terminate this Agreement and,

in the event Purchaser shall elect to terminate this Agreement, Seller shall refund to Purchaser the Earnest Money. If this Agreement is terminated and the Earnest Money is returned, as aforesaid, neither party shall have any further rights or obligations hereunder. If, after receipt of Seller's notice, as aforesaid, Purchaser does not exercise its option to terminate this Agreement, the parties hereto shall remain bound hereunder and Seller shall assign and turn over, and Purchaser shall be entitled to receive and keep, all awards for the taking by eminent domain described in said notice or all insurance proceeds payable as a result of such destruction or damage.

13. Final Agreement. This Agreement represents the final agreement of the parties and no agreements or representations, unless incorporated in this Agreement, shall be binding on any of the parties, and no portion hereof shall be amended or modified unless such change shall be in writing and signed by both parties thereto.

14. Notice. Any notice required hereunder shall be in writing and sent by certified mail, return receipt requested. Notice shall be deemed to be given when deposited in the United States mail, postage prepaid. Personal delivery and delivery by recognized overnight delivery service may be substituted for certified mail. Notice shall be sent to the following individuals:

If to Purchaser: Jordy Henson
 HES Investments, LLC
 2644 Old Rocky Ridge Road
 Birmingham, AL 35216

If to Seller: Mayor Alberto C. Zaragoza, Jr.
 City of Vestavia Hills, Alabama
 513 Montgomery Highway
 Vestavia Hills, Alabama 35216

With a copy to: Patrick H. Boone
 705 New South Federal Savings Building
 215 Richard Arrington, Jr. Boulevard North
 Birmingham, Alabama 35203-3720

15. Number and Gender. Whenever the singular number is used herein and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and the word "person" shall include a corporation, firm, partnership, joint venture, trust or estate.

16. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Alabama.

17. Assignment. Purchaser may not transfer, assign or encumber its rights and or obligations under this agreement without the prior written consent of Seller, which approval may be

withheld in Seller's sole and absolute discretion; provided, however, that Purchaser shall have the right to transfer and assign this Agreement to any entity which is controlled by Purchaser.

18. Survival. The representations, warranties and indemnities contained herein shall be deemed to have been made again by the parties as of the Closing Date, and shall survive the expiration or termination of this Agreement, the discharge of all other obligations owed by the parties to each other, and any transfer of title to the Property, and shall not be affected by any investigation by or on behalf of Purchaser, or by any information which Purchaser may have or obtain with respect thereto.

19. Severability. In the event that any condition or covenant herein contained is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or conditions herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

20. Waiver. No breach of any provision hereof can be waived unless in writing. Waiver of any one breach shall not be deemed to be a waiver of any other breach of the same or any other provision hereof.

21. Captions and Interpretations. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or any provision hereof. No provision in this Agreement is to be interpreted for or against either party because that party or such party's legal representative drafted such provision.

22. Broker. Seller and Purchaser shall indemnify each other against any and all claims for broker's fees, costs or commissions which might arise in connection with the purchase and sale of the Property as a result of either's action. The provisions of this Paragraph shall survive closing. Each party hereby represents to the other that it has not utilized the services of any real estate agent or broker in connection with this Agreement.

23. Patriot Act Representations. Seller and Purchaser each represent and warrant to the other that they are not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by the United States Treasury Department as a Specifically Designated National and Blocked Person, or for or on behalf of any person, group, entity, or nation designated in Presidential Executive Order 13224 as a person who commits, threatens to commit, or supports terrorism; and that they are not engaged in this transaction directly or indirectly on behalf of, or facilitating this transaction directly or indirectly in behalf of, any such person, group, entity, or nation.

24. Effective Date: The Effective Date of this Agreement is the date which is the sixth (6th) day following the posting of the ordinance approved and enacted by the City Council authorizing and directing the Mayor to sign the Agreement for and on behalf of the Seller.

25. **CONTINGENCIES AND CONDITIONS FOR CLOSING:** Anything contained in this Agreement to the contrary notwithstanding, this Agreement is subject to and contingent upon the completion and satisfaction of the following on or before the Seller is required to close this sale, hereinafter referred to collectively as "Closing Conditions":

CLOSING CONDITION ONE: Title 11-47-20, *Code of Alabama, 1975*, reads as follows:

“The governing body of any city or town in this state may, by ordinance to be entered on its minutes, direct the disposal of any real property not needed for public or municipal purposes and direct the mayor to make title thereto, and a conveyance made by the mayor in accordance with such ordinance invests the grantee with the title of the municipality.”

In order for the Seller to be required to close this sale pursuant to this Agreement, the City Council shall first make a determination, on or before the Effective Date set forth in Paragraph 24 hereof, that the Property is no longer needed for public or municipal purposes. If the City Council fails or refuses to make a determination that the Property is no longer needed for public or municipal purposes as aforesaid, then in such event the Seller shall not be required to close this sale and this Agreement shall be automatically terminated, be null and void and of no legal force and effect.

CLOSING CONDITION TWO: Amendment No. 772 to the *Constitution of Alabama* (1901) (Section 94.01(a)(3) of the *Recompiled Constitution of Alabama* (hereinafter referred to as “Amendment No. 772”), authorizes the City to lend its credit to or grant public funds and things of value in aid of or to any corporation or other business entity for the purpose of promoting the economic development of the City. Article IV, §94.01 of the *Constitution of Alabama of 1901* Amendment No. 772” reads in pertinent part as follows:

“(a) The governing body of any county, and the governing body of any municipality located therein, for which a local constitutional amendment has not been adopted authorizing any of the following, shall have full and continuing power to do any of the following:

(3) Lend its credit to or grant public funds and things of value in aid of or to any individual, firm, corporation, or other business entity, public or private, for the purpose of promoting the economic and industrial development of the county or the municipality.

(b) In carrying out the purpose of this amendment, neither the county nor any municipality located therein shall be subject to Section 93 or 94 of this Constitution.

(c) Neither the county nor any municipality located therein shall lend its credit to or grant any public funds or thing of value to or in aid of any private entity under the authority of this amendment unless prior thereto both of the following are satisfied:

(1) The action proposed to be taken by the county or municipality is approved at a public meeting of the governing body of the county or municipality, as the case may be, by a resolution containing a determination by the governing body that the expenditure of public funds

for the purpose specified will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities.

(2) At least seven days prior to the public meeting, a notice is published in the newspaper having the largest circulation in the county or municipality, as the case may be, describing in reasonable detail the action proposed to be taken, a description of the public benefits sought to be achieved by the action, and identifying each individual, firm, corporation, or other business entity to whom or for whose benefit the county or the municipality proposes to lend its credit or grant public funds or thing of value.

For purposes of the foregoing, any sale, lease, or other disposition of property for a price equal to the fair market value thereof shall not constitute the lending of credit or a grant of public funds or thing of value in aid of a private entity.”

In order for the Seller to be required to close this sale pursuant to this Agreement, the City Council shall first publish the notice of a public meeting in strict compliance with the mandated requirements of Amendment No. 772. If the City Council fails or refuses to publish said notice as aforesaid, then in such event the Seller shall not be required to close this sale and this Agreement shall be automatically terminated, be null and void and have no legal force and effect.

CLOSING CONDITION THREE: In order for the Seller to be required to close this sale pursuant to this Agreement, the City Council shall first:

- (a) Hold and conduct the public meeting as required by Amendment No. 772; and
- (b) Find and determine that the sale of the property pursuant to the Agreement will:
 - (1) Promote the economic development of the City of Vestavia Hills, Alabama; and
 - (2) Serve as a valid and sufficient public purpose notwithstanding any incidental benefit accruing to any private entity or entities; and
 - (3) Benefit the public and promote the public welfare of the City of Vestavia Hills, Alabama; and
 - (4) Promote commercial development and the stimulation of the local economy; and
 - (5) Increase employment opportunities and create jobs in the City; and

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

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

(8) Find and determine that a recognized company ("Company") will locate on the Property that will open and operate a commercial retail sales business that will generate annual municipal sales tax revenue in an amount sufficient to justify the sale of the Property for less than the year 2009 appraised value.

(c) Approve and adopt an ordinance authorizing and directing the Mayor to sign this Agreement.

If the City Council fails or refuses to hold and conduct the public hearing as mandated by Amendment No. 772 or fails and refuses to make any of the findings or determinations as set forth in paragraphs (1) through (8) above, and/or fails or refuses to approve and adopt the ordinance referred to above, then in such event the Seller shall not be required to close this sale and the Agreement shall be automatically terminated, be null and void and have no legal force and effect.

CLOSING CONDITION FOUR: The Purchaser shall, on or before ninety (90) days from the Effective Date, produce to Seller a tenant or company (the "Company" or the "tenant") that will, prior to the end of said ninety (90) day period provide written confirmation to the Seller stating that it, the Company, pending and in accordance with a fully executed commercial lease with Purchaser, and provided this Agreement closes and the Company actually opens for business:

a) Will locate within the corporate boundaries of the City of Vestavia Hills and open and operate a commercial retail sales business on the Property; and

(b) Will purchase from Seller a business license the cost of which shall be based upon a fee and a percentage of gross retail sales; and

(c) Will be engaged in the commercial business of retail sales; and

(d) Expects to generate annual retail sales in an amount necessary to collect and pay over to the City annually municipal sales tax revenue, (which is presently calculated at three percent (3%) of gross retail sales) sufficient to justify, in the sole opinion of Seller, selling the Property at less than the year 2009 appraised value.

In order for the Seller to be required to close this sale pursuant to this Agreement, the City Council shall first accept, agree and approve the Company to locate and operate in the City of Vestavia Hills as completion and satisfaction of this Closing Condition Four. The acceptance by the Seller shall be in writing and approved by the enactment of a resolution at a public hearing, all within

ten (10) business days from Purchaser's submission of a Company to Seller for its approval or disapproval.

Purchaser and Seller agree that the Seller shall have the sole, unfettered and absolute discretion to approve or disapprove the Company offered by Purchaser in an effort to complete and satisfy this Closing Condition Four. If the City Council fails or refuses to accept the Company as completion and satisfaction of this Closing Condition Four, then in such event the Seller shall have no legal obligation to close this sale and this Agreement shall be automatically terminated, be null and void and of no legal force and effect and the Earnest Money shall be immediately returned to Purchaser.

Anything to the contrary in this Closing Condition Four notwithstanding, Purchaser shall have ninety (90) days from the Effective Date to continue to submit prospective tenants to Seller for Seller's approval or disapproval. If after said ninety (90) day period Seller has not approved of a Company, then and only then shall the Seller have the right but not the obligation to terminate the Agreement by immediately refunding the Earnest Money to Purchaser.

CLOSING CONDITION FIVE: Seller shall have no legal obligation to close this sale unless and until the Property is rezoned by the City of Vestavia Hills so as to permit the contemplated use by the Purchaser or Company referred to in Closing Condition Four. If the Property is not rezoned as aforesaid, then in such event the Seller shall have no legal obligation to close the sale of the Property and this Agreement shall be automatically terminated, be null and void and of no force and effect and the Earnest Money shall be immediately returned to Purchaser.

CLOSING CONDITION SIX: In order for the Seller to be required to close this sale pursuant to this Agreement, the Circuit Court of Jefferson County, Alabama shall have first entered a judgment validating and confirming this Agreement and the closing thereof, which judgment shall have become forever conclusive in accordance with and as provided in Section 6-6-755 of the *Code of Alabama, 1975*. If the Circuit Court of Jefferson County, Alabama fails or refuses to render a judgment validating and confirming this Agreement prior to the expiration of the Inspection Period, then in such event the Seller shall not be required to close this sale and the Agreement shall be automatically terminated, be null and void and of no force and effect and the Earnest Money shall immediately be returned to Purchaser.

CLOSING CONDITION SEVEN: If the sale of the Property is not closed on or before the Closing Date, then in such event this Agreement shall automatically be terminated, cancelled, null and void and of no legal force and effect.

The Seller shall have no legal obligation to close this sale unless and until all seven Closing Conditions have been completed and satisfied. Stated another way, if any one of the Closing Conditions is not completed and satisfied, then in such event this Agreement shall be automatically terminated and of no legal force and effect and the Earnest Money shall be immediately refunded to Purchaser.

26. CONDITION OF PROPERTY: The Property is sold in "as is condition with any and all faults." Purchaser expressly acknowledges and agrees that Seller makes no representations or

warranties regarding the condition of the Property, except to the extent expressly and specifically set forth herein.

27. CONSTRUCTION OF TERMS: Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision. Any ambiguities of this Agreement shall be construed fairly and equitably regardless of the participation of either party in drafting this Agreement. The reference in terms to gender and number shall be modified as may be appropriate.

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

SELLER:

WITNESS

CITY OF VESTAVIA HILLS, ALABAMA

By _____
Alberto C. Zaragoza, Jr.
Its Mayor

PURCHASER:

WITNESS

HES INVESTMENTS, LLC

By _____
W. Jordy Henson
Its Managing Member

**STATE OF ALABAMA
JEFFERSON COUNTY**

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Alberto C. Zaragoza, Jr., whose name as Mayor of the City of Vestavia Hills, Alabama, is signed to the foregoing Real Estate Purchase and Sale Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the document, he, as such officer and with full authority, executed the same voluntarily for and as the act of said City of Vestavia Hills, Alabama.

Given under my hand and official seal, this the _____ day of _____, 2012.

My Commission Expires:

SEAL

Notary Public

**STATE OF ALABAMA
JEFFERSON COUNTY**

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that W. Jordy Henson, whose name as Managing Member of HES Investments, LLC, is signed to the foregoing Real Estate Purchase and Sale Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of the document, he, as such officer and with full authority, executed the same voluntarily for and as the act of said HES Investments, LLC.

Given under my hand and official seal, this the _____ day of _____, 2012.

My Commission Expires:

SEAL

Notary Public

**EXHIBIT A
TO
PURCHASE AND SALE AGREEMENT**

A parcel of land situated in the Northeast Quarter of the Southwest Quarter of Section 30, Township 18 South, Range 2 West, Jefferson County, Alabama, being more particularly described as follows:

From the Southwest corner of said quarter-quarter section run thence in an Easterly direction along the South line of same for a distance of 589.77 feet to the point of beginning of the parcel herein described; thence turn an angle to the left of 103 degrees 33 minutes 57 seconds and run in a Northwesterly direction for a distance of 206.63 feet; thence turn an angle to the right of 101 degrees 35 minutes 18 seconds and run in an Easterly direction for a distance of 359.60 feet to a point on the Westerly right-of-way of U.S. Highway 31, said point being in a curve to the right having a radius of 3173.97 feet and a central angle of 3 degrees 54 minutes 57 seconds and being concave to the West with a chord which forms an interior angle of 98 degrees 29 minutes 45 seconds with the previous call; thence run along the arc of said curve in said right-of-way line in a southerly direction for a distance of 216.93 feet to the South line of said quarter-quarter section, the chord of said curve forming an interior angle of 79 degrees 31 minutes 36 seconds with said South line of said quarter-quarter section; thence run in a Westerly direction along said South line for a distance of 350.34 feet to the point of beginning.

**EXHIBIT B
TO
PURCHASE AND SALE AGREEMENT**

**EXHIBIT C
TO
PURCHASE AND SALE AGREEMENT**

**CERTIFICATION OF
NONFOREIGN STATUS**

This Certification of Nonforeign Status is made by _____
_____ (“Seller”) to the _____ (“Purchaser”), pursuant to
Section 1445 of the Internal Revenue Code (the “Code”).

Section 1445 of the Code provides that a transferee of a United States real property interest must withhold tax if the transferor is a foreign person. To inform the Purchaser that withholding of tax is not required upon the disposition of a United States real property interest by Seller, the undersigned hereby certifies the following on behalf of Seller:

1. Seller is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Internal Tax Regulations). Seller is a domestic corporation organized under the laws of the State of Alabama. Seller is not a partner in any foreign partnership and does not have any interest in any foreign trust or foreign estate (as those terms are defined in the Code and Income Tax Regulations).

2. Seller’s employer identification number is 63-0371391.

3. Seller’s office address is _____.

Seller understands that this Certification of Nonforeign Status may be disclosed to the Internal Revenue Service by Purchaser and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under the penalties of perjury, I declare that I have examined this Certification of Nonforeign Status and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Seller.

[Signature Page Follows]

This Certification is signed by the undersigned on the ____ day of _____, 20____.

By: _____
Name: _____
Title: _____