

**Vestavia Hills  
City Council Agenda  
May 13, 2013  
5:00 PM**

1. Call to Order
2. Roll Call
3. Invocation – Danny Wood; Shades Mountain Baptist Church
4. Pledge of Allegiance
5. Announcements and Guest Recognition
  - a. Council Meeting Of May 27, 2013 Rescheduled To May 29, 2013 Due To Memorial Day Holiday
6. City Manager's Report
7. Councilors' Reports
8. Approval Of Minutes – April 22, 2013 (Regular Meeting) and May 2, 2013 (Work Session)

**Old Business**

9. Resolution Number 4445 – A Resolution Ascertaining, Fixing And Determining The Amount Of Assessment To Be Charged As A Lien On The Property Known As 3363 Mountainside Road, Vestavia Hills, Alabama 35243; Parcel Id# 28-23-2-4-3-RR-0, In The City Of Vestavia Hills As A Result Of The City Of Vestavia Hills Ordering The Demolition Of The Building On The Property Pursuant To Ordinance No. 2382 (*Public Hearing*)

**New Business**

10. Resolution Number 4447 – A Resolution Authorizing The City Manager To Enter Into A Contract With R&S Food Service Company For The Library In The Forest Café
11. Resolution Number 4448 – Declaring Certain Personal Property As Surplus And Directing The Sale/Disposal Of Said Property
12. Resolution Number 4449 – A Resolution To Rescind Resolution Number 4410 Authorizing The Mayor And City Manager To Execute An Agreement For Architectural Services For A City Garage/Maintenance Facility At Wald Park

13. Ordinance Number 2444 – An Ordinance To Rescind Ordinance Number 2426 Authorizing And Directing The Sale Of Real Estate Situated At 1112 Montgomery Highway

**New Business (Unanimous Consent Requested)**

14. Resolution Number 4450 – A Resolution Directing The City Manager To Initiate A Consumer's Use Tax Refund To Charter Communications LP
15. Ordinance Number 2446 – General Obligation Warrants (Federally Taxable – Qualified Energy Conservation Bonds – Direct Pay) Series 2013

**First Reading (No Action Taken At This Meeting)**

16. Ordinance Number 2447 – An Ordinance Authorizing And Directing The Purchase Of Real Estate Situated At 1105 Mayland Lane
17. Citizens Comments
18. Motion For Adjournment

## **CITY OF VESTAVIA HILLS**

### **CITY COUNCIL**

### **MINUTES**

**APRIL 22, 2013**

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

**MEMBERS PRESENT:**

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

**OTHER OFFICIALS PRESENT:**

Jim St. John, Interim City Manager  
Patrick Boone, City Attorney  
Rebecca Leavings, City Clerk  
Christopher Brady, City Engineer  
George Sawaya, Dep. Finance Director  
Danny Rary, Police Chief  
Lt. Kevin York, Police Department  
Fred Baughman, Economic Dev. Director

Invocation was given by George Pierce, followed by the Pledge of Allegiance.

### **ANNOUNCEMENTS, GUEST RECOGNITION**

- None.

### **CITY MANAGER REPORT**

- Mr. St. John announced the opening of Lifetime Fitness and read a letter of appreciation from the company acknowledging the assistance of the City staff that assisted with the approvals, permitting, inspections, etc. He stated that LTF appreciated the efforts of the staff and stated that this project was the best managed because of these staff members.
- Fred Baughman announced Winn-Dixie in Cahaba Heights as the City's Business of the Month and indicated that the manager had an unforeseen emergency and would receive the recognition at the next Council meeting.

- Brian Davis announced the replacement of several gas lines in the residential areas around parts of the City and asked residents to be patient as the lines are replaced.

### **COUNCILOR REPORTS**

- Mayor Zaragoza stated that the Mayor's Prayer Breakfast would be held Tuesday morning beginning at 7:30 AM at the Vestavia Country Club. Noah Galloway will be the keynote speaker.
- The Mayor stated that City Manager interviews will begin at 10 AM on Thursday in the North Conference Room. He stated that the interviews are open to the public. A public reception will be held at 6 PM to allow the general public to meet and speak with the applicants.
- Mr. Ammons stated that the First Responders Picnic will be held soon. This event is sponsored by the Rotary and Sunrise Club to honor and thank the City's First Responders. He thanked Chief St. John and Chief Rary for the work that both departments perform for the City.
- Mr. Henley reported that Vestavia Hills High School raised approximately \$209,000 the Relay for Life.

### **FINANCIAL REPORTS**

Mr. George Sawaya presented the financial reports for month ending March 2013. He read and explained the balances.

### **APPROVAL OF MINUTES**

The minutes of the April 4, 2013 (Work Session) and April 8, 2013 (Regular Meeting) were presented for approval.

**MOTION** Motion to dispense with the reading of the minutes of the April 4, 2013 (Work Session) and April 8, 2013 (Regular Meeting) and approve them as presented was by Mr. Ammons and second by Mr. Henley. Roll Call vote as follows:

Mr. Pierce – yes

Mr. Henley – yes

Mr. Ammons – yes

Mr. Sharp – yes

Mayor Zaragoza – yes

Motion carried.

**OLD BUSINESS**

**RESOLUTION NUMBER 4422**

**Resolution Number 4422 – A Resolution To Authorize The Mayor And City Manager To Execute An Agreement With CDG Engineers And Associates, Inc., For Engineering Services For ATRIP Project No. 37-03-33 Resurfacing Columbiana, Tyler And Overton Roads, Dated March 6, 2013 (postponed from March 25 and April 8, 2013) (public hearing)**

**MOTION** Motion to adopt Resolution Number 4422 was by Mr. Pierce and second was by Mr. Sharp.

The Mayor stated that this Resolution was postponed from the meetings of March 25 and April 8. He stated that he has discussed this further with Mr. Boone and noted that all changes have been made.

Mr. Boone explained that he has investigated this request with other municipalities and found that they concur with his recommendations and feelings concerning the documents.

The Mayor opened the floor for a public hearing. There being no one else present to address the Council concerning this issue, 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. Ammons – yes                      Mr. Sharp – yes  
Mayor Zaragoza – yes                      Motion carried.

**RESOLUTION NUMBER 4437**

**Resolution Number 4437 – Annexation – 90-Day – 3312 Blueberry Lane; Lot 137, Buckhead, 4<sup>th</sup> Sector; Brian And Shannon Fagen, Owners (Public Hearing)**

**MOTION** Motion to adopt Resolution Number 4437 was by Mr. Pierce and second was by Mr. Ammons.

Mayor Zaragoza stated that this Resolution is a request for annexation, similar to the following resolutions. He asked and the Council concurred to hear the annexation report and discuss the annexations together and then vote on each one separately.

Mr. Pierce gave the Standing Annexation Report for each property requesting annexation and indicated that the Committee found no adverse information for any of the properties. He explained the function of the Committee and stated that the owners are present for any questions.

The Council discussed the requested annexations and viewed maps depicting the location of the annexations.

Brian and Shannon Fagen were present for this request.

The Mayor opened the floor for a public hearing. There being no one else present to address the Council concerning this issue, 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. Ammons – yes                      Mr. Sharp – yes  
Mayor Zaragoza – yes                      Motion carried.

**RESOLUTION NUMBER 4438**

**Resolution Number 4438 – Annexation – 90-Day – 2469 Jannebo Road; Lot 123, Buckhead, 4<sup>th</sup> Sector; Shannon Kilgore, Owner (Public Hearing)**

**MOTION** Motion to adopt Resolution Number 4438 was by Mr. Pierce and second was by Mr. Ammons.

Eric White was present in regard to the request. He indicated that he and his wife recently closed on the property and stated that they are now the owners. He explained that they lived in Vestavia Hills and wanted this home but only if it were also in the City.

The Mayor opened the floor for a public hearing. There being no one else present to address the Council concerning this issue, 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. Ammons – yes                      Mr. Sharp – yes  
Mayor Zaragoza – yes                      Motion carried.

**RESOLUTION NUMBER 4439**

**Resolution Number 4439 – Annexation – 90-Day – 4595 Old Looney Mill Road; Lot 1, Old Looney Mill Development; Brandon And Kathryn Falls, Owners (*Public Hearing*)**

**MOTION** Motion to adopt Resolution Number 4439 was by Mr. Ammons and second was by Mr. Pierce.

Brandon and Kathryn Falls were present in regard to this request.

The Mayor opened the floor for a public hearing. There being no one else present to address the Council concerning this issue, 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. Ammons – yes     | Mr. Sharp – yes  |
| Mayor Zaragoza – yes | Motion carried.  |

**RESOLUTION NUMBER 4440**

**Resolution Number 4440 – Annexation – 90-Day – 4604 Old Looney Mill Road; Lot 1, W.O. Brasseale Subdivision; Jacquelyn G. Britt, Owner (*Public Hearing*)**

**MOTION** Motion to adopt Resolution Number 4440 was by Mr. Henley and second was by Mr. Pierce.

Jacque Britt was present in regard to this request.

The Mayor opened the floor for a public hearing. There being no one else present to address the Council concerning this issue, 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. Ammons – yes     | Mr. Sharp – yes  |
| Mayor Zaragoza – yes | Motion carried.  |

**RESOLUTION NUMBER 4441**

**Resolution Number 4441 – Annexation – 90-Day – 4608 Old Looney Mill Road; Lots 2 & 3, W.O. Brasseale Subdivision; Virginia W. Wood, Owner (Public Hearing)**

**MOTION** Motion to adopt Resolution Number 4441 was by Mr. Pierce and second was by Mr. Ammons.

Virginia Wood was present in regard to this request.

The Mayor opened the floor for a public hearing. There being no one else present to address the Council concerning this issue, 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. Ammons – yes                      Mr. Sharp – yes  
Mayor Zaragoza – yes                      Motion carried.

**RESOLUTION NUMBER 4442**

**Resolution Number 4442 – Annexation – 90-Day – 2855 Five Oaks Lane; John J. Santamour, Owner (Public Hearing)**

**MOTION** Motion to adopt Resolution Number 4442 was by Mr. Henley and second was by Mr. Sharp.

John Santamour was present in regard to this request.

The Mayor opened the floor for a public hearing. There being no one else present to address the Council concerning this issue, 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. Ammons – yes                      Mr. Sharp – yes  
Mayor Zaragoza – yes                      Motion carried.



**NEW BUSINESS**

**RESOLUTION NUMBER 4444**

**Resolution Number 4444 – A Resolution Appointing A Member To The Vestavia Hills Board Of Education**

**MOTION** Motion to adopt Resolution Number 4444 was by Mr. Henley and second was by Mr. Sharp.

Mr. Henley thanked the applicants for the appointment to the Vestavia Hills Board of Education. He stated that after careful consideration, the Council concurred to appoint Ms. Nancy Corona to the Board. He stated that the information was not available at the time of the agenda so an amendment was needed to fill the name in the Resolution.

The Mayor opened the floor for motion for an amendment.

**MOTION** Motion to amend Resolution Number 4444 to appoint Ms. Nancy Corona to the Vestavia Hills Board of Education was by Mr. Henley and second was by Mr. Ammons. Roll call vote as follows:

|                      |                  |
|----------------------|------------------|
| Mr. Pierce – yes     | Mr. Henley – yes |
| Mr. Ammons – yes     | Mr. Sharp – yes  |
| Mayor Zaragoza – yes | Motion carried.  |

**MOTION** Question called on a roll call vote:

|                      |                  |
|----------------------|------------------|
| Mr. Pierce – yes     | Mr. Henley – yes |
| Mr. Ammons – yes     | Mr. Sharp – yes  |
| Mayor Zaragoza – yes | Motion carried.  |

Ms. Corona thanked the Council for the appointment and indicated that she's looking forward to working on the Board.

**RESOLUTION NUMBER 4446**

**Resolution Number 4446 – A Resolution And Order Authorizing Certain Action With Respect To The Issuance Of General Obligation Warrants (Federally Taxable – Qualified Energy Conservation Bonds – Direct Pay), Series 2013**

**MOTION** Motion to adopt Resolution Number 4446 was by Mr. Ammons and second was by Mr. Pierce.

Heyward Hosch was present in regard to this request.

Mr. Hosch stated that this Resolution allows them to obtain quotes on the energy efficient conservation bonds which have been discussed previously at length. He stated that these quotes are not binding upon the Council and will need to come back to be approved.

**MOTION** Question called on a roll call vote:

Mr. Pierce – yes

Mr. Henley – yes

Mr. Ammons – yes

Mr. Sharp – yes

Mayor Zaragoza – yes

Motion carried.

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

The Mayor stated that the following Resolutions and/or Ordinances will be presented at a public hearing at the Council's next regularly scheduled meeting of May 13, 2013 at 5 PM.

- Resolution Number 4445 – A Resolution Ascertain, Fixing And Determining The Amount Of Assessment To Be Charged As A Lien On The Property Known As 3363 Mountainside Road, Vestavia Hills, Alabama 35243; Parcel Id# 28-23-2-4-3-RR-0, In The City Of Vestavia Hills As A Result Of The City Of Vestavia Hills Ordering The Demolition Of The Building On The Property Pursuant To Ordinance No. 2382 (*Public Hearing*)

**CITIZENS COMMENTS**

Patrick Dewees, 3048 AsburyPark Place, read a prepared statement regarding his opposition to the Highway 31 Redevelopment Plan and presented a written version to the Council for informational purposes.

**MOTION** Motion to adjourn was by Mr. Pierce. Meeting adjourned at 7:15 PM.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**CITY OF VESTAVIA HILLS**

**CITY COUNCIL**

**MINUTES**

**SPECIAL CALLED MEETING**

**MAY 2, 2013**

The City Council of Vestavia Hills met in a special called meeting on this date at 4:30 PM following posting/publication as required by Alabama law. The Mayor called the special meeting to order and the Deputy City Clerk checked the roll with the following:

**MEMBERS PRESENT:**

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

**OTHER OFFICIALS PRESENT:**

James R. St. John, City Manager  
Wendy Appling, Deputy City Clerk  
Brian Davis, Public Services Director  
Christopher Brady, City Engineer

**EXECUTIVE SESSION**

Mayor Zaragoza stated that the Council needed to move into Executive Session in order to discuss the purchase/sale of property and good name and character of an individual. He explained that the session is estimated to last approximately 60 minutes and that he had asked Mr. Boone to verify that is a legal reason for an Executive Session and he concurred.

The Mayor opened the floor for a motion.

**MOTION** Motion for the Council to move into Executive Session for the discussion of the purchase/sale and good name and character of an individual for an estimated 60 minutes was by Mr. Henley and second was by Mr. Pierce. On a roll call vote:

Mr. Pierce – yes

Mr. Henley – yes

Mr. Sharp – yes

Mr. Ammons – yes

Mayor Zaragoza – yes

Motion carried.

The Council exited the Chamber at 4:34 PM and entered into Executive Session.

Mr. Sharp left the meeting before the meeting was called back to order.

At 5:50 PM, the Mayor and City Council re-entered the Chamber and the Mayor called the meeting back to order.

**CITIZEN COMMENTS**

The Mayor opened the floor for citizen comments. There being no one to address the Council, the Mayor closed citizen comments.

**MOTION** Motion to adjourn the meeting at 5:51 PM was by Mr. Ammons. Meeting Adjourned.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Wendy Appling  
Deputy City Clerk

**RESOLUTION NO. 4445**

**A RESOLUTION ASCERTAINING, FIXING AND DETERMINING THE AMOUNT OF ASSESSMENT TO BE CHARGED AS A LIEN ON THE PROPERTY KNOWN AS 3363 MOUNTAINSIDE ROAD, VESTAVIA HILLS, ALABAMA 35243; PARCEL ID# 28-23-2-4-3-RR-0, IN THE CITY OF VESTAVIA HILLS AS A RESULT OF THE CITY OF VESTAVIA HILLS ORDERING THE DEMOLITION OF THE BUILDING ON THE PROPERTY PURSUANT TO ORDINANCE NO. 2382**

**WHEREAS**, heretofore the City Council of the City of Vestavia Hills, after due and lawful notice was given and a public hearing held in accordance with Ordinance No. 2382, declared that a building located within the City of Vestavia Hills was unsafe to the extent that it was a public nuisance and ordered the demolition of said building located on the following described property, to wit:

**STREET ADDRESS:**

3363 Mountainside Road, Vestavia Hills, AL 35243

**LEGAL DESCRIPTION:**

Lot 20, in Block 2, according to the Survey of Third Addition to Shades Cahaba Estates, as recorded in Map Book 41, page 12, in the Office of the Judge of Probate of Jefferson County, Alabama

**PARCEL IDENTIFICATION NUMBER:**

28-23-2-4-3-RR-0

**INTERESTED PERSONS:**

Jeffrey A. and Terri L. Knowles;  
Jeffrey A. Knowles;  
Amsouth Bank;  
Mortgage Electronic Registration Systems, Inc.;  
GMAC Mortgage, LLC F/K/A GMAC Mortgage Corporation;  
Department of Treasury;  
Internal Revenue Service;  
Jefferson County Sewer Service Office;  
Birmingham Water Works

**WHEREAS**, the City has completed demolition of said building at the City's expense;  
and

**WHEREAS**, the appropriate municipal official has made a report to the City Council of said costs, including the cost of complying with Ordinance No. 2382, the sum of which was **\$30,916.54**; and

**WHEREAS**, the City Clerk set the report of costs for a public hearing at a meeting of the City Council on Monday, April 22, 2013 at 5:00 p.m. and gave no less than ten (10) days notice of the public hearing by first-class mail to all persons or entities listed in Section 4-114(b)(1) of Ordinance No. 2382; and

**WHEREAS**, said public hearing was held by the City Council; and

**WHEREAS**, it is now the desire of the City Council of the City of Vestavia Hills to fix the costs which it finds were reasonably incurred in connection with the demolition and assess the costs against the previously described land upon which said building was located.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Vestavia Hills, Alabama while in regular session on Monday, May 13, 2013 at 5:00 p.m. as follows:

**Section 1.** That the City Council hereby assesses the sum of **\$30,916.54** to be the costs reasonably incurred by the City of Vestavia Hills in connection with the demolition of the building located on the following described property, to wit:

**STREET ADDRESS:**

3363 Mountainside Road, Vestavia Hills, AL 35243

**LEGAL DESCRIPTION:**

Lot 20, in Block 2, according to the Survey of Third Addition to Shades Cahaba Estates, as recorded in Map Book 41, page 12, in the Office of the Judge of Probate of Jefferson County, Alabama

**PARCEL IDENTIFICATION NUMBER:**

28-23-2-4-3-RR-0

**INTERESTED PERSONS:**

Jeffrey A. and Terri L. Knowles;  
Jeffrey A. Knowles;  
Amsouth Bank;  
Mortgage Electronic Registration Systems, Inc.;  
GMAC Mortgage, LLC F/K/A GMAC Mortgage Corporation;  
Department of Treasury;  
Internal Revenue Service;  
Jefferson County Sewer Service Office;

Birmingham Water Works

**Section 2.** That the City Clerk be authorized and directed to file a certified copy of this Resolution in the offices of the Judge of Probate of Jefferson County, Alabama, Birmingham Division, and the Jefferson County Tax Collector. Upon filing, the Jefferson County Tax Collector shall add the amount of the lien to the ad valorem tax bill on the property and shall collect the amount as if it were a tax and remit the amount to the City.

**Section 3.** That Resolution No. 4417 of the City of Vestavia Hills, Alabama is hereby amended to authorize the total costs of said demolition as recited herein and the payment of such costs by the City Manager is hereby ratified and approved in all respects.

**ADOPTED** this the 13<sup>th</sup> day of May, 2013.

APPROVED: \_\_\_\_\_  
Alberto C. Zaragoza, Jr., Mayor

ATTEST: \_\_\_\_\_  
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 13<sup>th</sup> day of May, 2013 while in regular session on Monday, May 13, 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 13<sup>th</sup> day of May, 2013.

\_\_\_\_\_  
Rebecca Leavings, City Clerk

**3363 Mountainside**

Exhibit A

|   |                           |
|---|---------------------------|
| Title Search Cost                           | \$199.00                  |
| Lis Pendens Recording Cost                  | \$49.00                   |
| Lis Pendens Certified Mailings Cost         | \$75.60                   |
| AL Messenger Publication Fee                | \$41.40                   |
| Notice of Demolition Recording Cost         | \$34.00                   |
| Notice of Demolition Certified Mailing Cost | \$48.60                   |
| Cost of Asbestos Testing                    | \$675.00                  |
| Cost of Asbestos Removal                    | \$4,250.00                |
| Costs of Demolition                         | \$10,131.00               |
| <b>Less Sale of Salvaged Materials</b>      | \$0.00                    |
| Final Assessment Recording Cost             | \$22.00                   |
| Final Assessment Notice Mailings Cost       | \$45.09                   |
| Attorneys' Fees                             | \$13,845.85               |
| Administrative Fees and Enforcement of Lien | <u>\$1,500.00</u>         |
| Total                                       | <u><u>\$30,916.54</u></u> |



**NOTICE REGARDING A PUBLIC HEARING ASCERTAINING, FIXING AND DETERMINING THE AMOUNT OF ASSESSMENT TO BE CHARGED AS A LIEN ON PROPERTY IN THE CITY OF VESTAVIA HILLS AS A RESULT OF THE CITY OF VESTAVIA HILLS ORDERING THE DEMOLITION OF THE BUILDING ON THE PROPERTY PURSUANT TO ORDINANCE NO. 2382**

**WHEREAS**, heretofore the City Council of the City of Vestavia Hills declared that a building located within the City of Vestavia Hills was unsafe to the extent that it was a public nuisance and ordered the demolition of said building located on the following described property, to wit:

**STREET ADDRESS:**

3363 Mountainside Road, Vestavia Hills, AL 35243

**LEGAL DESCRIPTION:**

Lot 20, in Block 2, according to the Survey of Third Addition to Shades Cahaba Estates, as recorded in Map Book 41, page 12, in the Office of the Judge of Probate of Jefferson County, Alabama

**PARCEL IDENTIFICATION NUMBER:**

28-23-2-4-3-RR-0

**WHEREAS**, the City has completed demolition of said building at the City's expense and the appropriate municipal official has made a report to the City Council of said costs.

**THEREFORE, you are hereby notified that** the City Clerk of the City of Vestavia Hills, Alabama has set the report of costs for a public hearing at a meeting of the City Council on **Monday, May 13, 2013 at 5:00 p.m.** whereupon the City Council will consider the report of costs attached hereto as Exhibit A and the proposed Resolution attached hereto as Exhibit B.

Witness my hand and seal of office this 22<sup>nd</sup> day of April, 2013.

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Rebecca Leavings, City Clerk  
City of Vestavia Hills, Alabama

## **RESOLUTION NUMBER 4447**

### **A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH R&S FOOD SERVICE COMPANY FOR OPERATION OF A CAFÉ IN THE VESTAVIA HILLS LIBRARY IN THE FOREST FOR A TEMPORARY PERIOD**

**WHEREAS**, the City of Vestavia Hills invited competitive bids for the operation of a café in the Vestavia Hills Library in the Forest; and

**WHEREAS**, on December 17, 2012 a public meeting was held in order to read the bids aloud in the Council Chambers of the Vestavia Hills Municipal Center. However, no bids received from this invitation; and

**WHEREAS**, the Library Director has received a proposal from R&S Food Service Company to operate the Library's café for a test period of 90 days; and

**WHEREAS**, a copy of said agreement is attached to and incorporated into this Resolution Number 4447 as if written fully therein.

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

1. The City Manager is hereby authorized to execute an agreement with R&S Food Service Company to temporarily operate the café at the Vestavia Hills Library in the Forest for a period of 90-days; and
2. This Resolution Number 4447 shall become effective immediately upon adoption and approval.

**DONE, ORDERED, ADOPTED and APPROVED** this the 13<sup>th</sup> day of May, 2013.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

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

May 7, 2013

By Hand Delivery

Mayor Alberto C. Zaragoza, Jr.  
Vestavia Hills Municipal Center  
513 Montgomery Highway  
Vestavia Hills, Alabama 35216

Interim City Manager James R. St. John  
Vestavia Hills Municipal Center  
513 Montgomery Highway  
Vestavia Hills, Alabama 35216

In Re: Proposed Lease By and Between the City of Vestavia Hills, Alabama, as "Landlord," and  
The R&S Food Service Company, as "Tenant"

Dear Mayor Zaragoza and City Manager St. John:

I have reviewed the proposed Lease by and between the City of Vestavia Hills, Alabama, as "Landlord," and The R&S Food Service Company, as "Tenant," for the operation of the Vestavia Hills Library in the Forest café for a period of ninety (90) days. I do not have any suggestions for additions, deletions, changes and/or corrections to the proposed Lease.

Sincerely,



Patrick H. Boone  
Vestavia Hills City Attorney

PHB:gp

cc: ✓ City Clerk Rebecca Leavings (by hand)

**Binding Letter of Lease**

The Vestavia Hills Library in the Forest is pleased to submit this Binding Letter of Lease for occupancy at the Vestavia Hills Library in the Forest, located at the corner of Round Hill Road and Highway 31 in Vestavia Hills, Alabama.

We seek to establish an unprecedented model of collaboration between Tenant and Landlord. Specifically, we believe in establishing a shared vision in which the Café will be profitable for both the Library in the Forest and the Tenant.

**Landlord:** The City of Vestavia Hills, Alabama (“City”) as owner of the building housing the Vestavia Hills Library in the Forest (“Library”).

**Tenant:** The R&S Food Service Company

**Area and Premises:** As highlighted on Exhibit A attached hereto and generally described as the “café space” and located on the Main Level (second floor) of the Library along the north-facing side of the building, fronting the parking lot. This space measures approximately 1,075 square feet.

**Use:** Tenant request Exclusive Rights to operate the Vestavia Hills Library in the Forest Café for a Test Period of ninety (90) days. The start date will begin ten (10) business days following the signing of this lease agreement.

Tenant shall use the Premises for the presentation, promotion sale, and consumption of food and beverage products only. Preparation shall be permitted as necessary and approved by local health codes.

Using commercially reasonable standards, Tenant at its sole discretion shall determine the menu items available within the Premises, provided however that the preparation and sale of such items do not create undue nuisance for Library patrons. If complaints arise from patrons, both Landlord and Tenant agree mutually to work in good faith to find a satisfactory solution or alternative item that best meets the demands of both Tenant and patrons.

At all times, Tenant shall be responsible for the care and maintenance of all spaces and items within the Premises and shall keep such in “like new” condition, commensurate with the quality of care throughout the rest of the Library.

**Minimum Hours:** Tenant shall be open for business Monday through Friday, 10:30 am - 4:30 pm; Saturday, 9:00 am – 1:30 pm; closed on Sunday. Landlord agrees that it will meet quarterly with Tenant to review operating hours of Library and shall use reasonable judgment in determining if Tenant operating hours should be adjusted.

**City Requirements:** The Premises is located within a municipal building and is therefore subject to all provisions to which the municipality must adhere or any operating procedures the City chooses to apply across other buildings owned by the City. Such provisions may include, but are not limited to, having City personnel present in the building at all times that the building is open, and or having police personnel whenever alcohol is served.

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**Standard of Service:** Tenant agrees to operate its business and maintain the Premises in a first class manner, ensuring that the business is properly staffed at all times; food and beverage offerings are professionally prepared, presented and available; the menu is appropriately varied, and at all times features coffee service.

Tenant shall secure a Health Department waiver for sales of pre-packaged food items. As coffee will be the only food item prepared on site, a health inspection will not be required.

**Rent Commencement:** Rent shall commence upon Tenant's commencement of business operations at the Library, including the provision of services within the Library beyond the Premises. Tenant shall work diligently to complete its scope of work, and obtain a Certificate of Occupancy for its work in as timely a manner as is commercially reasonable.

**Lease Term:** Ninety (90) days.

**Rent Schedule:**

| Effective Date                              | Rentable Square Feet      | Floors/Building  | Gross Rent | Tenant Improvement Allowance | Operating Expenses | Right to Audit Tenant Sales |
|---|---------------------------|--|------------|------------------------------|--------------------|-----------------------------|
| Rent Commencement Date (Approx. 03/01/2013) | Approx. 1,075 square feet | Main Level (Second Floor) Vestavia Hills Library in the Forest | See Below  | See Below                    | None. See Below    | Annually                    |

**Gross Rent:** Tenant shall pay an amount equal to twenty percent (20)% of net revenues originating from the Premises. For the purpose of this calculation, Tenant shall include all food and beverages (including from the sale of alcohol) supplied to meetings or events held at the Library regardless of whether those meetings or events take place within the Premises. Items incidental to the sale of food and beverages shall not be included in the calculation herein. (i.e.: additional event items such as flowers, photography, or the sale of keepsake items)

For each month during the Term, Tenant shall provide Landlord with a summary of gross sales and net revenues for the month; a computation of percentage rents due for the month; and, payment of said amount within 15 days of the end of said month. Unless payment by electronic transfer is mutually agreed to at a future date, all Rent shall be by written check, payable to "Vestavia Hills Library in the Forest" and delivered, by mail or by hand, to the Executive Director.

The above Net Rent shall be the only Rent payment due under this lease for use of the Premises. Tenant shall not be required to make any additional payment to the Landlord for its pro-rata share of Common Area Maintenance expenses, utilities (gas, electric, water, or trash removal), real estate taxes or common area insurance.

Should the Tenant, through the action of its officers, employees or agents, cause any damage to the Premises or Library, the Landlord shall make any necessary repairs and bill the Tenant separately, with such payment not being considered Rent. Any request by the Tenant for the Landlord to perform repairs or maintain the Premises shall be similarly billed to the Tenant and not be considered Rent. Tenant shall

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remain liable for all costs, taxes, insurance, assessments and penalties directly related to the nature and operation of its business including but not limited to sales taxes, liability insurance, employee insurance, permit fees, and fines.

By virtue of accepting Gross Rent as a derivative of the Tenant's sales, Landlord in no way assumes any liability for, obligation to, or interest in, the Tenant's business.

**Operating Expenses:** No portion of Library operating expenses or common area maintenance expenses shall be passed through to the Tenant. Should the Tenant request and receive approval for special events that require the Library to operate the facility beyond normal operating hours, reimbursement for the additional operating expenses of the Library will be considered as paid in the percentage of sales amount described above, or covered in the established and published room rental fees then in effect at the Library.

**Exclusivity** Provided the Tenant is not in Default under the terms of its Lease, Landlord shall grant Tenant the right of first refusal to provide catering, food and beverages services for all activities hosted at the Library and serviced by a commercial catering or food service provider. Should the tenant agree to provide catering services for events, such services shall be offered only at commercially reasonable and competitive rates for the area in which the Library is located. The Library staff will direct all food and beverage requests to the Tenant. If the Tenant elects not to pursue an individual request, it shall forfeit its right to be the exclusive provider to that request. Similarly, if Tenant exhibits a chronic pattern of not responding to food and beverage request forwarded by the Library, the Library shall notify the Tenant, present to Tenant proof of such failures, and terminate the Tenant's exclusive rights. Nothing in this paragraph should imply that individual groups utilizing Library meeting spaces are prohibited from bringing in their own self-prepared food and refreshments.

**Programming Cooperation** Tenant and Landlord agree to work with one another in good faith to plan, communicate, execute and perform programming activities for the Library in such a manner as to maximize the benefit to both parties. For Events which contemplate the use of the Common Areas of the Library, Tenant shall notify the Landlord no fewer than 90 days prior to such event, at which time the Landlord shall approve or disapprove of such request in its sole discretion.

*Tenant expressly acknowledges that the Library is under no obligation to make any space available for events and that the decision to make space available to third parties is at the Library's sole discretion.*

**Management Standard:** Maintenance, janitorial and overall property management standards of the Common Areas in the Library shall be in accordance with its status as a LEED certified building.

**Tenant Improvements** Tenant shall be responsible for all improvements above the Base Building Condition.

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### **Base Building Condition**

Landlord, at its sole cost and expense, shall provide the Premises in a "Base Building Condition", such condition as shall include all items noted on Exhibit A attached hereto and shall explicitly include proper utilities and base level wiring suitable for a tenant of the nature contemplated. All design and construction by Tenant in and around its space must be approved by the Landlord's architect, using commercially reasonable standards, on matters including but not limited to weight loads, MP&E, demising walls, VOC emitting materials, ventilation, and capital improvements in excess of \$1,000. In no event, however, shall improvements to the Tenant's space be permitted which would jeopardize the buildings' LEED certification, either during construction or after completion.

The above notwithstanding, Landlord also agrees to supply the following finishes, provided however that at all times such finishes are and shall remain the property of the Landlord:

1. Fully carpeted flooring in the customer areas;
2. Tile or stained concrete in the Tenant service areas;
3. Adequate base level lighting consistent with the interior design of the Library;
4. Limited accent lighting and/or spot lights per the Landlord architect's discretion;
5. Tables and chairs;
6. A visual barrier of Landlord's choosing between the customer area and adjacent restroom facilities;
7. One flat screen television panel wired into the Library's central television.

### **Electric/HVAC**

Landlord's architect will coordinate with Tenant's architect as to planning and design of any systems in excess of the Base Building Condition. Systems will be designed and integrated with other building design in order to maximize thermal comfort and meet all LEED certification standards. Where Landlord seeks written approval from Tenant on matters contemplated in the lease and related to construction or design, Tenant shall agree to provide such input within three business days of the request or Landlord shall move forward using its sole judgment in the matter. Upgrades due to Tenant's occupancy above those provided in the base building design and shall be at the Tenant's expense. Landlord will coordinate with Tenant in the installation of equipment so as to minimize any additional costs to the tenant (for example, cost efficiencies borne by installing more tonnage per unit rather than adding additional units.)

### **Renewal Options**

Twenty (20) business days prior to the end of the Initial Test Period, Tenant will deliver to Landlord a review of performance and all aspects of the Services done for the Café over the past seventy (70) days for determination of a signing for an annual Lease. Upon review, the Landlord shall meet with the Tenant to assess an annual lease.

Provided Tenant is not in default and has shown a record of prompt payment of rent during the Initial Term, Tenant may extend the Lease for one (1) year periods under the same terms as outlined herein.

Anything contained herein to the contrary notwithstanding, and pursuant to the laws of the State of Alabama, the Landlord shall have the right to



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terminate this Lease at any time after the Initial Term upon the expiration of the then existing term. Should the Landlord elect to terminate this Lease, it shall give the Tenant a minimum of 120 days notice of its intent to do so.

Except in the event that the entire Premises have been validly assigned to an Affiliated Entity as stipulated herein, the Renewal Options shall be personal to the Tenant and may not be exercised by any assignee permitted under the terms of the lease.

**Cancellation Right**

None.

**Assignment**

Tenant shall have the right to assign the lease to any partnership, Limited Liability Company or corporation wholly owned by the Tenant ("Affiliated entity") provided, however, that Tenant shall not be relieved of its financial obligations without the Landlord's expressed, written consent, such consent to be at Landlord's sole discretion. Tenant may not assign this Lease to any other party.

Tenant shall not have the right to sublet or subdivide the space.

**Signage**

Tenant and Landlord agree that the café will be named the LIFT Café and Tenant shall be allowed space on all building directories and may provide and install at its cost one external sign throughout the lease term subject to local ordinance. Such sign cannot jeopardize the design integrity of the exterior of the building. As such, the Landlord, the Landlord's architect and the City of Vestavia Hills shall have final approval rights for any potential signage, including the manner of illumination. Tenant shall remove at its sole cost any signage upon termination of the lease, whether such termination is voluntary, involuntary, or due to Lease expiration.

**Holdover**

Tenant shall have no right to holdover following Lease expiration. Should the Tenant do so, Tenant shall be subject to holdover at a rate equal to the greater of a) 250% of market; rates for comparable space or b) 150% of the then existing rent.

**ADA Compliance**

Any costs associated with ADA code compliance outside of the Leased Premises will be the Landlord's sole expense and not passed on to the Tenant throughout the Lease Term and any extensions thereof. Tenant shall be responsible for all ADA code compliance within the Premises.

**Hazardous Materials**

Tenant shall indemnify Landlord from and against any liability and costs associated with hazardous materials found to be on the property and not introduced to the property by the Landlord, its agents and/or assigns. Landlord warrants that there will be no hazardous materials at the property upon Tenant's occupancy (normal construction and common cleaning materials and solvents notwithstanding). In the case of the Landlord, any cost associated with the removal of hazardous materials that are found to be present or have been introduced by Landlord shall not be passed through to Tenant as operating expenses.

**Access**

Tenant's employees will have access to the Premises during normal operating hours of the Library or up to two hours in advance of opening. IT SHOULD BE NOTED, however, that if the Tenant accesses the Premises during hours in which the Library is not open for business, Tenant assumes all liability for damages to Library property that occur as a result of its access. This includes, but is not limited to, failure to properly set the security alarm for the building upon exit; and, damages by officers, employees, agents or customers who access other areas of the Library during this period.

**Restoration**

At the end of the Lease Term or other termination of the Lease, Tenant shall return the space in "broom clean" condition and remove any and all non-permanent improvements or personal property and repair any damage caused by such removal. Permanent improvements shall not be removed from the property.

**Default**

The occurrence of any one of the following events shall be an Event of Default by the Tenant: a) failure to pay Landlord any rent or other sum of money when due under this lease after the expiration of five (5) days written notice; or b) failure to perform or observe any other covenant or condition of this Lease after the expiration of (10) ten days written notice, provided however that if the failure is of a nature than it cannot be cured within such 10 day period, Tenant shall not have committed an Event of Default if Tenant commences curing of the failure within such ten day period and diligently pursues the same and completes the cure within thirty (30) days.

Upon an Event of Default by Tenant, Landlord shall, in addition to all available rights and remedies at law or in equity, have the right without further notice to Tenant and with or without judicial process, to terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord.

**Insurance**

Tenant shall procure and maintain policies of insurance, at its own cost and expense, insuring:

- a) the Landlord; the elected officials of the City of Vestavia Hills, Alabama; any Landlord mortgagee of which Tenant is given written notice; Landlord's employees; the Vestavia Hills Library in the Forest; the Board of Trustees of the Vestavia Hills Library in the Forest, and all Library patrons ("Insured Parties") from all claims, demands or actions made by or on behalf of any person or persons, firm or corporation and arising from, related to or connected with the Premises, for bodily injury to or personal injury to or death of any person, or more than one (1) persons, or for damage to the property in an amount of not less than \$2,000,000.00 combined single limit per occurrence/aggregate. Said insurance shall be written on an "occurrence" basis and not on a "claims made" basis. If at any time during the term of this Lease, Tenant owns or rents more than one location, the policy shall contain an endorsement to the effect that the aggregate limit in the policy shall apply separately to each location owned or rented by the Tenant. Tenant shall cause the Insured Parties above to be insured as "additional insureds" such that Tenant will protect, indemnify and saved harmless the Insured Parties

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from and against any and all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including without limitation reasonable attorney's fees and expenses) imposed upon or incurred by or asserted against the Insured Parties, or any of them, by reason of any bodily injury to or personal injury to or death of any person or more than one person or for damage to property, occurring on or about the Premises, cause by any party including without limitation any Insured Party provided, however, Tenant shall not be required to indemnify or insure against any loss resulting from the intentional wrongful acts of an Insured Party to the extent of the amount of the insurance required to be carried under this section or such greater amount of insurance as is actually carried. Tenant shall cause its liability insurance to include contractual liability coverage fully covering the indemnity hereinabove set forth.

- b) All contents and Tenant's trade fixtures, machinery, equipment, furniture and furnishings in the Premises to the extent of at least ninety percent (90%) of their replacement costs under Standard Fire and Extended Coverage Policy and all other risks of direct physical loss as an insured under special Form ("all risk") coverage. Said insurance shall contain an endorsement waiving the insurer's right of subrogation against any Insured Party.

All of the aforesaid insurance shall be in companies with an A.M. Best rating of at least (A-)(VIII) and licensed to do business in the State of Alabama. The insurer and the form, substance and amount (where not stated above) shall be reasonably satisfactory to Landlord and shall unconditionally provide that it is not subject to cancellation, material modification or non-renewal except after at least thirty (30) days prior written notice to Landlord and any mortgagee of Landlord.

Original certificates of Tenant's insurance policies reasonably satisfactory to Landlord, together with reasonably satisfactory evidence of payment of the premiums thereon, shall be deposited with Landlord at the Commencement Date and renewals thereof not less than thirty (30) days prior to the end of the term of such coverage.

### **Indemnification**

Tenant shall indemnify, defend and hold harmless Insured Parties from and against any and all liability, claims, demands, causes of action, judgments, costs, expenses, and all losses and damages for bodily injury, death and property damage arising from any activity in or about the Premises even if resulting from the negligent act or omission (but not willful misconduct), of any of the Insured Parties, and from all costs, reasonable attorneys' fees and disbursements, and liabilities incurred in the defense of any such claim. Upon notice from Landlord, Tenant shall defend any such claim, demand, cause of action or suite at Tenant's expense by counsel satisfactory to Landlord in its reasonable discretion, or as designated by Tenant's insurer. The provisions of this subsection shall survive the expiration or earlier termination of this Lease.

### **Security Deposit**

Tenant shall not be required to post a Letter of Credit for the 90 Day Test Period. When Tenant and Landlord review the performance of services prior to the end of the Test Period, a determination of proper Letter of Credit Amount, if any, will be undertaken.

**Parking**

Tenant shall be allowed the use of up to two (2) parking spaces at no cost to the Tenant for use by employees staffing the Premises. Employee parking shall only be on the upper tier of the parking lot, leaving spaces closest to the building available for Library patrons and customers. At no time shall the Tenant allow food service vehicles of the Tenant, its Agents or Suppliers to be parked in the Library parking for any purpose other than loading or unloading of equipment, food and supplies; or, for a period one hour before and one hour after a catered event. In this instance, the vehicle must be parked in the upper level of the parking area. No overnight parking shall be permitted.

**Construction Period**

Until the Rent Commencement Date, there shall be no charge to Tenant for utility or elevator usage during Tenant's construction and move-in period.

**Brokerage Fees**

Tenant represents that no broker has been retained by the Tenant in this transaction and that, should any broker successfully make claim to such representation on the Tenant's behalf, any and all costs related to such broker shall be borne by the Tenant.

Landlord represents that no broker has been used by the Landlord in this transaction and that, should any broker successfully make claim to such representation on the Landlord's behalf, any and all costs related to such broker shall be borne by the Landlord.

Upon execution by both parties and ratification by the Vestavia Hills Library in the Forest Board of Trustees, the provisions of this Letter of Lease shall create and constitute a legally binding obligation between Landlord and Tenant, and both parties shall be obligated with respect to the provisions herein.

**ACCEPTED by TENANT:**

By: \_\_\_\_\_ Print Name: \_\_\_\_\_

As: \_\_\_\_\_ Date: \_\_\_\_\_

Sworn and Subscribed before me this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Seal)

\_\_\_\_\_  
Notary Public  
My Commission Expires \_\_\_\_\_.

**ACCEPTED BY THE CITY OF VESTAVIA HILLS, ALABAMA (LANDLORD):**

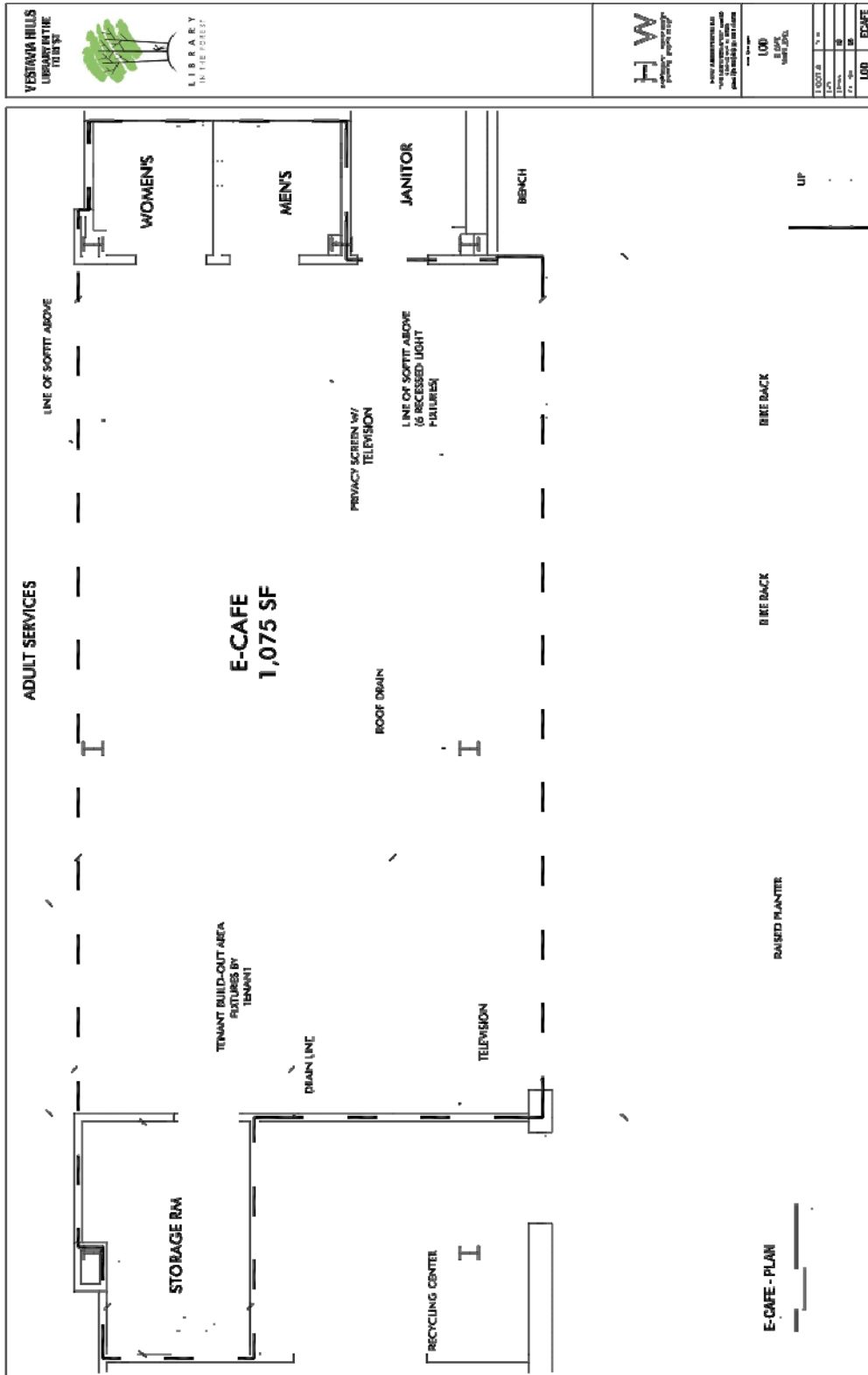
By: \_\_\_\_\_

Print Name: Alberto C. Zaragoza, Jr. Jim St. John  
As: Mayor Interim City Manager

ATTESTED BY: \_\_\_\_\_, City Clerk  
(Seal)

# EXHIBIT A

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**RESOLUTION NUMBER 4448**

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

**WITNESSETH THESE RECITALS**

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

**WHEREAS**, the City has determined that it would be in the best public interest to sell said property.

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

1. The City Manager is hereby authorized to sell the above-referenced surplus personal property; and
2. This Resolution Number 4448 shall become effective immediately upon adoption and approval.

**DONE, ORDERED, APPROVED and ADOPTED** on this the 13<sup>th</sup> day of May, 2013.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

# Memo

**To:** Rebecca Leavings, City Clerk  
**From:** Lt. Brian Gilham  
**Date:** April 22, 2013  
**Re:** Request to Surplus Vehicles

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Ms. Leavings,

We request, for the next VH City Council Meeting, that the listed vehicles below be listed as "Surplus Vehicle" so that they can be sold on auction at [www.govdeals.com](http://www.govdeals.com).

2007 Ford Crown Victoria

VH City Asset #: 10727

VIN: 2FAFP71W87X130210

Mileage: 158,966

2007 Ford Crown Victoria

VH City Asset #: 10729

VIN: 2FAFP71W17X130212

Mileage: 161,818 (Estimate)

Thank You

**RESOLUTION NUMBER 4449**

**A RESOLUTION TO RESCIND RESOLUTION NUMBER 4410  
AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE  
AN AGREEMENT FOR ARCHITECTURAL SERVICES FOR A CITY  
GARAGE/MAINTENANCE FACILITY AT WALD PARK**

**WHEREAS**, January 31, 2013, the City Council adopted and approved Resolution Number 4410 authorizing the Mayor and City Manager to execute an agreement for architectural services for a garage/maintenance facility at Wald Park; and

**WHEREAS**, the Mayor and City Council have reviewed the feasibility of said facility and have determined it is in the best public interest to rescind Resolution Number 4410 and terminate said agreement for architectural services.

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

1. Resolution Number 4410 is hereby rescinded in its entirety and the agreement for architectural services is terminated as of the date of this Resolution Number 4449; and
2. This Resolution Number 4449 shall become effective immediately upon adoption and approval.

**DONE, ORDERED, ADOPTED and APPROVED** this the 13<sup>th</sup> day of May, 2013.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk



**ORDINANCE NUMBER 2444**

**A RESOLUTION TO RESCIND ORDINANCE NUMBER 2426  
AUTHORIZING AND DIRECTING THE SALE OF REAL ESTATE  
SITUATED AT 1112 MONTGOMERY HIGHWAY**

**WHEREAS**, January 31, 2013, the City Council adopted and approved Ordinance Number 2426 authorizing the Mayor and City Manager to execute an agreement for the sale of property located at 1112 Montgomery Highway; and

**WHEREAS**, the Mayor and City Council have determined it is in the best public interest to rescind Ordinance Number 2426.

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

1. Ordinance Number 2426 is hereby rescinded in its entirety and all earnest funds paid relative to said purchase shall be refunded as soon as practical; and
2. This Ordinance Number 2444 shall become effective immediately upon adoption and approval.

**DONE, ORDERED, ADOPTED and APPROVED** this the 13<sup>th</sup> day of May, 2013.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**RESOLUTION NUMBER 4450**

**A RESOLUTION AUTHORIZING AND DIRECTING THE CITY  
MANAGER TO INITIATE A CONSUMER'S USE TAX REFUND TO  
CHARTER COMMUNICATIONS LP**

**WHEREAS**, Revenue Discovery Systems (“RDS”) acts as an agent for the City of Vestavia Hills for the collection of City sales, lease and use taxes; and

**WHEREAS**, RDS, in a letter dated April 16, 2013, advised the Finance Director of a request for a Consumer’s Use Tax Refund requested by Charter Communications LP that had been received in the amount of \$498,663.38, including interest; and

**WHEREAS**, RDS, in response to said request, audited and reviewed the remittance records of Charter Communications LP and determined that a net amount of \$407,836.70 was due to be refunded to Charter Communications LP; and

**WHEREAS**, the Mayor and City Council feel it is in the best public interest to refund said requested overpayment to Charter Communications LP.

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

1. The City Manager is hereby authorized and directed to initiate a Consumer’s Use Tax Refund to Charter Communications LP in the amount of \$407,836.70; and
2. Said Resolution Number 4450 shall become effective immediately upon adoption and approval.

**DONE, ORDERED, ADOPTED and APPROVED** this the 13<sup>th</sup> day of May, 2013.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk



2317 Third Avenue North, Suite 200  
Birmingham, Alabama 35203

800.556.7274 • 205.324.0088 • 205.423.4099 fax  
www.revds.com

April 16, 2013

Mr. Melvin Turner, III  
Finance Director  
City of Vestavia Hills  
513 Montgomery Highway  
Vestavia Hills, AL 35216-1807

Re: Charter Communications LP – Consumer’s Use Tax Refund

Dear Mr. Turner:

We are writing to accommodate your request for additional information pertaining to the proposed refund of City of Vestavia Hills consumer’s use tax to Charter Communications LP (“Charter”). We understand that you have questions surrounding the refund petitions and how the refund amounts have changed throughout the process. This letter will chronicle how the refund amounts due Charter from Vestavia Hills evolved from the original amount of \$498,663.38, to the RDS Audit Report amount of \$154,117.48, to the present total of \$407,836.70, and how the audit of Cisco Systems, Inc. by RiverTree impacted the RDS audit results and refund amounts due Charter.

Charter, including its affiliates and subsidiaries, following their acquisition of several local cable providers (e.g. Marcus Cable & Falcon Cable), and upon completion of an audit of their books and records, timely submitted multiple petitions for refund spanning periods from March 2007 through May 2011. The refund petitions evidenced that Charter had been reporting and remitting consumer’s use taxes at the general rate on equipment acquired and used in the broadcasting of cable television and the providing of telecommunications services throughout the applicable periods. Examples of such equipment include, but are not limited to; traps, receivers, video sequencers, filters, data scanners, equalizers, and converters which function to amplify, modify, or otherwise control electrical currents and signals imposed on electrical current and the attendant electromagnetic waves necessary for broadcasting or transmitting.

Alabama sales and use tax law has long designated such equipment and materials as qualified for the reduced manufacturing or “machine” rate of tax. ALA. CODE § 40-23-61(b) (2011 Repl.); ALA. ADMIN. CODE r. 810-6-2-.98 (1993); *Gulf Telephone Company v. Sizemore*, Circuit Court of Montgomery County, Alabama, CV-87-1730-G (May 3, 1988). The classification of such electrical equipment and components as property which “manufactures” tangible personal property is grounded in the long-standing Alabama



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Supreme Court decisions holding that electrical impulses and electromagnetic waves constitute “tangible personal property.” *Curry v. Alabama Power Co.*, 127 So.2d 603 (Ala. 1961); *State v. Television Corp.*, 127 So.2d 603 (Ala. 1961).

The initial petitions for refund filed by Charter, and other joint petitioners, for Vestavia Hills requested refunds of consumer’s use taxes in the amount \$498,663.38, not including applicable interest. Through an examination of the refund petitions and subsequent tax periods, RDS managed to reduce the amount of the refund to \$154,117.48 through offsetting tax liabilities and other related reporting errors. However, following the issuance of the audit report reflecting such, RDS was notified that a previously denied portion of the refund petition, in the amount of \$137,466.35 without applicable interest, was incorporated within a recent audit of Cisco Systems, Inc. by RiverTree on behalf of Vestavia Hills. In reviewing the RiverTree audit, RDS found that the taxes in question had been erroneously remitted to the State of Alabama Department of Revenue rather than RDS on behalf of Vestavia Hills. RDS had denied this entire portion of the refund because no evidence of payment to Vestavia existed, and assessed additional amounts due in the amount of \$68,733.18, plus penalty and interest, representing the manufacturing rate of tax applicable to the property in question, which was used to further offset the refund requested by Charter for Vestavia Hills. This adjustment represented approximately \$250,000 of the total \$400,000+ in offsetting tax liabilities discovered by RDS for Charter.

The amounts which were petitioned to be refunded from Vestavia Hills were instead due to be refunded from the State and remitted to Vestavia Hills. However, the amounts collected from Cisco Systems following the examination by RiverTree consisted of taxes assessed on manufacturing equipment which was originally paid at the general rate, 3%, on equipment which qualified and was eligible for the reduced manufacturing rate, 1%. Confusingly, the respective periods within the Cisco audit conducted by RiverTree coincided with periods which were audited by RDS for Charter. In sum, taxes were collected by Cisco from Charter at a rate of 3%, which should have been collected at the rate of 1%, and were erroneously remitted to the State rather than Vestavia Hills. When RiverTree audited Cisco, they collected the full amount from Cisco at the incorrect general tax rate of 3%. This resulted in portions of the Charter refunds which had been denied and assessed within the RDS audit, approximately \$250,000 referenced above, being reversed based upon corresponding revisions which had to be made in the RiverTree audit. This caused the refund amount of \$154,117.48, represented in the initial RDS audit report to Charter and previous correspondence to Vestavia Hills on January 15, 2013, to be increased to approximately \$407,836.70, after applicable interest calculations were included.

Ultimately, RDS did not know that the RiverTree audit was simultaneously ongoing, or that it had occurred, until after our first review of the refund petition and our letter on



2317 Third Avenue North, Suite 200  
Birmingham, Alabama 35203

800.556.7274 • 205.324.0088 • 205.423.4099 fax  
[www.revds.com](http://www.revds.com)

January 15<sup>th</sup>, 2013. We apologize for this confusion and pledge to work with the City of Vestavia Hills to find a solution as to how this might be prevented in the future.

Sincerely,

A handwritten signature in black ink that reads "Kennon Walthall". The signature is written in a cursive style.

Kennon Walthall  
COO & SVP  
Revenue Discovery Systems  
205-423-4114

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

The City Council of the City of Vestavia Hills met in regular public session at the City Hall in the City of Vestavia Hills, Alabama, at 5:00 p.m. on May 13, 2013. The meeting was called to order by the Mayor, and the roll was called with the following results:

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

Absent:           None

\* \* \*

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

\* \* \*

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

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**ORDINANCE NO. 2446**

---

**CITY OF VESTAVIA HILLS, ALABAMA**

**For**

**\$4,245,000**  
**GENERAL OBLIGATION WARRANTS**  
**(FEDERALLY TAXABLE – QUALIFIED ENERGY**  
**CONSERVATION BONDS – DIRECT PAY)**  
**SERIES 2013**

**Adopted: May 13, 2013**

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ORDINANCE NO. 2446

AN ORDINANCE AUTHORIZING THE ISSUANCE AND MAKING  
PROVISION FOR THE PAYMENT OF \$4,245,000 GENERAL  
OBLIGATION WARRANTS (FEDERALLY TAXABLE – QUALIFIED  
ENERGY CONSERVATION BONDS – DIRECT PAY), SERIES 2013

---

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS,  
ALABAMA, as follows:

ARTICLE 1

**Definitions; Provisions of General Application;  
and Representations and Warranties of City**

**Section 1.01 Definitions and Use of Phrases.**

(a) For all purposes of this Ordinance, except as otherwise expressly provided or unless the context otherwise requires:

(a) The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular.

(b) All references in this Ordinance to designated “Articles”, “Sections” and other subdivisions are to the designated Articles, Sections and subdivisions of this Ordinance as originally adopted.

(c) The terms “herein”, “hereof” and “hereunder” and other words of similar import refer to this Ordinance as a whole and not to any particular Article, Section or other subdivision.

(d) The following words and phrases and others evidently intended as the equivalent thereof shall, in the absence of clear implication herein otherwise, be given the following respective interpretations herein:

**Authorized Denominations** means with respect to all Warrants the amount of \$5,000 and any integral multiple thereof for each maturity.

**Beneficial Owner** shall have the meaning set forth in Section 3.04(a).

**Book-Entry System** means a book-entry only system of evidence of purchase and transfer of beneficial ownership interests in the Warrants.

**Business Day** means a day, other than a Saturday or a Sunday, on which commercial banking institutions are open for business in the state where the principal corporate office of the Paying Agent is located and a day on which the payment system of the Federal Reserve System is operational.



**Calculation Agreement** shall mean the Calculation Agency Agreement dated May 15, 2013 by the City and the Paying Agent.

**City** means shall mean the City of Vestavia Hills, Alabama and its successors and assigns.

**Code** means the Internal Revenue Code of 1986, as amended, and all references to specific sections of the Code shall be deemed to include any and all respective successor provisions to such sections.

**Continuing Disclosure Agreement** means the Continuing Disclosure Agreement dated the date of delivery by the City in favor of the Holders.

**Direct Participant** or **Direct Participants** means securities brokers and dealers, banks, trust companies, clearing corporations and other financial institutions which have access to the Book-Entry System.

**Eligible Certificates** means interest bearing certificates of deposit issued by any bank organized under the laws of the United States of America or of any state thereof, provided that (i) the issuing bank has capital, surplus and undivided profits of not less than \$50,000,000 at the time of issuance of such certificates, or (ii) the issuing bank collaterally secures such certificates by depositing and pledging with a federal reserve bank Federal Securities having a market value (exclusive of accrued interest) not less than the face amount of such certificates.

**Enabling Law** shall mean Section 11-47-2 and Article 7 of Chapter 16 of Title 41 of the Code of Alabama 1975.

**Federal Securities** means direct general obligations of the United States of America or any securities on which the payment of the principal and interest are unconditionally guaranteed by the United States of America.

**Fiscal Year** means the period beginning on October 1 of one calendar year and ending on September 30 of the next succeeding calendar year or such other Fiscal Year as may hereafter be adopted by the City.

**Holder** when used with respect to any Warrant means the Person in whose name such Warrant is registered in the Warrant Register.

**Indirect Participant** or **Indirect Participants** means securities brokers and dealers, banks, trust companies, clearing corporations and other financial institutions for which the Securities Depository holds Warrants as securities depository through a Direct Participant.

**Interest Payment Date** shall mean August 1, 2013 and each February 1 and August 1 thereafter.

**Investment Repurchase Agreement** means that certain Investment Repurchase Agreement dated May 15, 2013 by Bayerische Landesbank, acting through its New York Branch, and Wells Fargo Bank, National Association, as custodian, and the Paying Agent, and the City, with respect to the invested sinking fund for the Warrants.

**Letter of Representation** means and includes (i) the Letter of Representation with respect to the Warrants among the City, the Paying Agent and the Securities Depository and (ii) any other or subsequent agreement by whatever name or identification with respect to the Warrants among said parties from time to time in effect.

**Official Statement** shall have the meaning assigned in Section 9.02(a).

**Ordinance** means this Ordinance as originally adopted or as it may from time to time be supplemented, modified or amended.

**Outstanding** when used with respect to Warrants means, as of the date of determination, all Warrants theretofore authenticated and delivered under this Ordinance, except: (1) Warrants theretofore canceled by the Paying Agent or delivered to the Paying Agent for cancellation; and (2) Warrants for whose payment or redemption money in the necessary amount has been theretofore deposited with the Paying Agent in trust for the Holders thereof, provided that, if such warrants are to be redeemed, notice of such redemption has been duly given pursuant to this Ordinance or provision therefor satisfactory to the Paying Agent has been made; and (3) Warrants for the payment of which provisions have been made in accordance with Article 10; and (4) Warrants in exchange for or in lieu of which other warrants have been authenticated and delivered under this Ordinance.

**Paying Agent** means (i) The Bank of New York Mellon Trust Company, National Association, the bank designated by the City as the paying agent for the Warrant Fund and the paying agent and registrar for the Warrants, and (ii) any successor bank designated as such depository, paying agent and registrar pursuant to Section 8.03 hereof.

**Person** shall include any individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization and any government or agency or political subdivision thereof.

**Principal Office of the Paying Agent** means the office where the Paying Agent maintains its designated trust office for purposes of this Ordinance, or such other office as shall be designated by the Paying Agent by written notice to the City and the Holders.

**Qualified Investments** means:

(1) Federal Securities or a trust or fund consisting of Federal Securities, or

(2) A certificate of deposit or time deposit issued by (i) the Paying Agent, or (ii) any other bank organized under the laws of the United States of America or any state thereof with capital, surplus and undivided profits of not less than \$50,000,000, provided in each case such deposit is insured by the Federal Deposit Insurance Corporation or such deposit is collaterally secured by the issuing bank by pledging Federal Securities having a market value (exclusive of accrued interest) not less than the face amount of such certificate less the amount of such deposit insured by the Federal Deposit Insurance Corporation.

**QECB Subsidy Payments** means the semiannual payments to be received by the City from the United States Treasury, under Sections 54A, 54D, and 6431 of the Code, in respect of interest payable on the Warrants as "qualified energy conservation bonds" under Sections 54A and 54D of the Code.

**Record Date** means, for each Interest Payment Date, the 15<sup>th</sup> day of the month (whether or not a Business Day) next preceding any Interest Payment Date.

**Securities Depository** means The Depository Trust Company, a limited purpose trust company organized under the laws of the State of New York, and the successors and assigns thereof, and any substitute securities depository therefor that maintains a Book-Entry System for the Warrants.

**Securities Depository Nominee** means the Securities Depository or the nominee of such Securities Depository in whose name there shall be registered on the Warrant Register the Warrants to be delivered to such Securities Depository during a period in which the Warrants are held pursuant to the Book-Entry System.

**Series 2013 Energy Conservation and Lighting Project** means acquisition and installation of the Musco Light - Structure Green lighting system, in replacement of all lights and lighting systems, in all public athletic facilities, playgrounds, and parks of the City and the athletic facilities of the various public educational facilities and schools of the City.

**Tax Certificate and Agreement** means that certain Tax Certificate and Agreement delivered by the City with respect to the Warrants on the date of issuance thereof.

**Warrant Fund** means the fund established pursuant to Section 5.01 hereof.

**Warrant Registrar** means the agent of the City appointed as such pursuant to Section 3.02 for the purpose of registering Warrants and transfers of Warrants.

**Warrants** means the General Obligation Warrants (Federally Taxable – Qualified Energy Conservation Bonds – Direct Pay), Series 2013, dated the date of delivery, authorized to be issued pursuant to the provisions of this Ordinance.

**Section 1.02     Effect of Headings and Table of Contents**

The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

**Section 1.03     Binding Effect Upon Successors and Assigns**

All the covenants, stipulations, promises and agreements in this Ordinance contained by or on behalf of the City shall inure to the benefit of and bind its successors and assigns.

**Section 1.04     Governing Law**

This Ordinance shall be construed in accordance with and governed by the laws of the State of Alabama.

**Section 1.05     Enforceability**

The provisions of this Ordinance are severable. In the event that any one or more of such provisions or the provisions of the Warrants shall, for any reason, be held illegal or invalid, such illegality or invalidity shall

not affect the other provisions of this Ordinance or of the Warrants, and this Ordinance and the Warrants shall be construed and enforced as if such illegal or invalid provision had not been contained herein or therein.

**Section 1.06     Repeal of Conflicting Provisions**

All ordinances, resolutions and orders or parts thereof in conflict with this Ordinance are, to the extent of such conflict, hereby repealed.

**Section 1.07     Ordinance a Contract**

The terms, provisions and covenants set forth in this Ordinance shall constitute a contract with the registered owners from time to time of the Warrants and shall remain in effect until the principal of and interest on the Warrants shall have been paid in full.

**Section 1.08     Findings of Fact and Representations**

The City, upon evidence duly presented to and considered by it, does hereby find, determine and represent as follows:

(a)       It is necessary and desirable and in the public interest for the City to issue the Warrants to provide for the following purposes:

- (1)       to provide for the payment of the costs of the Series 2013 Energy Conservation and Lighting Project;
- (2)       to pay issuance expenses of the Warrants.

(b)       The assessed valuation of the taxable property in the City for the preceding fiscal year (ending September 30, 2012) is not less than \$622,104,176, and the total indebtedness of the City chargeable against the debt limitation for the City prescribed by the Constitution of Alabama of 1901 is not more than twenty percent of said assessed valuation.

**ARTICLE 2**

**Source of Payment; Security**

**Section 2.01     Source of Payment of Warrants**

The indebtedness evidenced and ordered paid by the Warrants shall be a general obligation of the City for the punctual payment of the principal of and interest on which the full faith, credit and taxing power of the City are hereby sacredly and irrevocably pledged.

**Section 2.02     Officers and Members of the Governing Body of the City Exempt from Individual Liability**

By acceptance of a Warrant, the Holder or Beneficial Owner thereof shall have agreed that no recourse under or upon any covenant or agreement of this Ordinance or of any Warrant, or for any claim

based thereon or otherwise in respect thereof, shall be had against any past, present or future officer, employee, or member of the governing body of the City, or of any successor of any thereof, and all such liability of every name and nature, either at common law or in equity or by constitution or statute, and any and all such rights and claims against every such officer, employee, or member of the governing body of the City as such, are hereby expressly waived and released as a condition of, and as a consideration for, the issuance of the Warrants.

**Section 2.03    Expenses of Collection; Interest After Maturity**

The City hereby covenants and agrees that, if the principal of and interest on the Warrants are not paid promptly as such principal and interest matures and comes due, it will pay to the Holders of the Warrants all expenses incident to the collection of any unpaid portion thereof, including reasonable attorneys' fees.

**ARTICLE 3**

**The Warrants**

**Section 3.01    Authorization and Description of Warrants**

(a)    (1)    Pursuant to the Constitution and laws of the State of Alabama, including particularly the Enabling Law, there is hereby authorized to be issued a series of warrants in the aggregate principal amount of \$4,245,000 for the purposes set forth in Section 1.08(a).

(2)    The Warrants shall be issued pursuant to a Book Entry System.

(b)    The Warrants shall be designated "General Obligation Warrants (Federally Taxable – Qualified Energy Conservation Bonds – Direct Pay), Series 2013," shall be in fully registered form, without coupons, shall be in Authorized Denominations, shall be numbered for identification as determined by the Paying Agent, and shall be dated the date of delivery.

(c)    The Warrants shall mature on February 1 in the following year and in the following principal amount and shall bear interest at the following per annum rate:

| <u>Year</u> | <u>Principal Amount<br/>Maturing</u> | <u>Interest Rate</u> |
|-------------|--------------------------------------|----------------------|
| 2033        | \$4,245,000                          | 3.750%               |

(d)    Interest on the Warrants shall be payable on August 1, 2013 and on each February 1 and August 1 thereafter on the basis of a 360-day year of 12 consecutive 30-day months.

(e)    The principal of, premium (if any) and interest on the Warrants shall be payable as provided therein in lawful money of the United States of America without deduction for exchange, fees or expenses.

(f) The Warrants are subject to redemption prior to maturity upon the circumstances, in the manner, on the dates, in the amounts and order, at the redemption prices and upon the notice as provided in this Ordinance and as set forth in the Warrants.

(g) The form of the Warrants and the authentication and registration certificates and the assignments appertaining thereto shall be substantially as follows, with appropriate changes, variations and insertions as provided herein; provided that for the purpose of printing the Warrants the face of the Warrants need not include the entire text so long as the paragraphs not appearing on the face of the printed Warrant appear on the reverse side thereof:

UNITED STATES OF AMERICA  
STATE OF ALABAMA

CITY OF VESTAVIA HILLS, ALABAMA  
GENERAL OBLIGATION WARRANTS  
(FEDERALLY TAXABLE – QUALIFIED ENERGY  
CONSERVATION BONDS – DIRECT PAY)  
SERIES 2013

No. R-1

| DATED DATE:  | MATURITY DATE:   | INTEREST RATE: | CUSIP:    |
|--------------|------------------|----------------|-----------|
| May 15, 2013 | February 1, 2033 | 3.75%          | 925479NL7 |

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

**CEDE & Co.**

or registered assigns in the principal amount of

FOUR MILLION TWO HUNDRED FORTY-FIVE THOUSAND DOLLARS  
(\$4,245,000)

and hereby orders and directs the Finance Director (or any successor to the duties and functions thereof) of the City to pay to said payee or registered assigns, solely from the Warrant Fund hereinafter designated, said principal amount on the Maturity Date specified above, and to pay to said payee or registered assigns from said Warrant Fund interest on said principal amount from the date hereof at the Interest Rate per annum specified above, computed on the basis of a 360-day year of 12 consecutive 30-day months, payable on August 1, 2013 and on February 1 and August 1 in each year thereafter.

**Authority for Issuance; Source of Payment and Security; Reference to Ordinance**

This warrant is one of a duly authorized issue of \$4,245,000 General Obligation Warrants (Federally Taxable – Qualified Energy Conservation Bonds – Direct Pay), Series 2013 (the "Warrants"), issued pursuant to the authority of the Constitution and laws of the state of Alabama and an ordinance and proceedings of the City duly held, passed and conducted (the "Ordinance").

In the Ordinance the City has appointed The Bank of New York Mellon Trust Company, National Association, as the Paying Agent and Warrant Registrar for the Warrants (the "Paying Agent").

Capitalized terms used herein without definition shall have the respective meanings assigned thereto in the Ordinance.

The indebtedness evidenced by the Warrants is a general obligation of the City and the full faith and credit of the City are hereby sacredly and irrevocably pledged to the punctual payment of the principal thereof and interest thereon.

The Warrants shall never constitute an indebtedness, pecuniary liability, or charge against the general credit or taxing power, of the State of Alabama or any political subdivision thereof except the City.

Reference is hereby made to the Ordinance, copies of which are on file at the Principal Office of the Paying Agent, for a description of the nature and extent of the security afforded by the Ordinance, the rights and duties of the City and the Paying Agent with respect thereto, and the terms and conditions upon which the purchase, transfer and exchange of the Warrants are to be made, to and by all of which terms, conditions and provisions of the Ordinance the owner of this Warrant, or of any beneficial interest in this Warrant, by the acquisition hereof, hereby assents and agrees to be bound.

**Payment; Warrant Fund**

The principal of and interest on the Warrants shall be payable in lawful money of the United States of America, without deduction for exchange, fees or expenses, by the City through the Paying Agent.

During a period in which the Book-Entry System is not in effect for the Warrants: (1) payment of interest on the Warrants shall be made by check or draft mailed by the Paying Agent to the Holders in whose names the Warrants are registered in the Warrant Register maintained by the Paying Agent at close of business on the Record Date (such payments to be deemed timely made if so mailed on the Interest Payment Date or, if such Interest Payment Date is not a Business Day, on the Business Day next following such Interest Payment Date); (2) payment of the principal of (and premium, if any, on) the Warrants shall be made to the Holders only upon surrender of the Warrants at the Principal Office of the Paying Agent; and (3) all such payments of principal of, premium (if any) and interest on the Warrants on behalf of the City or the Paying Agent shall be valid and effectual to satisfy and discharge the liability of the City and the Paying Agent to the extent of the amounts so paid.

During a period in which the Book-Entry System is in effect for the Warrants: (1) payments of principal, interest, and redemption premium, if any, with respect to the Warrants will be paid by the Paying Agent directly to the Securities Depository, or the Securities Depository Nominee, as Holder; provided, that payment of the principal of (and premium, if any, on) such Warrants due at final maturity or upon redemption in whole of any of such Warrants shall be made only upon surrender thereof at the Principal Office of the Paying Agent; (2) the Securities Depository and the Direct Participants and the Indirect Participants shall be responsible for the disbursement of such payments to the Beneficial Owners; and (3) all such payments to the Securities Depository or the Securities Depository Nominee, as Holder, of principal of, premium (if any) and interest on such Warrants on behalf of the City or the Paying Agent shall be valid and effectual to satisfy and discharge the liability of the City and the Paying Agent to the extent of the amounts so paid, and the City and the Paying Agent shall not be responsible or liable for payment to any Beneficial Owner by the Securities Depository or by any Direct Participant or by any Indirect Participant, or for sending transaction statements or for maintaining, supervising or reviewing records maintained by the Securities Depository or Direct Participants or Indirect Direct Participants.

If any payment on the Warrants is due on a day which is not a Business Day, such payment shall be made on the first succeeding day which is a Business Day with the same effect as if made on the day such payment was due.

The City, the Paying Agent and any agent of the City or the Paying Agent may treat the person in whose name any Warrant is registered as the owner of such Warrant for the purpose of receiving payment of



principal of, premium (if any) and interest on such Warrant and for all other purposes whatsoever whether or not such Warrant be overdue, and, to the extent permitted by law, neither the City, the Paying Agent nor any such agent shall be affected by notice to the contrary.

The City has established in the Ordinance a special fund designated "Warrant Fund" for the payment of the principal of and interest on the Warrants and has obligated itself to pay or cause to be paid into the Warrant Fund, from the revenues or funds of the City, sums sufficient to provide for the payment of the principal of and interest on the Warrants as the same shall become due and payable.

## **Redemption**

### **Optional Redemption**

The Warrants will be subject to prior redemption at the option and direction, of the City, as a whole or in part in integral multiples of an Authorized Denomination, on February 1, 2023 or on any date thereafter, in such principal amounts as the City may determine and by lot within a maturity, at a redemption price for each Warrant redeemed equal to the principal amount thereof to be redeemed plus accrued interest to the redemption date, without premium or penalty.

### **Extraordinary Optional Redemption**

*Extraordinary Optional Redemption.* The Warrants will be subject to redemption prior to their maturity, at the option of the City, in whole or in part on any date (but if in part, in integral multiples of \$5,000), upon the occurrence of an Extraordinary Event (as hereinafter defined), at a redemption price (the "Extraordinary Redemption Price") equal to the greater of (i) 100% of the principal amount of the Warrants to be redeemed; or (ii) the sum of the present value of the scheduled payments of principal and interest on the Warrants to be redeemed, not including any portion of those payments of interest accrued and unpaid as of the date on which the Warrants are to be redeemed, remaining to be paid during the period beginning with the date on which the Warrants are to be redeemed and ending at final maturity of the Warrants (i.e., February 1, 2033), discounted to the date on which the Warrants are to be redeemed on a semiannual basis, assuming a 360-day year consisting of twelve 30-day months, at the Treasury Rate (as hereinafter defined), plus 100 basis points; plus, in either case, accrued interest on the Warrants to be redeemed to the redemption date; provided, however, that any resulting redemption premium may not exceed 12 months' interest on the Warrants, computed at the rate which the Warrants would bear on the redemption date as specified therein if such option had not been exercised.

The Extraordinary Redemption Price of the Warrants to be redeemed at the option of the City will be determined by an independent accounting firm, investment banking firm or financial advisor retained by the City at the City's expense to calculate such redemption price. The City may conclusively rely on the determination of such redemption price by such independent accounting firm, investment banking firm or financial advisor, and will not be liable for such reliance. **As used hereinabove, "Extraordinary Event" means the failure of the United States Treasury to make a cash subsidy payment of less than what the City would have received with respect to the Warrants but for the reduction, suspension or termination of the payment, which such failure is not caused by any action or inaction of the City.**

As used hereinabove, "Treasury Rate" means, with respect to any redemption date, the rate per annum, expressed as a percentage of the principal amount, equal to the semiannual equivalent yield to

maturity or interpolated maturity of the Comparable Treasury Issue (as hereinafter defined), assuming that the Comparable Treasury Issue is purchased on the redemption date for a price equal to the Comparable Treasury Price (as hereinafter defined), as calculated by the Designated Investment Banker (as hereinafter defined). "Comparable Treasury Issue" means, with respect to any redemption date for a particular Warrant, the United States Treasury security or securities selected by the Designated Investment Banker which has an actual or interpolated maturity comparable to the remaining average life of the Warrant to be redeemed, and that would be utilized in accordance with customary financial practice in pricing new issues of debt securities of comparable maturity to the remaining average life of the Warrants to be redeemed.

"Comparable Treasury Price" means, with respect to any redemption date for a particular Warrant, (i) if the Designated Investment Banker receives at least four Reference Treasury Dealer Quotations (as hereinafter defined), the average of such quotations for such redemption date, and after excluding the highest and lowest Reference Treasury Dealer Quotations, or (ii) if the Designated Investment Banker obtains fewer than four Reference Treasury Dealer Quotations, the average of all such quotations.

"Designated Investment Banker" means one of the Reference Treasury Dealers (as hereinafter defined) appointed by the City from time to time.

"Reference Treasury Dealer" means a firm, specified by the City from time to time, that is a primary United States Government securities dealer in the City of New York (each, a "Primary Treasury Dealer"); provided, however, that if any of them ceases to be a Primary Treasury Dealer, the City will substitute another Primary Treasury Dealer.

"Reference Treasury Dealer Quotations" means, with respect to each Reference Treasury Dealer and any redemption date for a particular Warrant, the average, as determined by the Designated Investment Banker, of the bid and asked prices for the Comparable Treasury

Issue (expressed in each case as a percentage of its principal amount) quoted in writing to the Designated Investment Banker by such Reference Treasury Dealer at 3:30 P.M., New York City time, on the third business day preceding such redemption date.

*Extraordinary Mandatory Redemption.* The Warrants will be subject to redemption prior to their maturity if, on the date that is three years after the date on which the Warrants are issued (or, if an extension of the expenditure period has been received by the City from the Secretary of the Treasury, at the close of the extension period) (the "Final Expenditure Date"), there remain unspent proceeds on deposit in the Project Fund. Any such redemption will occur not later than 90 days after the Final Expenditure Date, in an amount equal to the amount of "nonqualified" Warrants (as determined pursuant to Section 142 of the Code and regulations promulgated thereunder), and at a price equal to the Extraordinary Redemption Price; provided, however, that any resulting redemption premium may not exceed 12 months' interest on the Warrants, computed at the rate which the Warrants would bear on the redemption date as specified therein if such option had not been exercised.

The Extraordinary Redemption Price of the Warrants to be redeemed pursuant to the foregoing extraordinary mandatory redemption will be determined by an independent accounting firm, investment banking firm or financial advisor retained by the City at the City's expense to calculate such redemption price. The City may conclusively rely on the determination of such redemption price by such independent accounting firm, investment banking firm or financial advisor, and will not be liable for such reliance.

### No Mandatory Redemption

The Warrants shall not be subject to mandatory redemption prior to maturity on February 1 , 2033.

### General

Warrants to be redeemed shall be selected by the Securities Depository or Paying Agent as provided in the Ordinance, and redemption thereof shall be effected in the manner, upon the notice, and on the terms and conditions provided in the Ordinance.

Notice meeting the requirements of the Ordinance of the intended redemption of any Warrants shall be given by the Paying Agent to the Holder of each Warrant, all or a portion of the principal of which is to be redeemed, not less than 30 days prior to the proposed redemption date, by United States registered or certified mail (first class, postage prepaid), or, if the Securities Depository or Securities Depository Nominee is the Holder, at the times and in the manner as provided in the Letter of Representation, at the address of such Holder appearing in the Warrant Register; provided, however, any Holder may waive the requirement of notice as to the redemption (in whole or in part) of the Warrant or Warrants thereof.

Warrants (or portions thereof) for the redemption and payment of which provision has been made and notice thereof given all in accordance with the Ordinance shall thereupon cease to be entitled to the benefits of the Ordinance and shall cease to bear interest from and after the date fixed for redemption unless default shall be made in the payment of the redemption price.

### Warrants Payable on Redemption Date; Interest to Cease to Accrue after Redemption Date

Notice of redemption having been given as aforesaid, the Warrants to be redeemed will, on the redemption date, become due and payable at the redemption price therein specified, and from and after such date (unless the City shall default in the payment of the redemption price) such Warrants will cease to bear interest. Installments of interest due prior to the redemption date will be paid to the registered holders of the Warrants on the relevant record dates.

### **Registration, Transfer, Exchange; Book Entry System**

The Warrants are initially issued in Authorized Denominations pursuant to the Book-Entry System to be administered by the Securities Depository and registered in the name of and held by the Securities Depository Nominee. During the period in which the Securities Depository Nominee is the registered owner of the Warrants, purchases and transfers of ownership of beneficial interests in the Warrants will be evidenced by book-entry only, as more particularly provided in the Ordinance.

The Securities Depository may determine to discontinue the Book-Entry System with respect to the Warrants at any time upon notice to the City and the Paying Agent and upon discharge of its responsibilities with respect thereto under applicable law. Upon such notice and compliance with law the Book-Entry System for the Warrants will be discontinued unless a successor securities depository is appointed by the City.

In the event the Book-Entry System for the Warrants is discontinued, Warrants in certificated form in Authorized Denominations will be physically distributed to the owners of beneficial interests in the Warrants, the Warrants will be registered in the names of the owners thereof on the registration books of the Paying Agent pertaining thereto, and the following provisions with respect to registration, transfer and exchange of the Warrants by the registered owners thereof shall apply, subject to the further conditions set forth in the Series 2013 Warrants Ordinance with respect thereto:

(a) The Warrants may be transferred by the registered owner in person or by authorized attorney, only on the Warrant Register maintained by the Paying Agent and only upon surrender of the Warrant to the Paying Agent for cancellation with a written instrument of transfer acceptable to the Paying Agent executed by the registered owner or his duly authorized attorney, and upon any such transfer, a new Warrant of like tenor shall be issued to the transferee in exchange therefor.

(b) The registered owner of any Warrant in a face amount of more than the smallest Authorized Denomination may surrender the same in exchange for more than one Warrant, each in the principal amount which is an integral multiple of an Authorized Denomination, having the same year of maturity as the Warrant so surrendered and the same aggregate principal amount. The registered owner of two or more Warrants having the same principal maturity may surrender the same in exchange for a single Warrant in the aggregate principal amount of the Warrants so surrendered.

(c) The Paying Agent shall not be required to transfer or exchange any Warrant during the period from the Record Date and the then next succeeding Interest Payment Date; and in the event that any Warrant (or any part thereof) is duly called for redemption, the Paying Agent shall not be required to register or transfer any such Warrant during the period of forty-five (45) days next preceding the date fixed for such redemption.

No charge shall be made for the privilege of transfer or exchange, but the registered owner of any Warrant requesting any such transfer or exchange shall pay any tax or other governmental charge required to be paid with respect thereto. The registered owner of any Warrant will be required to pay any expenses incurred in connection with the replacement of a mutilated, lost, stolen or destroyed Warrant.

The Ordinance provides that each registered owner of the Warrants, by receiving or accepting the Warrant, consents and agrees and is estopped to deny that, insofar as the City and the Paying Agent are concerned, the Warrant may be transferred only in accordance with the provisions of the Ordinance.

## General

The Ordinance provides that, as a condition of, and a consideration of, the issuance of the Warrants, each Holder or Beneficial Owner thereof, by acceptance of a Warrant shall have agreed that no covenant or agreement contained in this warrant or in the Ordinance shall be deemed to be a covenant or agreement of any officer, agent, employee, or member of the governing body of the City or of the Paying Agent in its individual capacity and none of such parties or persons nor any officer executing this warrant shall be liable personally on this warrant or be subject to any personal liability or accountability by reason of the issuance of this warrant.

This warrant shall not be valid or become obligatory for any purpose until the Certificate of Authentication and Registration inscribed hereon shall have been executed by the Paying Agent by the manual signature of one of its authorized officers.

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

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

**CITY OF VESTAVIA HILLS, ALABAMA**

By: \_\_\_\_\_  
Mayor

SEAL

Attest: \_\_\_\_\_  
City Clerk

**REGISTRATION CERTIFICATE**

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

\_\_\_\_\_  
Finance Director of the  
City of Vestavia Hills, Alabama

**AUTHENTICATION AND REGISTRATION DATE: MAY 15, 2013**

**CERTIFICATE OF AUTHENTICATION  
AND REGISTRATION**

This warrant is hereby authenticated and has been registered by the City of Vestavia Hills, Alabama on the registration books maintained with the Paying Agent in the name of the above registered owner on the Authentication and Registration Date noted above.

**THE BANK OF NEW YORK MELLON TRUST COMPANY,  
NATIONAL ASSOCIATION**

By \_\_\_\_\_  
Its Authorized Officer

**ASSIGNMENT**

For value received \_\_\_\_\_ hereby sell(s), assign(s), and transfer(s) unto \_\_\_\_\_ the within Warrant and hereby irrevocably constitute(s) and appoint(s) \_\_\_\_\_, attorney, with full power of substitution in the premises, to transfer this Warrant on the books of the within mentioned Paying Agent.

Dated this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
NOTE: The signature on this assignment must correspond with the name of the registered owner as it appears on the face of the within Warrant in every particular, without alteration, enlargement or change whatsoever.

Signature Guaranteed:\*

\_\_\_\_\_  
(Bank, Trust Company or Firm)

By \_\_\_\_\_  
(Authorized Officer)

\* Signature(s) must be guaranteed by an eligible guarantor institution which is a member of the recognized signature guarantee program, i.e., Securities Transfer Agents Medallion Program (STAMP), Stock Exchanges Medallion Program (SEMP), or New York Stock Exchange Medallion Signature Program (MSP).

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**Notice By Securities Depository**

Unless the within Warrant is presented by an authorized representative of the Securities Depository (as defined in the Ordinance referenced in the within Warrant), to the City or its agent for registration of transfer, exchange, or payment, and any Warrant issued is registered in the name of the Securities Depository or the Securities Depository Nominee (as defined in the Ordinance referenced in the within Warrant), as the case may be, or in such other name as is requested by an authorized representative of the Securities Depository (and any payment is made to the Securities Depository or the Securities Depository Nominee or to such other entity as is requested by an authorized representative of the Securities Depository), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, the Securities Depository or Securities Depository Nominee, as the case may be, has an interest herein.

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**Section 3.02     Registration of Warrants**

(a)     The City shall cause to be kept at the Principal Office of the Paying Agent a register (the "Warrant Register") in which, subject to such reasonable regulations as it may prescribe, the City shall provide for the registration of Warrants and registration of transfers of Warrants entitled to be registered or transferred as herein provided.

(b)     The Paying Agent is hereby appointed "Warrant Registrar" for the purpose of registering Warrants and transfers of Warrants as herein provided.

**Section 3.03     Execution, Authentication and Delivery of Warrants**

(a)     The Warrants shall be executed in the name of and on behalf of the City by signature of the Mayor, shall be sealed with the seal of the City imprinted thereon, and said seal and said Warrants shall be attested by the City Clerk of the City. The Warrants shall be registered by the City Clerk of the City as a claim against the City and the Warrant Fund. The Mayor and the City Clerk of the City are hereby authorized and directed to so execute, attest and register the Warrants as provided above. All Warrants bearing the signature of officers in office on the date of signing thereof shall be valid and binding obligations, notwithstanding that before the delivery and payment therefor, such officers whose signatures appear thereon shall have ceased to be officers of the City.

(b)     The Paying Agent is hereby directed to execute the Authentication and Registration Certificate appearing on each Warrant.

(c)     No Warrant issued hereunder shall be the valid and binding obligation of the City unless said Authentication and Registration Certificate shall have been executed as provided herein.

**Section 3.04     Registration, Transfer, and Exchange of Warrants; Replacement of Mutilated, Lost, Destroyed or Stolen Warrants**

(a)     The Warrants will be registered in the names of the Holders thereof on the Warrant Register. The City, the Paying Agent and any agent of the City or the Paying Agent may treat the person in whose name any Warrant is registered as the owner of such Warrant for the purpose of receiving payment of principal of and interest on such Warrant and for all other purposes whatsoever whether or not such Warrant be overdue, and, to the extent permitted by law, neither the City, the Paying Agent nor any such agent shall be affected by notice to the contrary.

(b)     Upon surrender for transfer of any Warrant at the Principal Office of the Paying Agent, the City shall execute, and the Paying Agent shall authenticate, register and deliver, in the name of the designated transferee or transferees, one or more new Warrants of the same series, of any Authorized Denominations and in a principal amount equal to the unpaid or unredeemed portion of the principal of the Warrant so presented.

(c)     If and to the extent so provided with respect to the Warrants, at the option of the Holder, Warrants may be exchanged for other Warrants of any Authorized Denomination and of a like aggregate principal amount, upon surrender of the Warrants to be exchanged at the Principal Office of the Paying Agent. Whenever any Warrants are so surrendered for exchange, the City shall execute, and the Paying

Agent shall authenticate, register and deliver, the Warrants which the Holder making the exchange is entitled to receive.

(d) Every Warrant presented or surrendered for transfer or exchange shall (if so required by the City or the Warrant Registrar) be duly endorsed or be accompanied by a written instrument of transfer in form satisfactory to the City and the Warrant Registrar duly executed by the Holder thereof or his attorney duly authorized in writing.

(e) The Paying Agent shall not be required to transfer or exchange any Warrant during the period between the Record Date and the then next succeeding Interest Payment Date; and, in the event that any Warrant (or any part thereof) is duly called for redemption, the Paying Agent shall not be required to transfer or exchange any such Warrant during the period of forty-five (45) days next preceding the date fixed for such redemption.

(f) All Warrants surrendered upon any exchange or transfer provided for in this Resolution and Order shall be cancelled as provided in Section 3.07.

(g) If (1) any mutilated Warrant is surrendered to the Paying Agent, or the City and the Paying Agent receive evidence to their satisfaction of the destruction, loss or theft of any Warrant, and (2) there is delivered to the City and the Paying Agent such security or indemnity as may be required by them to save each of them harmless, then, in the absence of notice to the City or the Paying Agent that such Warrant has been acquired by a bona fide purchaser, the City shall execute and the Paying Agent shall authenticate, register and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Warrant, a new Warrant of the same series and of like tenor and principal amount, bearing a number not contemporaneously outstanding.

(h) No charge shall be made for the privilege of transfer or exchange, but the registered owner of any Warrant requesting any such transfer or exchange shall pay any tax or other governmental charge required to be paid with respect thereto. The registered owner of any Warrant will be required to pay any expenses incurred in connection with the replacement of a mutilated, lost, stolen or destroyed Warrant.

(i) All Warrants issued upon any transfer or exchange of Warrants shall be the valid obligations of the City and be entitled to the same security and benefits under this Resolution and Order as the Warrants surrendered upon such transfer or exchange, and every new Warrant issued pursuant to this Section in lieu of any destroyed, lost or stolen Warrant shall constitute an original additional contractual obligation of the City, whether or not the destroyed, lost or stolen Warrant shall be at any time enforceable by anyone.

(j) The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Warrants.

### **Section 3.05 Book-Entry System**

(a) The Warrants shall be issued pursuant to a Book-Entry System administered by the Securities Depository with no physical distribution of any Warrant to any Person. One Warrant for each maturity will be issued, registered in the name of the Securities Depository Nominee, and immobilized in the custody of the Securities Depository. Beneficial ownership interests in Warrants held by the Securities

Depository may be purchased by or through Direct Participants. The holders of these beneficial ownership interests in such Warrants are referred to as the “Beneficial Owners”. The Beneficial Owners will not receive certificated warrants representing their beneficial ownership interests. Ownership of the interests in Warrants in Authorized Denominations will be evidenced on the records of the Securities Depository and the Direct Participants and Indirect Participants pursuant to rules and procedures established by the Securities Depository. During a period in which the Book-Entry System is in effect for the Warrants the City and the Paying Agent shall treat the Securities Depository or the Securities Depository Nominee as the only registered owner of such Warrants for all purposes under this Ordinance, including, without limitation, receipt of all principal of, premium (if any) and interest on the Warrants, receipt of notices, voting, and requesting or directing the Paying Agent or City to take or not to take, or consenting to, certain actions under this Ordinance. In the event the Securities Depository or the Securities Depository Nominee assigns its rights to consent or vote under this Ordinance to any Direct Participant or Indirect Participant, the City and the Paying Agent shall treat such assignee or assignees as the only registered owner or owners of the Warrants for the purpose of exercising such rights so assigned.

(b) During a period in which the Book-Entry System is in effect for the Warrants, payments of principal, interest, and redemption premium, if any, with respect to such Warrants will be paid by the Paying Agent directly to the Securities Depository, or the Securities Depository Nominee, as Holder, and as provided in the Letter of Representation; provided, that payment of the principal of (and premium, if any, on) such Warrants due at final maturity or upon redemption in whole of any of such Warrants shall be made only upon surrender thereof at the Principal Office of the Paying Agent. The Securities Depository and the Direct Participants and the Indirect Participants shall be responsible for the disbursement of such payments to the Beneficial Owners. All such payments to the Securities Depository or the Securities Depository Nominee, as Holder, of principal of, premium (if any) and interest on such Warrants on behalf of the City or the Paying Agent shall be valid and effectual to satisfy and discharge the liability of the City and the Paying Agent to the extent of the amounts so paid, and the City and the Paying Agent shall not be responsible or liable for payment to any Beneficial Owner by the Securities Depository or by any Direct Participant or by any Indirect Participant, or for sending transaction statements or for maintaining, supervising or reviewing records maintained by the Securities Depository or Direct Participants or Indirect Direct Participants.

(c) Transfers of ownership interests in the Warrants by the Beneficial Owners thereof, and conveyance of notices and other communications by the Securities Depository to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners of the Warrants, will be governed by arrangements among the Securities Depository, Direct Participants, Indirect Participants and the Beneficial Owners, subject to any statutory and regulatory requirements as may be in effect from time to time. For every transfer and exchange of beneficial ownership in such Warrants, the Beneficial Owners may be charged a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in relation thereto.

(d) Redemption notices respecting Warrants held by the Securities Depository shall be sent to the Securities Depository Nominee by the Paying Agent and redemption of Warrants shall be effected as provided in Article 4.

(e) The City may enter into a custody agreement with any bank or trust company serving as custodian (which may be the Paying Agent serving in the capacity of custodian) to provide for a Book-Entry System or similar method for the registration and transfer of the Warrants.

(f) During a period in which the Book-Entry System is in effect for the Warrants in accordance herewith, the provisions of this Ordinance and such Warrants shall be construed in accordance with the Letter of Representation and to give full effect to such Book-Entry System.

(g) The Beneficial Owners of all the Warrants, by their acquisition of any beneficial interest in a Warrant or Warrants, and the Securities Depository, the Securities Depository Nominee, and all Direct Participants and all Indirect Participants, severally agree that the City and the Paying Agent shall not have any responsibility or obligation to any Direct Participant or any Indirect Participant or any Beneficial Owner with respect to (1) the accuracy of any records maintained by the Securities Depository or any Direct Participant or any Indirect Participant; (2) the payment by the Securities Depository or any Direct Participant or any Indirect Participant of any amount due to any Beneficial Owner in respect of the principal of, premium (if any) and interest on the Warrants; (3) the delivery or timeliness of delivery by the Securities Depository or any Direct Participant or any Indirect Participant of any notice due to any Beneficial Owner which is required or permitted under the terms of this Ordinance to be given to Beneficial Owners; or (4) any consent given or other action taken by the Securities Depository, or the Securities Depository Nominee, as owner.

(h) The Securities Depository may determine to discontinue the Book-Entry System with respect to the Warrants at any time upon notice to the City and the Paying Agent and upon discharge of its responsibilities with respect thereto under applicable law. Upon such notice and compliance with law the Book-Entry System for the Warrants will be discontinued unless a successor securities depository is appointed by the City.

(i) In the event the Book-Entry System for the Warrants is discontinued, Warrants in certificated form in Authorized Denominations will be physically distributed to the Beneficial Owners thereof and such Warrants will be registered in the names of the owners thereof on the Warrant Register, the Paying Agent will make payments of principal of, premium (if any) and interest on such Warrants to the registered owners thereof as provided in the Warrants and this Ordinance, and the following provisions with respect to registration, transfer and exchange of such Warrants by the registered owners thereof shall apply.

**Section 3.06 Payment of Warrants; Payment Dates; Persons Deemed Owners**

(a) The principal of, premium (if any) and interest on the Warrants shall be payable at the Principal Office of the Paying Agent and as provided in this Ordinance and in the Warrants; provided, the final principal payment on such Warrants shall be payable only upon presentation thereof at the Principal Office of the Paying Agent.

(b) If any payment on the Warrants is due on a day which is not a Business Day, such payment shall be made on the first succeeding day which is a Business Day with the same effect as if made on the day such payment was due.

(c) The City, the Paying Agent and any agent of the City or the Paying Agent may treat the Person in whose name any Warrant is registered as the owner of such Warrant for the purpose of receiving payment of principal of, premium (if any) and interest on such Warrant and for all other purposes whatsoever whether or not such Warrant be overdue, and, to the extent permitted by law, neither the City, the Paying Agent nor any such agent shall be affected by notice to the contrary.

**Section 3.07 Cancellation of Surrendered Warrants**

All Warrants surrendered for payment, redemption, transfer or exchange, shall be promptly cancelled by the Paying Agent. No Warrant shall be authenticated in lieu of or in exchange for any Warrant cancelled as provided in this Section, except as expressly provided by this Ordinance. All cancelled Warrants held by the Paying Agent shall be destroyed and certificates thereof furnished to the City.

**Section 3.08 Application of Proceeds of Warrants**

The net proceeds of the Warrants of \$4,146,218.85 (the principal amount thereof less underwriting discount of \$40,327.50 and less net original issue discount of \$58,453.65) shall be applied as follows on the date of issuance of the Warrants:

(1) the amount of \$43,402.00 shall be held by the City and applied to the payment of issuance expenses, and any balance remaining shall be applied to the payment of the Series 2013 Energy Conservation and Lighting Project; and

(2) the amount of \$4,102,816.85 shall be held by the City and applied to the payment of the Series 2013 Energy Conservation and Lighting Project.

**ARTICLE 4**

**Redemption of Warrants**

**Section 4.01 General Applicability of Article**

The Warrants shall be subject to redemption in accordance with their terms and in accordance with this Article.

**Section 4.02 Election to Redeem; Notice to Paying Agent**

The election of the City to exercise any right of optional redemption shall be given by written notice to the Paying Agent not less than 45 days prior to the proposed redemption date. In case of any redemption at the option of the City of less than all of the principal amount of the Outstanding Warrants, the City shall, at least 60 days prior to the date fixed by the City for redemption of Warrants (unless a shorter notice shall be satisfactory to the Paying Agent) notify the Paying Agent of such redemption date and of the principal amount of Warrants to be redeemed.

**Section 4.03 Selection of Warrants to be Redeemed**

(a) If less than all of the Outstanding Warrants are to be redeemed during a period in which the Book-Entry System is in effect for the Warrants, the City shall designate the order and amount of maturities of the Warrants (or portions thereof) to be redeemed not less than 45 nor more than 60 days prior to the redemption date from the Outstanding Warrants which have not previously been called for redemption, and, in accordance with the Letter of Representation, the Securities Depository may determine the amount of the interest of each Direct Participant in those Warrants to be redeemed, on the basis of the

smallest Authorized Denomination of such Warrants, by lot or by such other method as the Securities Depository shall deem fair and appropriate.

(b) If less than all of the Outstanding Warrants are to be redeemed during a period in which the Book-Entry System is not in effect for the Warrants, the City shall designate the order and amount of maturities of the Warrants (or portions thereof) to be redeemed not less than 45 nor more than 60 days prior to the redemption date from the Outstanding Warrants which have not previously been called for redemption, on the basis of the smallest Authorized Denomination of such Warrants, and the Paying Agent shall select, by lot or by such method as the Paying Agent shall deem fair and appropriate, the order and amount of Warrants to be redeemed within a maturity.

(c) For all purposes of this Ordinance, unless the context otherwise requires, all provisions relating to the redemption of Warrants shall relate, in the case of any Warrant redeemed or to be redeemed only in part, to the portion of the principal of such Warrant which has been or is to be redeemed.

#### **Section 4.04 Notice of Redemption**

(a) Notice of any intended redemption shall be given by the Paying Agent to the Holder of each Warrant, all or a portion of the principal of which is to be redeemed, not less than 30 days prior to the proposed redemption date, by United States registered or certified mail (first class, postage prepaid), or, if the Securities Depository or Securities Depository Nominee is the Holder, at the times and in the manner as provided in the Letter of Representation, at the address of such Holder appearing in the Warrant Register; provided, however, any Holder may waive the requirement of notice as to the redemption (in whole or in part) of the Warrant or Warrants thereof. During a period in which the Book-Entry System is in effect, notice of any intended redemption may also be given to each Beneficial Owner, all or portion of the interest of which in such Warrants is to be redeemed, by the Direct Participants and, where appropriate, by the Indirect Participants, pursuant to arrangements among said parties, subject to statutory and regulatory requirements in effect from time to time; provided, however, any Beneficial Owner may waive the requirement of notice as to the redemption of the interest thereof in the Warrants.

(b) All notices of redemption shall state:

(1) the redemption date,

(2) the redemption price,

(3) the principal amount of Warrants to be redeemed, and, if less than all Outstanding Warrants are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Warrants to be redeemed,

(4) that on the redemption date the redemption price of each of the Warrants to be redeemed will become due and payable and that the interest thereon shall cease to accrue from and after said date, and

(5) the place or places where the Warrants to be redeemed are to be surrendered for payment of the redemption price.

**Section 4.05 Payment of Redemption Price**

Prior to any redemption date, the City shall deposit or cause to be deposited with the Paying Agent an amount of money sufficient to pay the redemption price of all the Warrants which are to be redeemed on that date. Such money shall be held in trust for the benefit of the persons entitled to such redemption price.

**Section 4.06 Warrants Payable on Redemption Date**

(a) Notice of redemption having been given as aforesaid, the Warrants so to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified and from and after such date (unless the City shall default in the payment of the redemption price) such Warrants shall cease to bear interest. Upon presentation of any such Warrant for redemption, or compliance with the requirements of the Securities Depository with respect to redemption in part, in accordance with said notice such Warrant shall be paid by the City at the redemption price. Installments of interest due on or prior to the redemption date shall be payable to the Holders of the Warrants according to the terms of such Warrants and the provisions of this Ordinance.

(b) If any Warrant called for redemption shall not be so paid upon surrender thereof for redemption, the principal of the Warrant to be so redeemed shall, until paid, continue to bear interest from the redemption date at the rate prescribed in such Warrant.

**Section 4.07 Warrants Redeemed in Part**

(a) During a period in which the Book-Entry System is in effect for the Warrants, the recordation and evidence of any reduction in the aggregate principal amount of the Warrants as a result of the redemption of a portion thereof shall be made in accordance with the Letter of Representation and the rules and procedures of the Securities Depository with respect thereto from time to time in effect.

(b) During a period in which the Book-Entry System is not in effect for the Warrants, unless otherwise provided herein, any Warrant which is to be redeemed only in part shall be surrendered at the principal corporate trust office of the Paying Agent (with, if the City or the Paying Agent requires, due endorsement by, or a written instrument of assignment or transfer in form satisfactory to the City and the Paying Agent duly executed by the Holder thereof or his attorney duly authorized in writing) and the City shall execute and the Paying Agent shall authenticate and deliver to the Holder of such Warrant, without service charge, a new Warrant or Warrants of any Authorized Denomination as requested by such Holder in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Warrant so surrendered.

## ARTICLE 5

### The Warrant Fund

#### **Section 5.01**    The Warrant Fund

(a)        There is hereby established a special fund which shall be designated the "Warrant Fund". The Paying Agent shall be the depository, custodian and disbursing agent for the Warrant Fund. The money in the Warrant Fund shall be used only to pay principal of and interest on the Warrants as the same shall become due and payable.

(b)        There shall be deposited in the Warrant Fund the following amounts on the following dates:

(1)        On or before the twentieth day of each January and July in each year, an amount equal to the interest coming due on the Warrants on the next ensuing Interest Payment Date.

(2)        On or before the twentieth day in January in each year, an amount equal to the principal maturing on the Warrants on the next ensuing principal payment date.

(3)        When and as received by the City or the Paying Agent under the Calculation Agreement, all QECB Subsidy Payments.

(4)        When and as received by the City or the Paying Agent, all amounts held and invested under the Investment Repurchase Agreement.

(5)        All other money required to be deposited in the Warrant Fund pursuant to this Ordinance.

(c)        The Paying Agent will deposit in the Warrant Fund all money received by the Paying Agent when accompanied by directions that such money is to be deposited in the Warrant Fund.

(d)        The City and Paying Agent covenant and agree that (i) all money transferred to or deposited in the Warrant Fund shall be applied to the payment of principal of or interest on the Warrants within 13 months from the date of such transfer or deposit and (ii) all income and profits received from investment of money in the Warrant Fund shall be applied to the payment of principal of or interest on the Warrants within 12 months from the date of receipt of such income or profits.

(e)        The City acknowledges that deposits and transfers to the Warrant Fund required by this Section have been calculated to provide amounts which will be sufficient to pay the principal of and interest on the Warrants as the same shall become due and payable. If on any principal or interest payment date the amount on deposit in the Warrant Fund is insufficient to pay the principal of and interest on the Warrants due and payable on such date, the City will forthwith pay any such deficiency into the Warrant Fund.

(f)        The City hereby authorizes and directs the Paying Agent to withdraw sufficient money from the Warrant Fund to pay the principal of and interest on the Warrants as the same shall become due and payable, whether at maturity or otherwise.



(g) The City shall collect the revenues, income, taxes, assets and resources of the City and the City shall promptly deposit into the Warrant Fund from the aforesaid sources all amounts required to be deposited in the Warrant Fund at the times therefor.

**Section 5.02 Investment of and Security For Warrant Fund**

(a) Money in the Warrant Fund shall be invested by the Paying Agent at the written direction of the City in Qualified Investments. Investments shall be made so that a sufficient principal amount shall mature or be redeemable at the option of the holder on or prior to the date or dates the City and the Paying Agent anticipate that money from the fund invested will be required hereunder. The Paying Agent shall not be liable or responsible for any loss resulting from any such investment if made in compliance herewith.

(b) All income derived from the investment of money on deposit in the Warrant Fund shall remain therein and be credited against the next ensuing deposit specified therefor, and all losses resulting from liquidation of investments in the Warrant Fund shall be charged thereto and added to the next ensuing deposit specified therefor.

(c) The moneys at any time on deposit in the Warrant Fund shall be and at all times remain public funds impressed with a trust for the purpose for which each of said the Warrant Fund was created. The Paying Agent shall at all times keep the moneys on deposit in the Warrant Fund continuously secured for the benefit of the City and the registered owners of the Warrants, either (1) by holding on deposit as collateral security Federal Securities or other marketable securities eligible as security for the deposit of public trust funds under regulations of the Comptroller of the Currency, United States Treasury, having a market value at any date of calculation (exclusive of accrued interest) not less than the amount of moneys on deposit in the fund being secured, or (2) if the furnishing of security in the manner provided in (1) above is not permitted by the then applicable law and regulations, then in such other manner as may be required or permitted by the then applicable state and federal laws and regulations respecting the security for, or granting a preference in the case of, the deposit of public trust funds; provided, however, that it shall not be necessary for the Paying Agent to secure any portion of the moneys on deposit in any such fund that may be insured by the Federal Deposit Insurance Corporation or by any agency of the United States of America that may succeed to its functions, or to secure any portion of the moneys that are invested as herein provided.

**ARTICLE 6**

**Special Covenants of the City**

**Section 6.01 Compliance with the Tax Certificate and Agreement**

The City covenants and agrees to duly and punctually observe and perform all agreements and covenants thereof under the Tax Certificate and Agreement.

**Section 6.02 Designation of Warrants as "Qualified Energy Conservation Bonds" under the Code; Election to Have Section 6431(f) of the Code Apply to the Warrants**

(a) The City hereby designates the Warrants as "qualified energy conservation bonds" for all purposes of Section 54A of the Code.

- (b) The City hereby irrevocably elects to have Section 6431(f) of the Code apply to the Warrants.

**Section 6.03 Provision of Ordinance a Contract; Remedies**

(a) The terms, provisions and conditions set forth in this Ordinance constitute a contract between the City and the registered owners of the Warrants and shall remain in effect until the principal of and interest on the Warrants shall have been paid in full as provided in Article 10.

(b) The City agrees (i) the registered owners of the Warrants shall have all rights and remedies for the enforcement of the Warrants and this Ordinance as may be provided by the laws of the State of Alabama, including particularly the Enabling Law, and (ii) the Finance Director (or any successor to the duties and functions thereof) of the City is subject to mandamus in the event such officer has money available for payment of principal of and interest on the Warrants and does not, as required by this Ordinance, deposit such money in the Warrant Fund, when and as required by Section 5.01 of this Ordinance in each Fiscal Year, and apply such proceeds (and investment earnings thereon) to the payment of the principal of and interest on the Warrants when and as the same become due and payable in each Fiscal Year in amounts sufficient for such purposes.

**ARTICLE 7**

**Approval of Agreements**

**Section 7.01 Approval of Continuing Disclosure Agreement**

(a) The Continuing Disclosure Agreement, in substantially the form and of substantially the content as the form of Continuing Disclosure Agreement presented to and considered by the City Council of the City, is hereby authorized, approved and adopted.

(b) The Mayor of the City is hereby authorized and directed to execute and deliver the Continuing Disclosure Agreement for and on behalf of and in the name of the City, with such changes or additions thereto or deletions therefrom as he may deem necessary or desirable and shall approve, which approval shall be conclusively evidenced by his executing the Continuing Disclosure Agreement as herein provided, and the City Clerk is hereby authorized and directed to affix to the Continuing Disclosure Agreement the seal of the City and to attest the same.

**Section 7.02 Approval of Calculation Agreement**

(a) The Calculation Agreement, in substantially the form and of substantially the content as the form of Calculation Agreement presented to and considered by the City, is hereby authorized, approved and adopted.

(b) The Mayor of the City is hereby authorized and directed to execute and deliver the Calculation Agreement for and on behalf of and in the name of the City, with such changes or additions thereto or deletions therefrom as the Mayor may deem necessary or desirable and shall approve, which approval shall be conclusively evidenced by execution by the Mayor of the City of the Calculation Agreement as herein

provided, and the City Clerk is hereby authorized and directed to affix to the Calculation Agreement the seal of the City and to attest the same.

**Section 7.03 Approval of Investment Repurchase Agreement**

(a) The Investment Repurchase Agreement, in substantially the form and of substantially the content as the form of Investment Repurchase Agreement presented to and considered by the City, is hereby authorized, approved and adopted.

(b) The Mayor of the City is hereby authorized and directed to execute and deliver the Investment Repurchase Agreement for and on behalf of and in the name of the City, with such changes or additions thereto or deletions therefrom as the Mayor may deem necessary or desirable and shall approve, which approval shall be conclusively evidenced by execution by the Mayor of the City of the Investment Repurchase Agreement as herein provided, and the City Clerk is hereby authorized and directed to affix to the Investment Repurchase Agreement the seal of the City and to attest the same.

**ARTICLE 8**

**The Paying Agent**

**Section 8.01 Designation of Paying Agent**

The City does hereby designate and appoint The Bank of New York Mellon Trust Company, National Association as the depository for the Warrant Fund and as Paying Agent, Warrant Registrar and authenticating agent for and with respect to the Warrants.

**Section 8.02 Duties of Paying Agent; Payments at Par**

(a) The Paying Agent, by acceptance of its duties hereunder, shall have agreed thereby with the registered owners from time to time of the Warrants that it will make all remittances of principal of, premium (if any), and interest on the Warrants from money supplied by the City for such purpose in bankable funds at par and without discount or deduction for exchange, fees or expenses. The City hereby covenants and agrees with the registered owners of the Warrants and with the Paying Agent that it will pay all charges for exchange, fees or expenses which may be incurred by the Paying Agent in the making of remittances in bankable funds at par.

(b) The Paying Agent shall not be liable hereunder except for its noncompliance with the provisions hereof, its willful misconduct or its gross negligence.

(1) It may execute any of the powers conferred on it hereunder or perform any duty hereunder either directly or through agents and attorneys in fact who are not regularly in its employ and who are selected by it with reasonable care, but it shall be responsible for the observance by such agents and attorneys in fact of the terms and conditions hereof.

(2) It may consult with counsel on any matters connected herewith and shall not be answerable for any action taken or failure to take any action in good faith on the advice of counsel, provided that its action or inaction is not contrary to an express provision hereof.

(3) It need not recognize a Holder of a Warrant as such without the satisfactory establishment of his title to such warrant.

(4) It shall not be answerable for any action taken in good faith on any notice, request, consent, certificate or other paper or document which it believes to be genuine and signed or acknowledged by the proper party.

(5) It shall be entitled to reasonable compensation for its services hereunder, including extra compensation for unusual or extraordinary services.

(6) Any action taken by the Paying Agent at the request of and with the consent of the Holder of a Warrant will bind all subsequent Holders of the same Warrant and any warrants issued hereunder in lieu thereof.

(7) It may the Holder of Warrants as if not Paying Agent hereunder.

(8) It shall not be liable for proper application of any moneys other than those that may be paid to or deposited with it.

(9) It shall not unreasonably withhold or delay any consent or approval required of it under the provisions of this Ordinance.

(10) All moneys received by the Paying Agent to be held by it hereunder shall be held as trust funds until disbursed in the manner herein provided therefor. The Paying Agent shall not be liable to pay or allow interest thereon or otherwise to invest any such moneys except as specifically required herein.

(11) It may make any investments permitted hereby through its own investment department or affiliated entity, and any Eligible Certificates issued or held by it hereunder shall be deemed investments and not deposits.

(12) It shall, upon reasonable request, advise the City of the amount at the time on deposit in any of the special funds herein created.

(13) The recitals of fact herein and in the Warrants are statements by the City and not by the Paying Agent, and the Paying Agent is in no way responsible for the validity or security of the Warrants, or the validity or enforceability of the Ordinance. The Paying Agent does, however, assume responsibility for its eligibility to accept and administer the duties created hereby, and it agrees and represents that it is duly authorized to accept and administer such duties and that the acceptance and administration by it of such duties do not violate or contravene, and are not void or voidable under, any applicable state or federal law now existing.

(14) The Paying Agent shall have no obligation to file financing statements or continuation statements.

(15) The Paying Agent's immunities and protections from liability and its right to indemnification in connection with the performance of its duties under this Ordinance shall extend to the Paying Agent's officers, directors, agents, attorneys and employees. Such immunities and protections and rights to indemnification, together with the Paying Agent's right to compensation,

shall survive the Paying Agent's resignation or removal, the discharge of this Ordinance, and final payment of the Warrants.

**Section 8.03 Resignation and Removal; Appointment of Successor**

(a) The Paying Agent may resign and be discharged of all duties imposed upon it as Paying Agent, Warrant Registrar and transfer agent by giving written notice of such resignation by certified or registered mail to the City at least 30 days prior to the date when such resignation shall take effect.

(b) If at any time the Paying Agent shall resign or be or become incapable of acting or shall be adjudged a bankrupt or insolvent or a receiver of the Paying Agent or of its property shall be appointed or any public officer shall take charge or control of the Paying Agent or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, then the City may remove the Paying Agent and the City shall promptly appoint a successor Paying Agent.

**Section 8.04 Qualification of and Acceptance of Appointment by Successor**

(a) Any successor Paying Agent shall be a bank or trust company authorized to act as Paying Agent and Warrant Registrar and having, at the time of its acceptance of such appointment, combined capital and surplus of at least \$50,000,000.

(b) Every successor Paying Agent appointed hereunder shall execute, acknowledge and deliver to the City and to the retiring Paying Agent an instrument accepting such appointment and thereupon the resignation or removal of the retiring Paying Agent shall become effective and such successor Paying Agent, without any further act, deed or conveyance, shall become vested with all the rights, powers, and duties of the retiring Paying Agent.

**Section 8.05 Merger or Consolidation**

Any corporation into which the Paying Agent may be merged or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which the Paying Agent shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Paying Agent, shall be the successor of the Paying Agent hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Warrants shall have been authenticated, but not delivered, by the Paying Agent then in office, any successor by merger or consolidation to such authenticating Paying Agent may adopt such authentication and deliver the Warrants so authenticated with the same effect as if such successor Paying Agent had itself authenticated such Warrants.

**ARTICLE 9**

**Sale of Warrants; Official Statement**

**Section 9.01 Sale and Delivery of Warrants; Closing Papers**

(a) The Warrants are hereby sold to Sterne, Agee & Leach, Inc., upon the payment to the City of the purchase price of the principal amount thereof less underwriting discount of \$40,327.50 and less net

original issue discount of \$58,453.65. The City has determined that the sale of the Warrants to such purchaser on such terms is most advantageous to the City.

(b) The Warrant Purchase Agreement presented to this meeting is hereby approved and the Mayor and City Clerk are authorized to execute such Agreement. Any prior execution by the Mayor and City Clerk is hereby ratified and approved.

(c) The Warrants shall be delivered to such purchaser through The Depository Trust Company, New York, New York, upon the payment to the City of the aforesaid purchase price. The Mayor and the City Clerk, or either of them, are hereby authorized and directed to effect such delivery and in connection therewith to deliver such closing papers containing such representations as are required to demonstrate the legality and validity of the Warrants; the exclusion of the interest on the Warrants from the gross income of the Holders thereof for federal income taxation; the exemption of interest on the Warrants from State of Alabama income taxation; and the absence of pending or threatened litigation with respect to any of such matters. The City Clerk shall give a receipt to the purchaser for the purchase price paid, and such receipt shall be full acquittal to the purchaser and said purchaser shall not be required to see to, or be responsible for, the application of the proceeds of the Warrants. Nevertheless, the proceeds of the Warrants shall be held in trust and applied solely for the purposes specified in this Ordinance.

#### **Section 9.02 Approval of Official Statement for the Warrants**

(a) The Official Statement dated May 1, 2013 (the "Official Statement") with respect to the Warrants in substantially the form and of substantially the content as the Official Statement presented to and considered by the City, is hereby authorized, approved and adopted.

(b) The City does hereby find and determine that the Official Statement is true and correct and does not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(c) The Mayor of the City is hereby authorized to date the Official Statement the date of delivery thereof and to execute and deliver the Official Statement for and on behalf of and in the name of the City, with such changes or additions thereto or deletions therefrom as the Mayor may deem necessary or desirable in order to state fully and correctly the pertinent facts concerning the City and the Warrants.

(d) The Mayor of the City is authorized and directed to cause distribution of the Official Statement to be made to prospective purchasers of the Warrants.

### **ARTICLE 10**

#### **Payment of Warrants**

(a) Warrants for the payment or redemption of which moneys shall have been set aside and held by the Paying Agent on the maturity or redemption date thereof shall be deemed to have been paid and no longer Outstanding under this Ordinance.

(b) Warrants shall, prior to the maturity or redemption date thereof, be deemed to have been paid and no longer Outstanding under this Ordinance if (1) in case any of said Warrants are to be redeemed on any date prior to their maturity, the City shall have given to the Paying Agent in form satisfactory to it irrevocable instructions to give and publish notice of redemption thereof on such date, (2) there shall have been deposited with the Paying Agent either moneys in an amount which shall be sufficient, or Federal Securities the principal of and the interest on which when due will provide moneys which, together with the moneys, if any, deposited with the Paying Agent at the same time and available for such purpose, shall be sufficient, to pay when due the principal of, premium (if any) and interest due and to become due on said Warrants on and prior to the redemption date or maturity date thereof, as the case may be, and (3) in the event said Warrants are not by their terms subject to redemption or payment within the next succeeding 90 days, the City shall have given the Paying Agent in form satisfactory to it irrevocable instructions to mail a notice to the Holders thereof that the deposit required by clause (2) of this subsection has been made with the Paying Agent and that said Warrants are deemed to have been paid in accordance with this Section and no longer Outstanding under this Ordinance and stating such maturity or redemption date or dates upon which moneys are to be available for the payment of the principal of and premium (if any) on said Warrants.

(c) Neither Federal Securities nor moneys deposited with the Paying Agent pursuant to this Section nor principal nor interest payments on any such Federal Securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal or redemption price, if applicable, and interest on said Warrants; provided that any cash received from such principal or interest payments on such Federal Securities deposited with the Paying Agent, if not then needed for such purpose, shall, to the extent practicable, be reinvested, at the written direction of the City, in Federal Securities maturing at times and in amounts sufficient to pay when due the principal, premium (if any) and interest to become due on said Warrants on and prior to such redemption date or maturity date thereof, as the case may be.

(d) Any amounts remaining in the Warrant Fund after payment in full of the Warrants (or provision having been made therefor in accordance with this Article), and payment of the fees, charges and expenses of the Paying Agent and all other amounts required to be paid hereunder, shall be paid to the City.

DONE, ORDERED, ADOPTED and APPROVED this 13th day of May, 2013.

---

Alberto C. Zaragoza, Jr., Mayor

S E A L

Attest: \_\_\_\_\_  
City Clerk



It was moved by Councilmember \_\_\_\_\_ that all rules and regulations which, unless suspended, would prevent the immediate consideration and adoption of the said ordinance be suspended and that unanimous consent to the immediate consideration and adoption of the said ordinance be given. The motion was seconded by Councilmember \_\_\_\_\_ and on roll call was unanimously adopted, those answering aye being:

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

Nays:           None

The Mayor declared the motion unanimously carried.

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

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

Nays:           None

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

\* \* \* \*

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

Minutes approved:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Member of the City Council

\_\_\_\_\_  
Member of the City Council

\_\_\_\_\_  
Member of the City Council

\_\_\_\_\_  
Member of the City Council

S E A L

Attest: \_\_\_\_\_  
City Clerk

STATE OF ALABAMA )  
JEFFERSON COUNTY )

**CERTIFICATE OF CITY CLERK**

I, the undersigned, do hereby certify that (1) I am the duly elected, qualified and acting City Clerk of the City of Vestavia Hills, Alabama (the "Municipality"); (2) as Clerk of the Municipality I have access to all original records of the Municipality and I am duly authorized to make certified copies of its records on its behalf; (3) the above and foregoing pages constitute a complete, verbatim and compared copy of excerpts from the minutes of a regular meeting of the City Council of the Municipality duly held on May 13, 2013, the original of which is on file and of record in the minute book of the City Council in my custody; (4) the ordinance set forth in such excerpts is a complete, verbatim and compared copy of such ordinance as introduced and adopted by the City Council on such date; and (5) said ordinance is in full force and effect and has not been repealed, amended or changed.

IN WITNESS WHEREOF, I have hereunto set my hand as Clerk of the Municipality and have affixed the official seal of the Municipality, this 15th day of May, 2013.

\_\_\_\_\_  
Clerk of the City of Vestavia Hills,  
Alabama

SEAL

**ORDINANCE NUMBER 2447**

**AN ORDINANCE AUTHORIZING AND DIRECTING THE  
PURCHASING AND CLOSING OF THE SALE OF REAL ESTATE**

**THIS ORDINANCE NUMBER 2447** is considered, approved, enacted and adopted on this the 29<sup>th</sup> day of May, 2013.

**WITNESSETH THESE RECITALS**

**WHEREAS**, municipalities in Alabama have the legal authority to acquire real estate by purchase pursuant to Title 11-40-1, *Code of Alabama, 1975*; and

**WHEREAS**, the City Council (the “City Council”) of the City of Vestavia Hills, Alabama, a municipal corporation (the “City”) finds and determines that the purchase by the City of the hereinafter described real property (the “Property”) will promote the health, safety and general welfare of the City; and

**WHEREAS**, Title 11-47-5, *Code of Alabama, 1975*, reads as follows:

“Contracts entered into by a municipality shall be in writing, signed and executed in the name of the city or town by the officers authorized to make the same and by the party contracting. In cases not otherwise directed by law or ordinance, such contracts shall be entered into and executed by the mayor in the name of the city or town and all obligations for the payment of money by the municipality, except for bonds and interest coupons, shall be attested by the clerk. This section shall not be construed to cover purchases for the ordinary needs of the municipality;” and

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

**1. PROMOTION OF PUBLIC WELFARE:** The City Council (the “City Council”) of the City of Vestavia Hills, Alabama, a municipal corporation (the “City”) finds and determines that the purchase by the City of the hereinafter described real property and improvements located at 1105 Mayland Lane (the “Property”) will promote the health, safety and general welfare of the City.

2. **CONTRACT FOR PURCHASE OF REAL ESTATE:** The purchasing and closing of the sale of the Property shall be completed all in accordance with the terms, provisions, conditions and limitations of a written Real Estate Sales Contract (the “Contract”) ultimately considered for acceptance and approval by the City Council at this regularly scheduled public meeting.

3. **CONTRACT:** A copy of the proposed contract is attached to and incorporated into this Ordinance Number 2447 as though written fully therein.

9. **POSTING OF ORDINANCE NUMBER 2447:** If the City Council approves, enacts and adopts Ordinance Number 2447, as amended, then in such event, said Ordinance shall be posted in three (3) public places within the City as required by Title 11-45-8(b)(1), *Code of Alabama, 1975*.

10. **EFFECTIVE DATE OF ORDINANCE NUMBER 2447:** Ordinance Number 2447 shall become effective five (5) days after posting in accordance with Title 11-45-8(3), *Code of Alabama, 1975*.

11. **CLOSING DATE:** The Real Estate Sales Contract shall be closed after the effective date of Ordinance Number 2447 on a date mutually agreed upon by Seller and Purchaser.

**DONE, ORDERED, APPROVED and ADOPTED**, this the 13<sup>th</sup> day of May, 2013.

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 # 2447 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 13<sup>th</sup> day of May, 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 \_\_\_\_\_ day of \_\_\_\_\_, 2013.

Rebecca Leavings  
City Clerk

May \_\_, 2013

GENERAL SALES CONTRACT the Undersigned Purchaser(s) City of Vestavia Hills, Alabama, whose address is 513 Montgomery Highway, Vestavia Hills, Alabama 35216, Attention: Mr. Jim St. John, Interim City Manager, hereby agrees to purchase and the Undersigned Seller \_\_\_\_\_ whose address is \_\_\_\_\_, hereby agrees to sell the following described real estate, together with all improvements, shrubbery, plantings, fixtures and appurtenances, situated in the City of Vestavia County of Jefferson, Alabama, on the terms stated below:  
Address 1105 Mayland Lane, Vestavia Hills, AL 35216 and described as:

See Attached Exhibit A (collectively, the "Property").

1. **THE PURCHASE PRICE:** shall be \$825,000.00 which shall be payable as follows:

Earnest Money (the "Earnest Money") ..... \$ 10,000.00

Cash on closing this sale ..... \$ 815,000.00

Total ..... \$ 825,000.00

2. **TITLE INSURANCE:** The Purchaser shall obtain within 14 days after the Effective Date a standard owner's title insurance commitment for the issuance of an owner's title insurance policy, issued by a company qualified to insure titles in Alabama in the amount of the purchase price, showing Seller has fee simple title to the Property, together with the documents relating to exceptions to title referred to therein ("Title Commitment"). Purchaser shall notify Seller of any unacceptable liens, encumbrances, restrictions, or other defects or matters ("Title Objections") on or before the expiration of the Inspection Period; provided, however, that Purchaser shall not be required to provide any written notice of any Existing Mortgages and Subsequently-Created Title Matters, as herein defined, and Seller shall, at Seller's sole cost and expense, remove or eliminate on or prior to the closing, any and all Existing Mortgages and Subsequently-Created Title Matters. As used herein, the term "Existing Mortgages and Subsequently-Created Title Matters" means and refers to all mortgages, liens (other than the lien for ad valorem taxes not yet due), judgments or other encumbrances encumbering the Property which can be removed or eliminated by the payment of a fixed sum of money and any matters of title created or allowed to be created by Seller on the Property at any time after the effective date of the owner's title insurance commitment delivered to Purchaser. Except for any Existing Mortgages and Subsequently-Created Title Matters, in the event that Purchaser fails to notify Seller of any Title Objections within said time period, Purchaser shall be deemed to have accepted such title and all matters contained therein shall be deemed to be "Permitted Encumbrances". In the event that Purchaser does provide Title Objections within said time period, within five (5) days following Purchaser's delivery of the Title Objections, Seller shall elect (by written notice to Purchaser) to cure or decline to correct such Title Objections. If Seller advises Purchaser that Seller is unwilling or unable to correct any or all Title Objections or if Seller fails to respond, within five (5) days thereafter, Purchaser may elect to terminate this Agreement by giving written notice to Seller, at which time the Earnest Money shall be returned to Purchaser. In the event that Purchaser fails to provide such notice during such time, Purchaser shall be deemed to have accepted such title and such matters shall be deemed to be "Permitted Encumbrances". At closing, Purchaser shall pay for the owner's title insurance policy ("Owner's Policy") to be issued by the Title Company pursuant to the Title Commitment which shall contain references to the Permitted Encumbrances. Purchaser shall also pay for any special endorsements required by Purchaser or Purchaser's lender.

3. **PRORATIONS: NONE.** All closing costs (other than Seller's attorneys' fees, if any, shall be paid by Purchaser).

4. **CLOSING & POSSESSION DATES:** The sale shall be closed and the deed delivered (the "closing") at 10:00 a.m. Central Daylight Savings Time on July 9, 2013 (the "Closing Date") except the Seller shall have a reasonable length of time within which to perfect title or cure defects in the title to the said property. Possession, subject to any existing leases on the property, is to be given on delivery of the deed unless otherwise agreed to herein.

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

6. **CONDITION OF PROPERTY:** Property is being sold in its present "as is" condition, including ordinary wear and tear to the closing date. Seller makes no representations or warranties regarding the condition of the Property except to the extent expressly and specifically set forth herein.

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

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

9. **SELECTION OF ATTORNEY:** Each party shall be responsible for its own attorneys' fees and expenses.

10. **SURVEY:** Purchaser at its expense may elect to obtain a current survey. In the event a current survey is obtained, all easements and other matters shown on the survey shall be Permitted Encumbrances unless objected to in writing prior to the end of the Review Period. If no survey is obtained, any easements and other matters that would be disclosed by a current and accurate survey shall be Permitted Encumbrances.

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

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

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



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

15. **NOTICE:** All notices, demands and/or consents provided for in this Agreement shall be in writing and shall be deemed to have been served on the date mailed by United States registered or certified mail, return receipt requested, with postage prepaid. All such notices and communications shall be addressed to the parties hereto at the respective addresses set forth at page 1 hereof, or at such other addresses as either may specify to the other in writing. If the parties fax number or email addresses are available notice shall be deemed to have been served when sent by one of these methods.

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

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

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

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

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

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

SELLER:

\_\_\_\_\_

\_\_\_\_\_  
Witness to Seller's Signature(s)

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date of Execution: \_\_\_\_\_

PURCHASER:

CITY OF VESTAVIA HILLS, ALABAMA

\_\_\_\_\_  
Witness to Purchaser's Signature(s)

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date of Execution: \_\_\_\_\_

\_\_\_\_\_  
Witness to Purchaser's Signature(s)

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date of Execution: \_\_\_\_\_

Receipt is hereby acknowledged of the earnest money as hereinabove set forth \_\_\_\_CASH \_\_\_\_CHECK

Firm: LAND TITLE COMPANY OF ALABAMA

By: \_\_\_\_\_

Its: \_\_\_\_\_

## ADDENDUM

This Addendum (this "Addendum") shall supersede and override any and all language in the original General Sales Contract (the "General Sales Contract") dated as of the date of this Addendum between the City of Vestavia Hills, Alabama ("Purchaser") and \_\_\_\_\_ ("Seller") regarding the subject matter contained herein. This Addendum in its entirety is hereby made a part of this General Sales Contract. *Capitalized terms not otherwise expressly defined herein shall have the same meanings as set forth in the General Sales Contract.*

1. (a) During the period of time beginning on the Effective Date and ending at 5:00 p.m. Central Standard/Daylight Savings Time on June 2, 2013 (the "Inspection Period"), Purchaser, Purchaser's authorized agents and employees, as well as others authorized by Purchaser, shall have the right, at Purchaser's sole cost and expense, but subject to the rights of all existing tenants of the Seller's Property, as hereinafter defined, to enter upon the Property and conduct such tests, evaluations, inspections, investigations and reviews of the Property (collectively, the "Inspections") as Purchaser may desire. The Inspections may include, without limitation, valuating and/or conducting all architectural, engineering, topographical, geological, survey, floodway, soil, surface, subsurface, environmental, storm water drainage, traffic, utility availability, zoning and subdivision inquiries and otherwise conducting and performing all other tests and evaluations affecting the Property as Purchaser may require. Purchaser covenants and agrees to promptly repair any physical damage to the Property caused by, arising out of or resulting from any of the Inspections. Purchaser does hereby indemnify, agree to defend and hold Seller (and Owner) harmless from and against any and all claims, costs, expenses and liabilities, including reasonable attorneys' fees and expenses suffered, paid or incurred by Seller (or Owner) arising out of or by virtue of (i) any injury or damage to person (including death) or property caused by any act or omission of Purchaser, its agents, employees, representatives or contractors in conducting or performing any of the Inspections, (ii) Purchaser's failure to pay all bills, invoices, costs and other charges relating to the Inspections and (iii) Purchaser's failure to repair and replace any damage to the Property caused by, resulting from or arising out of any of the Inspections. The indemnification obligations of Purchaser set forth herein shall survive the closing or the termination and cancellation of this Agreement.  
  
(b) If, at any time on or before the expiration of the Inspection Period, Purchaser determines, in its sole and absolute discretion, that the results or findings of any of the Inspections or any other matters or things relating to the Property or Purchaser's acquisition of the Property for Purchaser's intended use are unacceptable to Purchaser, then Purchaser shall have the unqualified right, at its option, to cancel and terminate this Agreement upon written notice to Seller given at any time on or before the expiration of the Inspection Period in which event the Earnest Money shall be promptly returned to Purchaser, this Agreement shall be deemed canceled and terminated and, except for the indemnification obligations of Purchaser set forth in Paragraph 1(a) above, neither party shall have any further obligation or liability to the other hereunder.
2. Notwithstanding anything provided to the contrary in the General Sales Contract, Purchaser's obligations to close the transaction contemplated by the General Sales Contract and this Addendum shall be subject to and conditioned upon Purchaser acquiring on or before the Closing Date that certain real property situated adjacent to the Property having a street address of 1034 Montgomery Highway, Vestavia Hills, Alabama 35216 which was formerly the location of a "Food World" grocery store (the "Adjacent Property"). If, for any reason, Purchaser has not purchased and acquired the Adjacent Property from Vestavia Plaza LLC on or before the Closing Date set forth in this General Sales Contract or if Purchaser elects to cancel and terminate the prior contract to purchase the Adjacent Property at any time on or before the Closing Date,

then in either event, Purchaser shall have the right to cancel and terminate the General Sales Contract in which event the Earnest Money shall be refunded to Purchaser, the General Sales Contract shall be deemed cancelled and terminated and, except for the indemnification obligations of Purchaser set forth in Paragraph 2(a) of this Addendum, neither party shall have any further obligation or liability to the other hereunder.

3. The purchase and sale transaction contemplated by the General Sales Contract does not include any personal property situated within the building located on the Property. For a four (4) month period following the closing, Seller shall have the right, at Seller's expense, to enter upon the Property and remove any personal property from the Property. After such four (4) month period, all personal property remaining in said building shall be deemed to have been abandoned by Seller and Purchaser may dispose of the same in any manner determined by Purchaser.
4. To the extent the closing occurs, Purchaser agrees to erect and maintain as part of the improvements to be constructed on the Property by Purchaser, a memorial sign or plaque which provides information concerning the prior use of the Property as Joe's Ranch House and its owner, Joe Zarzaur, and his family and their contributions to the City of Vestavia Hills, Alabama.
5. Seller and Purchaser represent and warrant to each other that they have not dealt with any broker or sales agent in connection with this transaction. Seller and Purchaser each hereby agree to indemnify, defend and hold the other harmless from and against any and all claims, suits, liabilities, judgments and expenses, including reasonable attorneys' fees and expenses, suffered, paid or incurred by the other party as a result of any claim or claims for brokerage commissions, finder's fees or other compensation asserted by any person, firm or corporation in connection with the execution of the General Sales Contract and the consummation of the transactions contemplated by the General Sales Contract.

Seller:

\_\_\_\_\_.

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Purchaser:

CITY OF VESTAVIA HILLS, ALABAMA

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Its: \_\_\_\_\_