

**Vestavia Hills
City Council Agenda
August 12, 2013
5:00 PM**

1. Call to Order
2. Roll Call
3. Invocation – Brad Allison, Altadena Valley Presbyterian Church
4. Pledge of Allegiance
5. Announcements, Candidate and Guest Recognition
6. Councilors’ Reports
7. Proclamation – National Senior Citizens Day – August 21, 2013
8. Approval Of Minutes –July 18, 2013 (Meeting With The Mayor) And July 22, 2013 (Regular Meeting)

Old Business

9. Ordinance Number 2442 – Annexation – 90-Day Final – 4918 Cahaba River Road; Shannon Waltchack, LLC, Owner (*public hearing*)
10. Ordinance Number 2443 – Rezoning – 4918 Cahaba River Road; Rezone From Jefferson County E-2 To Vestavia Hills B-3 With A Conditional Use For Storage/Warehousing Of Inventory; Shannon Waltchack LLC, Owners (*public hearing*)
11. Resolution Number 4473 – A Resolution Ordering The Demolition Of A Building Or Structure Located At 3348 Ridgely Circle, Vestavia Hills Alabama, Parcel ID# 28-00-23-2-007-32.000, In Compliance With Sections 11-40-30 Through 11-40-36, Sections 11-53B-1 Through 11-53B-16, Inclusive, Of The *Code Of Alabama*, And In Compliance With Ordinance Number 2382 Of The City Of Vestavia Hills, Alabama; And Calling For Said Demolition To Be Performed By The City Of Vestavia Hills And Directing The City Attorney And The City Clerk To Cause The Cost Of Such Demolition To Be Charged Against The Land On Which The Building Or Structure Exists As A Municipal Lien Or Cause Such Cost To Be Recovered In A Suit At Law Against The Owner Or Owners (*public hearing*)
12. Resolution Number 4474 – A Resolution Ordering The Demolition Of A Building Or Structure Located At 2713 Millwood Road, Vestavia Hills Alabama, Parcel ID# 28-00-28-2-002-001.000, In Compliance With Sections 11-40-30 Through 11-40-36, Sections 11-53B-1 Through 11-53B-16, Inclusive, Of The *Code Of Alabama*, And In Compliance

With Ordinance Number 2382 Of The City Of Vestavia Hills, Alabama; And Calling For Said Demolition To Be Performed By The City Of Vestavia Hills And Directing The City Attorney And The City Clerk To Cause The Cost Of Such Demolition To Be Charged Against The Land On Which The Building Or Structure Exists As A Municipal Lien Or Cause Such Cost To Be Recovered In A Suit At Law Against The Owner Or Owners (*public hearing*)

New Business

13. Resolution Number 4476 – A Resolution Changing The City Officials Designated And Authorized To Sign Checks And Drafts For Payments From City Of Vestavia Hills Accounts On Deposit In The National Bank Of Commerce
14. Resolution Number 4479 – A Resolution Changing The City Officials Designated And Authorized To Sign Checks And Drafts For Payments From City Of Vestavia Hills Accounts On Deposit In The Regions Bank
15. Resolution Number 4480 - A Resolution Changing The City Officials Designated And Authorized To Sign Checks And Drafts For Payments From City Of Vestavia Hills Accounts On Deposit In The Southpoint Bank
16. Resolution Number 4481 – A Resolution Changing The City Officials Designated And Authorized To Sign Checks And Drafts For Payments From City Of Vestavia Hills Accounts On Deposit In The Wells Fargo Bank
17. Resolution Number 4477 – A Resolution Changing The City Officials Designated And Authorized To Sign Checks And Drafts For Payments From City Of Vestavia Hills Accounts On Deposit In The Pinnacle Bank
18. Resolution Number 4478 – A Resolution Changing The City Officials Designated And Authorized To Sign Checks And Drafts For Payments From City Of Vestavia Hills Accounts On Deposit In The Regions Bank – Court Bond Account
19. Resolution Number 4482 – A Resolution Granting A License For The Sale Of Off-Premise Retail Beer And Retail Wine For Vestavia Texaco D/B/A Food Max LLC; Max McMoezam, Executive (*public hearing*)
20. Resolution Number 4483 – A Resolution Granting Alabama Power Company A Utility Easement For Power To The Tennis Courts At Wald Park (*public hearing*)
21. Resolution Number 4484 – A Resolution Granting Alabama Power Company A Utility Easement For Park Facilities In Cahaba Heights (*public hearing*)

First Reading (No Action Taken At This Meeting)

22. Ordinance Number 2462 – An Ordinance Rescinding Ordinance Number 1687 – Establishing The Speed Limit For Liberty Parkway, Vestlake Communities And All Areas Of Liberty Parkway (*public hearing*)
23. Ordinance Number 2463 – An Ordinance To Repeal Ordinance Number 2099 And Ordinance Number 2411, To Reaffirm Ordinance Number 2209 And Adopt In Full Ordinance Number 2463 Titled The “City Of Vestavia Hills Smoke-Free Ordinance Of 2012” (*public hearing*)
24. Resolution Number 4485 – A Resolution Amending Resolution Number 4425 To Allow Validation Of Additional Incentives For The City Of Vestavia Hills, Alabama (*public hearing*)
25. Resolution Number 4486 – A Resolution Directing The City Manager And Mayor To Take All Actions Necessary To Delivery And Request Validation Of An Incentive Package Submitted By Hollywood Imports (*public hearing*)
26. Citizens Comments
27. City Manager’s Report
28. Executive Session
29. Motion For Adjournment

PROCLAMATION

WHEREAS, throughout our history, older people have achieved much for our families, communities, and country; and

WHEREAS, with improved healthcare and more years of productivity, older citizens are reinforcing their historical roles as leaders and sense of purpose as individuals and as a Nation; and

WHEREAS, many of them are embarking on second careers, giving younger people an example of responsibility, resourcefulness, competence, and determination; and

WHEREAS, more than 4.5 million senior citizens are serving as volunteers in various programs and projects that benefit every sector of society; and

WHEREAS, we can best demonstrate our gratitude for the older seniors' accomplishments by making sure that our communities enable them to participate to the fullest and find the encouragement, acceptance, assistance, and services they need to continue to lead lives of independence and dignity;

NOW, THEREFORE, I, Alberto C. Zaragoza, Jr. by virtue of the authority vested in me as Mayor of the City of Vestavia Hills in the State of Alabama, do proclaim August 21, 2013 as

NATIONAL SENIOR CITIZENS DAY

which is recognized annually and was authorized and requested by President Ronald Reagan in 1988 to encourage them to be active members of their community.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Vestavia Hills to be affixed this the 12th day of August, 2013.

Alberto C. Zaragoza, Jr.
Mayor

**CITY OF VESTAVIA HILLS
MEETING WITH THE MAYOR**

MINUTES

JULY 18, 2013

The City Council of Vestavia Hills met in a regularly scheduled Meeting with the Mayor on this date at 4:30 PM following posting/publication pursuant to Alabama law. The Mayor called the meeting to order and the roll was checked with the following:

MEMBERS PRESENT:

Alberto Zaragoza, Mayor
Steve Ammons, Mayor Pro-Tem
John Henley
George Pierce

MEMBERS ABSENT:

Jim Sharp

OTHER OFFICIALS PRESENT:

Jeff Downes, City Manager
Jim St. John, Interim City Manager
Dan Rary, Chief of Police
Wendy Appling, Acting City Clerk
Melvin Turner III, Finance Director

The Mayor opened the meeting and welcomed the persons in attendance.

The Mayor discussed with the Council several topics/updates, including but not limited to:

- Cahaba Heights Revitalization.
- Annual Audit.
- Various city issues were discussed.

There being no further business, the meeting adjourned at 6:05 PM.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Wendy Appling
Acting City Clerk

CITY OF VESTAVIA HILLS

CITY COUNCIL

MINUTES

JULY 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:

Jeff Downes, City Manager
Jim St. John, Fire Chief
Patrick Boone, City Attorney
Wendy Appling, Acting City Clerk
Christopher Brady, City Engineer
Melvin Turner III, Finance Director
George Sawaya, Dep. Finance Director
Danny Rary, Police Chief
Fred Baughman, Economic Dev. Director

Invocation was given by Jim Sharp, followed by the Pledge of Allegiance.

ANNOUNCEMENTS, GUEST RECOGNITION

- Mayor Zaragoza welcomed the following Boy Scouts to the meeting: Luke Norris, 1852 Indian Hill Road, Troop 110; Josh Norris, 1852 Indian Hill Road, Troop 110; and Brandon Bogard, 3013 Panorama Brook Circle, Troop 1

CITY MANAGER REPORT

- Mr. Downes stated that he has been warmly received since coming here to the City.
- The budget will be ready for the Council to review prior to August 15.
- Mr. Downes reminded everyone that the annual sales tax holiday is August 2-4, 2013.

BUSINESS OF THE MONTH

Mr. Baughman recognized Liberty Park for all their efforts in the City of Vestavia Hills. He introduced Mr. Shawn Arterburn, Vice President of Real Estate Development with Liberty Park and presented him with a certificate in recognition of Business of the Month.

COUNCILOR REPORTS

- Mr. Pierce announced that the I Love America Day celebration had a successful kickoff in July and the next event scheduled will be August 16 at Wald Park.
- The Mayor stated that Chevy 6 will be entertainment at the next I Love America event playing the great oldies.

FINANCIAL REPORTS

Mr. Turner presented the financial reports for month ending June 2013. He read and explained the balances.

APPROVAL OF MINUTES

The minutes of the July 8, 2013 (Regular Meeting) were presented for approval.

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

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

NEW BUSINESS

RESOLUTION NUMBER 4475

Resolution Number 4475 – A Resolution Accepting The 2011-2012 Audit For The City Of Vestavia Hills, Alabama

MOTION Motion to suspend the agenda, move Resolution Number 4475 to the beginning of the agenda, consider and act on Resolution Number 4475 was by Mr. Ammons and second was by Mr. Sharp.

Mr. Jason Harpe, Carr, Riggs, & Ingram, LLC, explained the audit and stated that the fund is extremely healthy.

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

OLD BUSINESS

The Mayor stated that there are several annexations on the agenda and asked Mr. Pierce to speak on them prior to consideration.

Mr. Pierce stated that the annexation committee has heard the cases and found no adverse information on any of them. There is a Board of Education representative on the annexation committee. The owners of all of the requests are in the audience this evening and all have paid their donations and fire due buyouts for annexation.

Mr. Sharp asked why there are so many annexations on the agenda.

Mr. Pierce stated that the annexation committee only meets a few times a year. Since last year was an election year, annexations were suspended and this is generally a period of “catch up” following an election year.

ORDINANCE NUMBER 2450

Ordinance Number 2450 – Annexation – 90-Day Final – 3312 Blueberry Lane; Lot 137 Buckhead, 4th Sector; Brian And Shannon Fagan, Owners (*public hearing*)

MOTION Motion to adopt Ordinance Number 2450 was by Mr. Pierce and second was by Mr. Ammons.

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.

ORDINANCE NUMBER 2451

Ordinance Number 2451 – Rezoning – 3312 Blueberry Lane; Lot 137, Buckhead, 4th Sector; Rezone From Jefferson County E-2 To Vestavia Hills R-1; Compatible Zoning For Annexation; Brian And Shannon Fagan, Owners (public hearing)

MOTION Motion to adopt Ordinance Number 2451 was by Mr. Pierce and second was by Mr. Henley.

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.

ORDINANCE NUMBER 2452

Ordinance Number 2452 – Annexation – 90-Day Final – 2469 Jannebo Road; Lot 123, Buckhead, 4th Sector; Eric And Robin White, Owners (public hearing)

MOTION Motion to adopt Ordinance Number 2452 was by Mr. Pierce and second was by Mr. Henley.

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.

ORDINANCE NUMBER 2453

Ordinance Number 2453 – Rezoning – 2469 Jannebo Road, Lot 123, Buckhead, 4th Sector; Rezone From Jefferson County E-2 To Vestavia Hills R-1;

Compatible Zoning For Annexation; Eric And Robin White, Owners (*public hearing*)

MOTION Motion to adopt Ordinance Number 2453 was by Mr. Pierce and second was by Mr. Sharp.

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.

ORDINANCE NUMBER 2454

Ordinance Number 2454 – Rezoning – 2469 Jannebo Road, Lot 123, Buckhead, 4th Sector; Rezone From Jefferson County E-2 To Vestavia Hills R-1; Compatible Zoning For Annexation; Eric And Robin White, Owners (*public hearing*)

MOTION Motion to adopt Ordinance Number 2454 was by Mr. Pierce and second was by Mr. Ammons.

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.

ORDINANCE NUMBER 2455

Ordinance Number 2455 – Annexation – 90-Day Final – 4604 Old Looney Mill Road; Lot 1 WO Brasseale Subd; Jacquelyn G. Britt, Owners (*public hearing*)

MOTION Motion to adopt Ordinance Number 2455 was by Mr. Pierce and second was by Mr. Henley.

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.

ORDINANCE NUMBER 2456

Ordinance Number 2456 – Annexation – 90-Day Final – 4608 & 4612 Old Looney Mill Road; Lots 2 & 3, WO Brasseale Subd; Virginia W. Wood, Owner (public hearing)

MOTION Motion to adopt Ordinance Number 2456 was by Mr. Pierce and second was by Mr. Sharp.

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.

ORDINANCE NUMBER 2457

Ordinance Number 2457 – Annexation – 90-Day Final – 2855 Five Oaks Lane; John Santamour, Owner (public hearing)

MOTION Motion to adopt Ordinance Number 2457 was by Mr. Pierce and second was by Mr. Henley.

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.

ORDINANCE NUMBER 2458

Ordinance Number 2458 – Rezoning – 4595, 4604, 4608 And 4612 Old Looney Mill Road And 2855 Five Oaks Lane; Rezone From Jefferson County E-2 To Vestavia Hills R-1, Compatible Zoning For Annexation; Brandon Falls, Kathryn Falls, Jacquelyn Britt, Virginia Wood And John Santamour, Owners (*public hearing*)

MOTION Motion to adopt Ordinance Number 2458 was by Mr. Pierce and second was by Mr. Henley.

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 4464

Resolution Number 4464 – Annexation – 2549 Skyland Drive; Lot 6, Block 3, Dolly Ridge Estates; Derrell And Terry Crim, Owners (*public hearing*)

MOTION Motion to adopt Resolution Number 4464 was by Mr. Pierce and second was by Mr. Sharp.

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.

ORDINANCE NUMBER 2459

Ordinance Number 2459 – Annexation – Overnight - 2549 Skyland Drive; Lot 6, Block 3, Dolly Ridge Estates; Derrell And Terry Crim, Owners (*public hearing*)

MOTION Motion to adopt Ordinance Number 2459 was by Mr. Pierce and second was by Mr. Ammons.

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 4465

Resolution Number 4465 – Annexation – 2615 April Drive; Lot 11, Altadena Acres; James And Emily Pace, Owners (public hearing)

MOTION Motion to adopt Resolution Number 4465 was by Mr. Pierce and second was by Mr. Sharp.

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.

ORDINANCE NUMBER 2460

Ordinance Number 2460 – Annexation – Overnight - 2615 April Drive; Lot 11, Altadena Acres; James And Emily Pace, Owners (public hearing)

MOTION Motion to adopt Ordinance Number 2460 was by Mr. Pierce and second was by Mr. Henley.

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 4466

Resolution Number 4466 – Annexation – 2624 Altadena Road; Part Of Estate 5, Westbrook Estates; David And Pamela Hultstrand, Owners (*public hearing*)

MOTION Motion to adopt Resolution Number 4466 was by Mr. Pierce and second was by Mr. Ammons.

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.

ORDINANCE NUMBER 2461

Ordinance Number 2461 – Annexation – Overnight - 2624 Altadena Road; Part Of Estate 5, Westbrook Estates; David And Pamela Hultstrand, Owners (*public hearing*)

MOTION Motion to adopt Ordinance Number 2461 was by Mr. Pierce and second was by Mr. Henley.

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.

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 August 12, 2013 at 5 PM.

- Ordinance Number 2442 – Annexation – 90-Day Final – 4918 Cahaba River Road; Shannon Waltchack, LLC, Owner (*public hearing*)
- Ordinance Number 2443 – Rezoning – 4918 Cahaba River Road; Rezone From Jefferson County E-2 To Vestavia Hills B-3 With A Conditional Use For Storage/Warehousing Of Inventory; Shannon Waltchack LLC, Owners (*public hearing*)
- Resolution Number 4473 – A Resolution Ordering The Demolition Of A Building Or Structure Located At 3348 Ridgely Circle, Vestavia Hills, Alabama, Parcel Id# 28-00-23-2-007-32.000, In Compliance With Sections 11-40-30 Through 11-40-36, Sections 11-53b-1 Through 11-53b-16, Inclusive, Of The Code Of Alabama, And In Compliance With Ordinance Number 2382 Of The City Of Vestavia Hills, Alabama; And Calling For The City Of Vestavia Hills To Cause Said Demolition To Be Performed And Directing The City Attorney And The City Clerk To Cause The Cost Of Such Demolition To Be Charged Against The Land On Which The Building Or Structure Exists As A Municipal Lien Or Cause Such Cost To Be Recovered In A Suit At Law Against The Owner Or Owners (*public hearing*)
- Resolution Number 4474 – A Resolution Ordering The Demolition Of A Building Or Structure Located At 2713 Millwood Road, Vestavia Hills, Alabama, Parcel Id# 28-00-28-2-002-001.000, In Compliance With Sections 11-40-30 Through 11-40-36, Sections 11-53b-1 Through 11-53b-16, Inclusive, Of The *Code Of Alabama*, And In Compliance With Ordinance Number 2382 Of The City Of Vestavia Hills, Alabama; And Calling For The City Of Vestavia Hills To Cause Said Demolition To Be Performed And Directing The City Attorney And The City Clerk To Cause The Cost Of Such Demolition To Be Charged Against The Land On Which The Building Or Structure Exists As A Municipal Lien Or Cause Such Cost To Be Recovered In A Suit At Law Against The Owner Or Owners (*public hearing*)

CITIZENS COMMENTS

Mr. Paul Sumner, 2336 Tanglewood Brook Lane, stated that he knows the people annexed tonight and they are good people.

The Mayor stated that Alagasco has been working in the area around Chestnut Road. They have dug up the roads and indicated that they are only going to patch the streets. The Mayor requested Mr. Downes to contact Alagasco about repaving the streets instead of patching them and that he would like it completed before school begins in August.

Mr. Ammons welcomed Mr. Downes to his first Council meeting.

The Mayor announced that Mr. Downes is the right fit for Vestavia Hills. He has already dug into the daily transactions of the City and has been a part of the budget hearings.

MOTION Motion to adjourn was by Mr. Henley. Meeting adjourned at 6:00 PM.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Wendy Appling
Acting City Clerk

ORDINANCE NUMBER 2442

**ANNEXING CERTAIN TERRITORY TO THE
CORPORATE LIMITS OF THE CITY OF
VESTAVIA HILLS, ALABAMA.**

WHEREAS, on the 14th day of January, 2013, a petition was presented to the City Council of the City of Vestavia Hills, Alabama, proposing the annexation of certain property to the City of Vestavia Hills, Alabama, under the provisions of Act 32 of the Special Session on the Alabama Legislature of 1964; and

WHEREAS, the City Council of the City of Vestavia Hills, at the time and place of its regular meeting on said date, made a determination that the matters contained in the Petition were true and that it was in the public interest that said property be annexed to the City of Vestavia Hills, Alabama.

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

1. That the following property which was described in said petition be annexed to the City of Vestavia Hills, Alabama:

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

More particularly described as follows:

Part of the NE q/4 of the NE ¼ of Section 34, Township 18 South, Range 2 West, Situated in Jefferson County, Alabama, more particularly described as follows:

Begin at the SE corner of said ¼-¼ section and run then Westerly along the South line thereof for a distance of 240 feet to the point of beginning of the tract here described. From the point of beginning thus obtained, continue Westerly along the South line of said quarter-quarter section for a distance of 162.60 feet; thence turn an angle of 92 degrees 03' 30" to the right and run Northwardly for a distance of 234.16 feet to a point of intersection with a curve, said curve having a radius of 1,186.48 feet and

extending a central angle of 4 degrees 44' 10" to the tangent of said curve forming an angle of 81 degrees 36' 30" to the right from the last described course when extended Northwardly through the point of intersection of said curve, run thence Eastwardly along said curve and along the Southerly line of the right of way of US Highway 280 for a distance of 98.08 feet; thence turn an angle of 88 degrees 05' 30" to the right angle measured to tangent of said curve and run Southwardly for a distance of 255.33 feet, more or less to the point of beginning.

2. That this Annexation shall become effective upon the adoption and approval of this Ordinance in accordance with the provisions of law, after which the heretofore described property shall become a part of the City of Vestavia Hills, Alabama.

3. That the City Clerk be and is hereby directed to publish this Ordinance in accordance with the requirements of the law and to file a copy hereof, together with a duly certified copy of the petition, with the Probate Judge of Jefferson County, Alabama.

ADOPTING and APPROVED this the 12th day of July, 2013.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

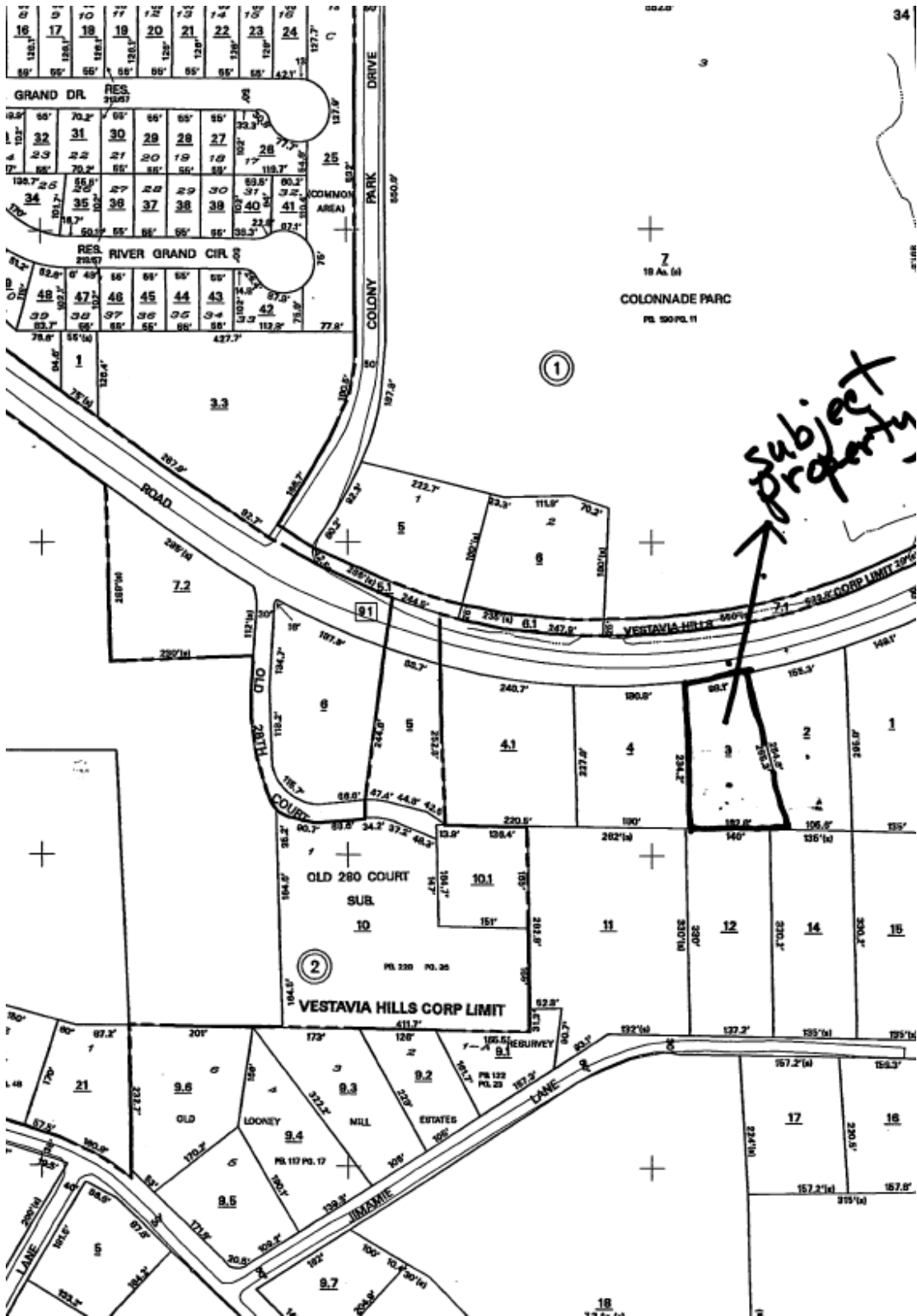
Rebecca Leavings
City Clerk

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 # 2442 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 12th day of July, 2013, as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills Library in the Forest, Vestavia Hills New Merkle House and Vestavia Hills Recreational Center this the _____ day of _____, 2013.

Rebecca Leavings
City Clerk



ORDINANCE NUMBER 2443

AN ORDINANCE TO FURTHER AMEND THE ZONING ORDINANCE AND THE ZONING MAP OF THE CITY OF VESTAVIA HILLS, ALABAMA, ADOPTED SEPTEMBER 16, 1985, AND AS LAST AMENDED SO AS TO CHANGE THE CLASS OF DISTRICT ZONING OF A PARCEL OF PROPERTY FROM JEFFERSON COUNTY E-2 TO VESTAVIA HILLS B-3 WITH CONDITIONAL USE FOR STORAGE

BE IT ORDAINED by the City Council of the City of Vestavia Hills, Alabama, as follows: That the Zoning Ordinance and Zoning Map of the City of Vestavia Hills, Alabama, adopted September 16, 1985, and as last amended so as to change the class of district zoning of the following described property from Jefferson County E-2 to Vestavia Hills B-3 with a conditional use for storage/warehousing of inventory;

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

More particularly described as follows:

Part of the NE q/4 of the NE ¼ of Section 34, Township 18 South, Range 2 West, Situated in Jefferson County, Alabama, more particularly described as follows:

Begin at the SE corner of said ¼-¼ section and run then Westerly along the South line thereof for a distance of 240 feet to the point of beginning of the tract here described. From the point of beginning thus obtained, continue Westerly along the South line of said quarter-quarter section for a distance of 162.60 feet; thence turn an angle of 92 degrees 03' 30" to the right and run Northwardly for a distance of 234.16 feet to a point of intersection with a curve, said curve having a radius of 1,186.48 feet and extending a central angle of 4 degrees 44' 10" to the tangent of said curve forming an angle of 81 degrees 36' 30" to the right from the last described course when extended Northwardly through the point of intersection of said curve, run thence Eastwardly along said curve and along the Southerly line of the right of way of US Highway 280 for a distance of 98.08 feet; thence turn an angle of 88 degrees 05' 30" to the right angle measured to tangent of said curve and run Southwardly for a distance of 255.33 feet, more or less to the point of beginning.

APPROVED and ADOPTED this the 12th day of August, 2013.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

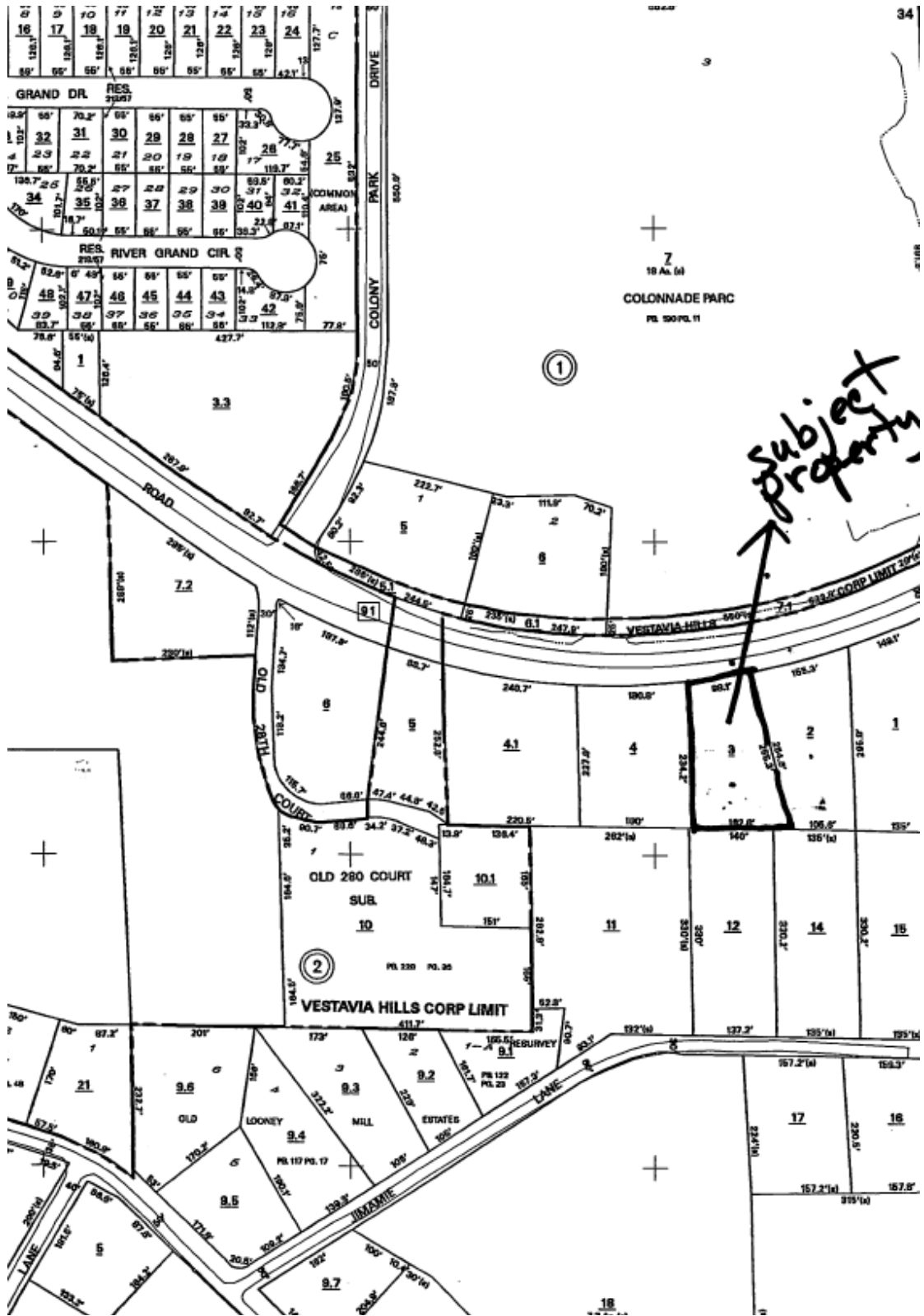
Rebecca Leavings
City Clerk

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 # 2443 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 12th day of August, 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



CITY OF VESTAVIA HILLS
SYNOPSIS AND STAFF RECOMMENDATION CONCERNING
APPLICATION BEFORE THE PLANNING AND ZONING COMMISSION

Date: APRIL 11, 2013

- **CASE:** P-0313-06
- **REQUESTED ACTION:** Rezone from Jefferson County E-2 to Vestavia Hills B-3 with Conditional Use for Storage of Inventory
- **PROPOSED USE(S):** Office/Storage
- **ADDRESS/LOCATION:** 4918 Cahaba River Rd.
- **APPLICANT/OWNER:** Shannon Waltcheck, LLC; 120 18th St. South, Suite 101 Birmingham, AL 35233
- **REPRESENTING AGENT:** Len Shannon
- **GENERAL DISCUSSION:** This property is located on Cahaba River Rd, diagonally across from the dry cleaners and donut shop just east of Colony Park Dr. The site is .72 acres. The property is currently zoned Jefferson County E-2 but the applicant requests to be zoned Vestavia Hills B-3 with a Conditional Use for storage of inventory for Centurion Labs, a pharmaceutical wholesaler. A proposed site plan is included which appears to meet the requirements of a B-3 zoning.
- **CAHABA HEIGHTS COMMUNITY PLAN:** This request is consistent with the Cahaba Heights Community Plan for limited mixed use.
- **STAFF REVIEW AND RECOMMENDATION:**
 1. **City Planner Review:** I have looked at all of the relevant zoning / subdivision requirements related to this proposal, including application, notification, setbacks, area of lot development, etc. Notification has been sent to property owners pursuant to Alabama law. I have reviewed this request and find it does meet the minimum requirements of the proposed zoning.

City Planner Recommendation: No recommendation
 2. **City Engineer Review:** No problems noted

3. **City Fire Marshal Review:** No problems noted.
 4. **Building Safety Review:** No problems noted.
 5. **Economic Development Review:** No problems noted
- **PLANNING AND ZONING BOARD RECCOMENDATION:**
Motion to recommend approval was made by Mr. Jim Sharp and was seconded by Mr. Deloye Burrell. Recommended unanimously for approval.



August 7, 2013

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

RE: 4918 Cahaba River Road | Jefferson County, Alabama

via: e-mail

Dear Len:

Goodwyn Mills and Cawood, Inc (GMC) has been working to support your efforts to annex the above referenced property into the corporate limits of the City of Vestavia Hills. As a part of this support we have drafted a preliminary site plan based on the survey you provided GMC and our understanding of what can be approved by Jefferson County Roads & Transportation and the Health Department.

GMC has attempted to have a perc test and test pit performed on this lot (per the Health Department standards) to support the design of an onsite sewage disposal system, but due to unforeseen site conditions and weather constraints they have not been completed to date. I have talked to Jeff Swinney, with the Health Department and he suggested that the water being produced by the natural spring be temporarily rerouted within the parcel so that the area to be used for the disposal field can be evaluated in drier conditions that would be representative of the finished state. He did state that in those conditions a mound system should be able to be designed in such a manner that could be approved by his agency.

GMC has also reached out to Ken Boozer with Jefferson County Roads and Transportation to discuss the access for this parcel on the Jefferson County controlled Right of Way of Cahaba River Road. Ken felt like the low volume of traffic that will be generated by the proposed development (based on the expected number of employees) would not necessitate any improvements to Cahaba River Road. He did state that he would like for you to make an attempt to negotiate a shared drive scenario with the property to the east. Since your efforts have not been fruitful in this attempt, I would assume that the drive could approved as shown in the attached plan.

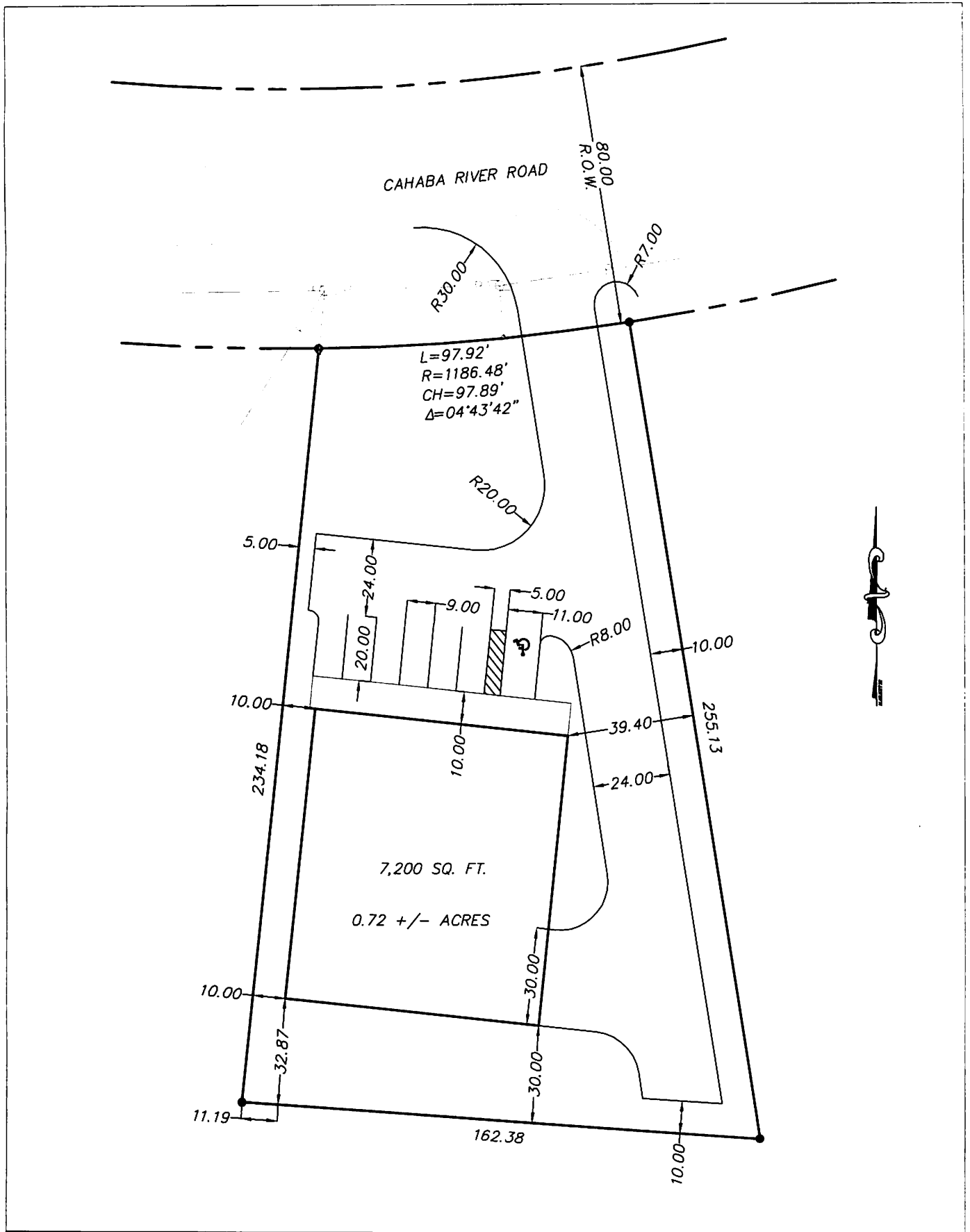
Please feel free to contact me at your convenience to discuss any questions or concerns you may have.

Sincerely:

GOODWYN, MILLS AND CAWOOD, INC.

J. Coleman Williams, P.E., LEED GA
Project Manager

Attachment: Site Plan



REF. SHEET:

DESCRIPTION: CONCEPTUAL SITE LAYOUT PLAN

SCALE: 1" = 40'

C1.0

CONCEPTUAL DRAWING

GMC #

DATE: 08.07.2013

DRAWN BY: --



GOODWYN | MILLS | CAWOOD

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

▶ **4918 CAHABA RIVER ROAD**
VESTAVIA HILLS, ALABAMA



P-0413-08//28-34-1-2-3
4918 Cahaba River Rd.
Rezone to VH E-2
Shannon Waltchack, LLC
JEFFCo Office

Proposed Annexation and Re-Zoning

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

Proposed By:

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



Table of Contents

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

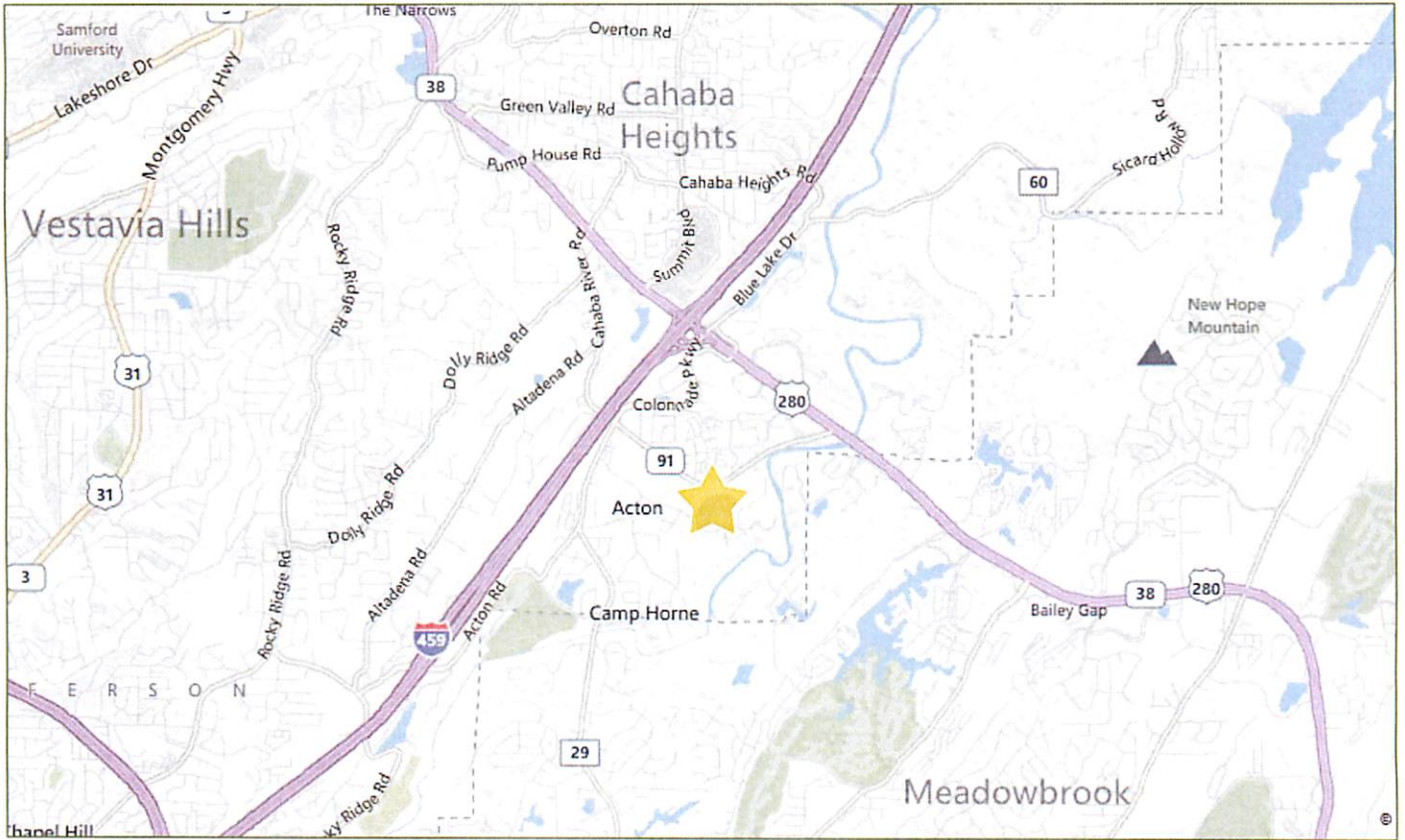


Overview of Request

- Owner:** Shannon Waltchack, LLC currently owns the property, but the development will be owned 50% by Shannon Waltchack and 50% by the future tenant, Centurion Labs.
- Property:** Property is located on Cahaba River Rd., just east of Patchwork Farms.
- Proposal:** To construct a commercial building, being approximately (???) square feet for office and storage.
- Architecture:** An exterior designed to look less like a warehouse and more like an office.
- Parking:** Our tenant will only have four employees (offices) and the rest of the building will be temperature controlled storage for medical products since they sell to wholesalers. No customers will be coming to the office.
- Lighting:** Minimal exterior lighting is proposed.
- Dumpster:** Future Tenant will not need a dumpster.
- Tenant:** Centurion Labs is owned by Trey Duet who lives in Vestavia on Caldwell Mill Rd. Centurion Labs sells prescription products and supplements to drug wholesalers.



VICINITY MAP





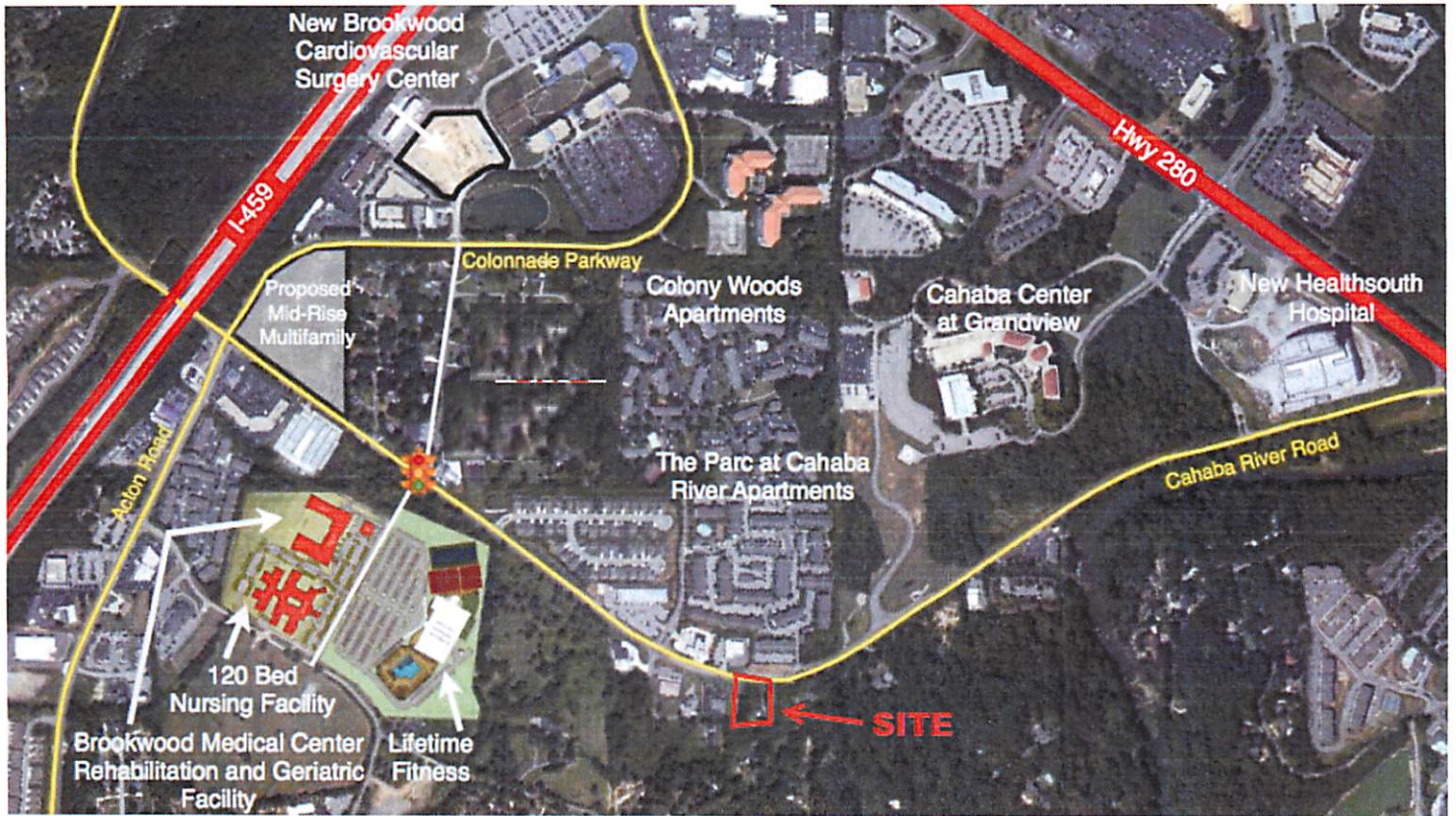
REF. SHEET:
DESCRIPTION: CONCEPTUAL LAYOUT PLAN

▶ CAHABA RIVER ROAD PROPOERTY
BIRMINGHAM, AL

C1.1

CONCEPTUAL DRAWING
GMC #
DATE: 11.29.2012
DRAWN BY: ---

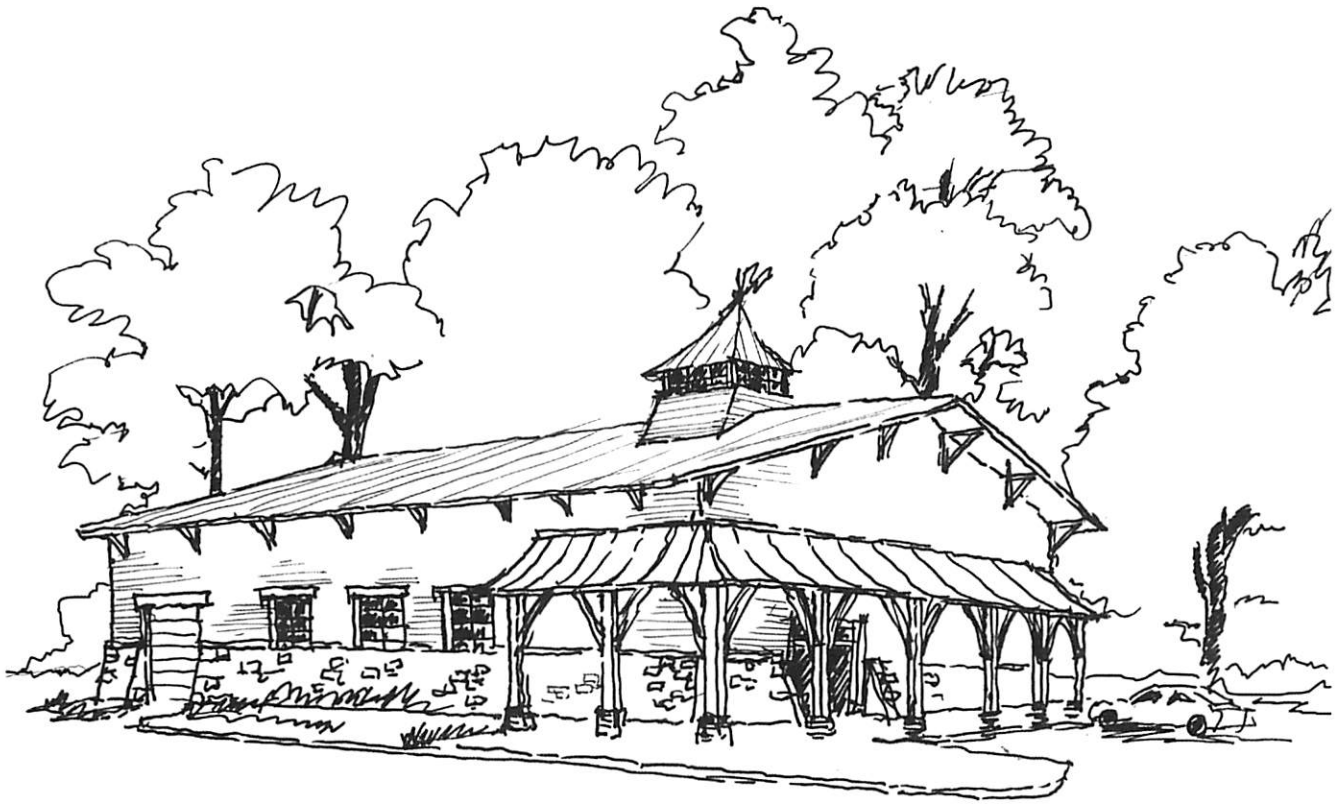
AERIAL 1



AERIAL 2



PROPOSED BUILDING DESIGN



CAHABA RIVER ROAD

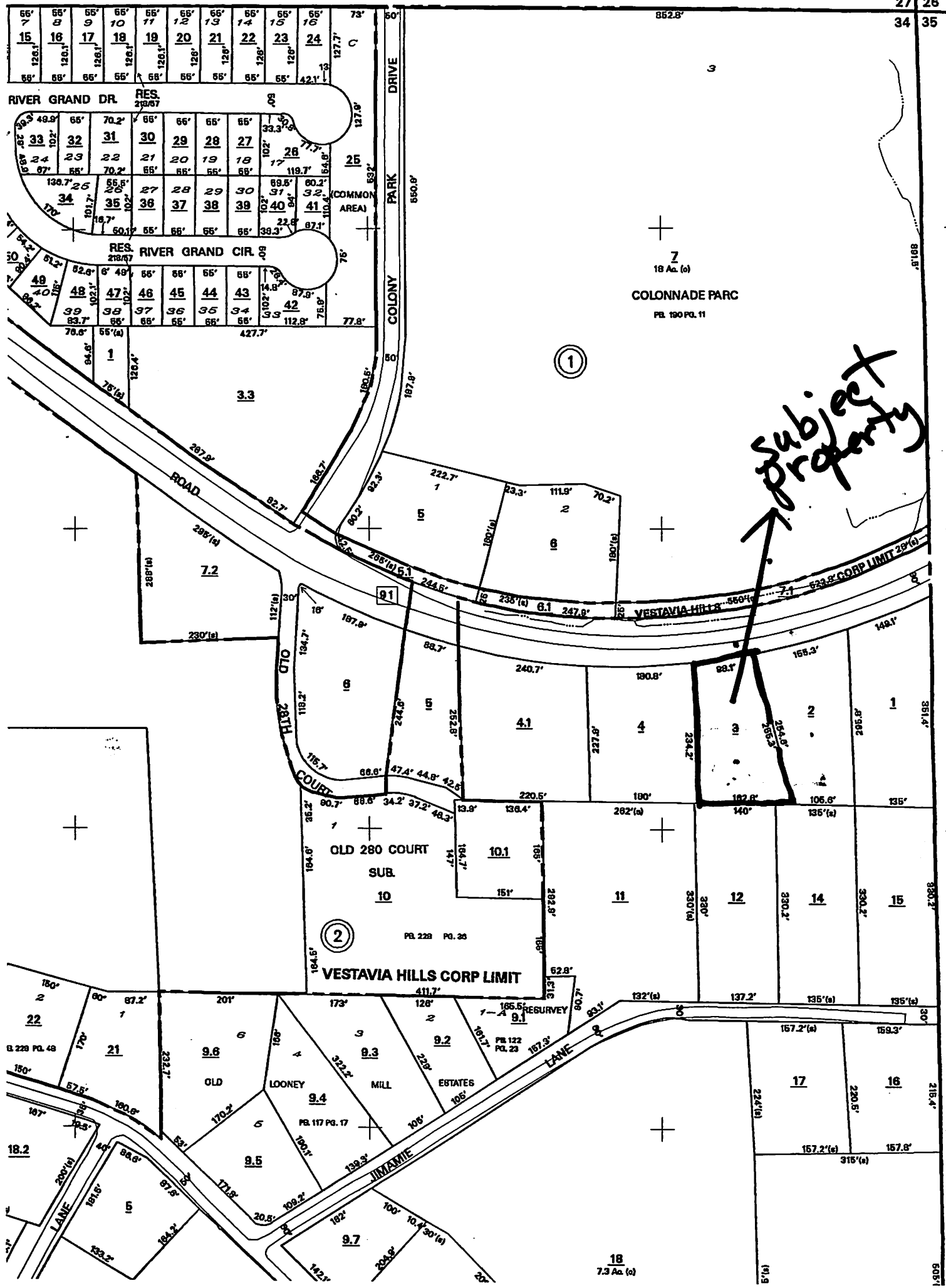
CONCEPTUAL SKETCH | MAY 14, 2012

 CHRISTOPHER
ARCHITECTS



SHANNON · WALTCHACK

20 18th Street South, Suite 101 / Birmingham, AL 35233 o: 205.977.9797 f: 205.977.9793 w: shanwalt.com



subject property

1

2

18
7.3 Ac. (c)

RESOLUTION NUMBER 4473

A RESOLUTION ORDERING THE DEMOLITION OF A BUILDING OR STRUCTURE LOCATED AT 3348 RIDGELY CIRCLE, VESTAVIA HILLS, ALABAMA, PARCEL ID# 28-00-23-2-007-32.000, IN COMPLIANCE WITH SECTIONS 11-40-30 THROUGH 11-40-36, SECTIONS 11-53B-1 THROUGH 11-53B-16, INCLUSIVE, OF THE *CODE OF ALABAMA*, AND IN COMPLIANCE WITH ORDINANCE NUMBER 2382 OF THE CITY OF VESTAVIA HILLS, ALABAMA; AND CALLING FOR THE CITY OF VESTAVIA HILLS TO CAUSE SAID DEMOLITION TO BE PERFORMED AND DIRECTING THE CITY ATTORNEY AND THE CITY CLERK TO CAUSE THE COST OF SUCH DEMOLITION TO BE CHARGED AGAINST THE LAND ON WHICH THE BUILDING OR STRUCTURE EXISTS AS A MUNICIPAL LIEN OR CAUSE SUCH COST TO BE RECOVERED IN A SUIT AT LAW AGAINST THE OWNER OR OWNERS

WHEREAS, the appropriate Municipal Officials determined that the condition of the building or structure located at 3348 Ridgely Circle, Vestavia Hills, Alabama, Parcel I.D. Number 28-00-23-2-007-032.000 is in such a condition as to make it dangerous to the life, health, property, morals, safety, or general welfare of the public or the occupants.

WHEREAS, contemporaneously with the filing of “Finding of Public Nuisance, Notice and Order to Remedy and Notice of Lis Pendens” on June 4, 2013, a copy of same was sent via certified mail, properly addressed and postage prepaid to:

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

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

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

D. All lien holders of record as shown from a search of the records of the Office of the Judge of Probate of Jefferson County, Alabama to the address set forth in the statement of lien or, if no address for the lien holder is set forth in the statement of

lien, to the address determined to be the correct address by the appropriate Municipal Officials; and

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

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

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

BE IT RESOLVED by the City Council of the City of Vestavia Hills, Alabama while in regular session on Monday, August 12, 2013 at 5:00 p.m. as follows:

Section 1. A Public Hearing was held on August 12, 2013 at 5:00 p.m. and after due deliberation the City Council of the City of Vestavia Hills, Alabama finds that the structure standing at 3348 Ridgely Circle, Vestavia Hills, AL 35243, Parcel ID# 28-00-23-2-007-032.000 is unsafe to the extent of becoming a public nuisance to the citizens of the City of Vestavia Hills, Alabama and is due to be condemned and demolished in compliance with Sections 11-40-30 through 11-40-36 and Sections 11-53B-1 through 11-53B-16, inclusive, of the Code of Alabama (1975), and Ordinance Number 2382 of the City of Vestavia Hills, Alabama, subject, however, and limited by that certain Remediation Agreement attached hereto as Exhibit A, which the Mayor is hereby authorized to execute;

Section 2. That the City of Vestavia Hills shall cause said demolition to be performed by its own employees and/or by contractor(s); and

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

ADOPTED this the 12th day of August, 2013.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION OF CITY CLERK

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, Rebecca Leavings, City Clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true and correct copy of a Resolution duly and legally adopted by the City Council of the City of Vestavia Hills, Alabama, on the _____ day of _____, 2013 while in regular session on Monday, August 12, 2013, and the same appears of record in the minute book of said date of said City.

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

Rebecca Leavings, City Clerk

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

June 4, 2013

VIA HAND DELIVERY

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

RE: Lis Pendens

Dear Becky:

Please find enclosed five copies of the filed-stamped Lis Pendens notice for the demolition of real property located at 3348 Ridgely Circle. One copy of this notice is for your file. The other four copies need to be posted in the following locations within three days of today:

1. 3348 Ridgely Circle.
2. Vestavia Hills Municipal Center.
3. Vestavia Hills Library in the Forest.
4. Vestavia Hills Civic Center.

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

Very truly yours,



Kelly Thrasher Fox

Enclosures


cc: Mark T. Waggoner, Esq.
Benjamin S. Goldman, Esq.

537256

Es 4473

IN THE PROBATE COURT OF JEFFERSON COUNTY, ALABAMA

CITY OF VESTAVIA HILLS, ALABAMA)
)
 v.)
)
 REALTY INVESTMENTS, INC.;)
 JEFFERSON COUNTY SEWER SERVICE)
 OFFICE;)
 BIRMINGHAM WATER WORKS)
)
 Lot 4, Block 3, according to the Survey of)
 Shades Cahaba Estates 3rd Addition, as recorded)
 in Map Book 41, page 12, in the Probate Office)
 of Jefferson County, Alabama.)


20130604000579700 1/10
Bk: LR201314 Pg:19999
Jefferson County, Alabama
I certify this instrument filed on:
06/04/2013 11:57:48 AM LN
Judge of Probate- Alan L. King

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

TAKE NOTICE that:

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

STREET ADDRESS:

3348 Ridgely Circle, Vestavia Hills, AL 35243

LEGAL DESCRIPTION:

Lot 4, Block 3, according to the Survey of Shades Cahaba Estates 3rd Addition, as recorded in Map Book 41, page 12, in the Probate Office of Jefferson County, Alabama

PARCEL IDENTIFICATION NUMBER:

28-00-23-2-007-032.000

The City provides further notice as follows:

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

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

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

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

(1) Exclusive of the foundation, the building shows thirty-three (33) percent, or more, of damage or deterioration of one (1) or more supporting members, or fifty (50) percent of damage or deterioration of the non-supporting enclosing or outside walls or covering;

(2) The building has been damaged by fire, wind, earthquake, flood, sinkhole, deterioration, neglect, abandonment, vandalism, or any other cause so as to have become dangerous to life, health, property, morals, safety, or general welfare of the public or the occupants;

(3) The building has become or is so damaged, dilapidated, decayed, unsafe, unsanitary, lacking in maintenance, vermin or rat infested, containing filth or contamination, lacking proper ventilation, lacking sufficient illumination, or so utterly fails to provide the amenities essential to decent living that it is unfit for human habitation, or is likely to cause sickness or disease, so as to work injury to the life, health, property, morals, safety, or general welfare of the public or the occupants;

(4) The building has light, air, heating, cooling, and sanitation facilities which are inadequate to protect the life, health, property, morals, safety, or general welfare of the public or the occupants;

(5) The building does not provide minimum safeguards to protect or warn occupants in the event of fire;

(6) The building is neglected, damaged, dilapidated, unsecured, or abandoned so as to become an attractive nuisance to children who might play in or on the building, structure, part of building or structure, party wall, or foundation to their danger, has become a harbor for vagrants, criminals, or immoral persons, or enables persons to resort to the building, structure, part of building or structure, party wall, or foundation for committing a nuisance or an unlawful act; and

(7) The building is, because of its condition, unsafe, unsanitary, or dangerous to the life, health, property, morals, safety, or general welfare of the public or the occupants.

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

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

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

8. The Appropriate Municipal Officials find that the building on the Subject Property is in such condition as to make it dangerous to the life, health, property, morals, safety, or general welfare

of the public or the occupants. Therefore, the Appropriate Municipal Officials order that the building on the Subject Property be and remain vacated until demolished.

9. A public hearing as provided for by Section 5-146(a) set forth in Ordinance No. 2382 shall be held on the finding of the Appropriate Municipal Officials in the Council Chambers at the Vestavia Hills Municipal Center, 513 Montgomery Highway, Vestavia Hills, AL 35216, on the 12th day of August, 2013, at 5:00 p.m. At that time, the City Council shall hold a public hearing to receive any objections to the finding by the Appropriate Municipal Officials that the building or structure is unsafe to the extent of becoming a public nuisance. A written request for a public hearing is not necessary. At the public hearing, the City Council shall also receive any written objections to the finding by the Appropriate Municipal Officials. Any such written objection must be submitted to the City Clerk prior to the start of the City Council meeting at which the public hearing is held. No action shall be taken on the finding of the Appropriate Municipal Officials until determination thereon is made by the City Council. Upon holding the hearing, the City Council shall determine whether or not the building or structure is unsafe to the extent that it is a public nuisance. If it is determined by the City Council that the building or structure is unsafe to the extent that it is a public nuisance, the City Council shall order demolition of the building at the expense of the City and assess the expenses of the move or demolition on the land on which the building stands or to which it is attached. Any person aggrieved by the decision of the City Council at the hearing may, within ten (10) days thereafter, appeal to the Circuit Court of Jefferson County, Alabama, Birmingham Division, upon filing with the Clerk of the Circuit Court of Jefferson County, Alabama, Birmingham Division, notice of the appeal and bond for security of costs in the form and amount to be approved by the Circuit Clerk. For further particulars, see Ordinance No. 2382.

10. A failure by the Vestavia Hills City Council to act on the findings of the Appropriate Municipal Officials within ninety (90) days from the date of this "Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*" shall constitute an abdication of the Appropriate

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

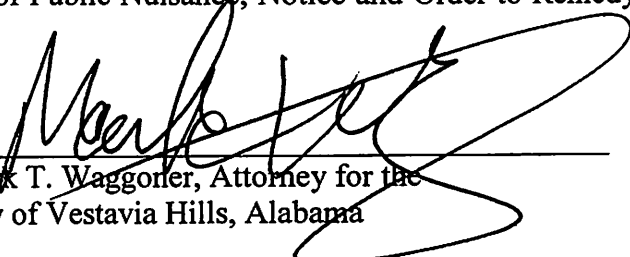
11. It is unlawful for any person, or for any agent, servant or employee of such person, to obstruct or interfere with the Appropriate Municipal Officials in carrying out the purposes of Ordinance No. 2382.

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

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

14. It is unlawful for any person who has received this "Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*" to sell, transfer, mortgage, lease, encumber, or otherwise dispose of the building that is the subject of the same to another until such person shall first furnish the grantee, transferee, mortgagee, or lessee a true copy of this "Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*" and shall furnish to the Appropriate

Municipal Officials a signed and notarized statement from the grantee, transferee, mortgagee, or lessee acknowledging the receipt of this "Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*" and fully accepting the responsibility without condition for making the corrections or repairs required by this "Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*."



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

OF COUNSEL:

Hand Arendall LLC

2001 Park Place North, Suite 1200

Birmingham, AL 35203

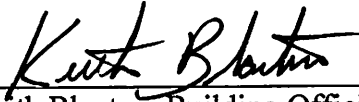
E-mail: mwaggoner@handarendall.com

Phone: (205) 324-4400 Fax: (205) 322-1163

VERIFICATION OF THE APPROPRIATE MUNICIPAL OFFICIALS

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

DONE this the 4th day of ^{June} ~~May~~, 2013.



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



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

This Instrument Prepared By:

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

CERTIFICATE OF SERVICE

Contemporaneously with the filing of this "Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*," a copy of the same has been sent via certified mail, properly addressed and postage prepaid to all of the following persons on this the 4th day of ^{June} ~~May~~, 2013:

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

Realty Investments, Inc.
P.O. Box 1086
Birmingham, AL 35201

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

Realty Investments, Inc.
3348 Ridgely Circle
Birmingham, AL 35243

Realty Investments, Inc.
5144 Kirkwall Lane
Birmingham, AL 35242

Realty Investments, Inc.
c/o Key, Greer, Harrison & Casey
Attention: James H. Greer
2163 Highway 31 South
Pelham, AL 35124

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

There are no mortgagees of record.

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

There are no lien holders of record.

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

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

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

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

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

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

Notice that the Appropriate Municipal Official has made a finding that the Subject Property is a dangerous building because it is unsafe to the extent that it is a public nuisance and is subject to

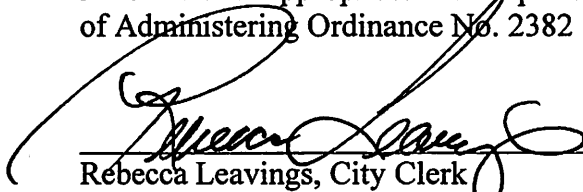
demolition and that a public hearing will be held on the date assigned herein will also be given to all interested parties and to the public at large by publication in the *Alabama Messenger*.



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



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



Rebecca Leavings, City Clerk
City of Vestavia Hills, Alabama

20130604000579700 10/10
Bk: LR201314 Pg: 19999
Jefferson County, Alabama
06/04/2013 11:57:48 AM LN
Fee - \$43.00

Total of Fees and Taxes-\$43.00
SCOTTK

REMEDIATION AGREEMENT

COME NOW, **Realty Investments, Inc.** and **Billy C. Franklin** ("Petitioners"), who have an interest in the Subject Property as defined herein, and the **City of Vestavia Hills, Alabama** ("City"), to enter into this Agreement as of the 12th day of August, 2013. The "Subject Property" referred to in this Agreement shall include the following described real property and the personal property thereon:

STREET ADDRESS:

3348 Ridgely Circle, Vestavia Hills, AL 35243

LEGAL DESCRIPTION:

Lot 4, Block 3, according to the Survey of Shades Cahaba Estates
3rd Addition, as recorded in Map Book 41, page 12, in the Probate
Office of Jefferson County, Alabama

PARCEL IDENTIFICATION NUMBER:

28-00-23-2-007-032.000

Petitioners agree that they will make certain improvements to the Subject Property, including the following:

1. That the premises of the Subject Property shall be immediately maintained in accordance with all laws governing grass and weeds and remain so at all times;
2. That the Subject Property—in its entirety, both improvements and land—shall be brought into compliance with all applicable technical, building, and safety codes adopted by the City no later than January 12, 2014; and
3. That the improvements to the Subject Property shall include, at a minimum, the scope of work contemplated by the schedule attached hereto as Exhibit A hereof, and landscaping of the Subject Property (Items 1-3 altogether "the Timeline").

The Petitioners agree that they will satisfy all provisions of the Timeline.

The Petitioners agree that until all of the provisions of the Timeline have been completed by the Petitioners, the Petitioners will not sell, transfer, mortgage, lease, encumber, or otherwise dispose of the Subject Property without the express written permission of the City.

In the event that the Petitioners should fail to meet any provision of the Timeline, the City may, at its sole discretion and election, either demolish the Subject Property or any part

thereof without further notice to the Petitioners or complete the remediation of the Subject Property as contemplated by the Timeline. The Petitioners agree to be responsible for any expenses (including attorneys' fees and costs actually incurred) associated with the City's enforcement of its rights pursuant to this Agreement, including but not limited to demolition of the Subject Property by the City and/or remediation of the Subject Property by the City for the Petitioners' failure to meet any provision of the Timeline and/or prosecution related to the condition of the Subject Property, and the Petitioners authorize the City to file an assessment and lien against the Subject Property for the same.

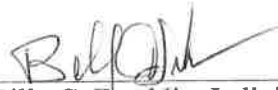
The Petitioners agree to hold harmless and hereby release the City and its agents, officers, employees, attorneys, contractors, and subcontractors from any and all types of claims that they had, now have, or in the future may have related to the Subject Property. The Petitioners agree to assume the risk of making any improvements to the Subject Property or investing any money therein and acknowledge the risk that the Subject Property may be demolished and/or subjected to a lien if the Petitioners fail to strictly comply with the Timeline whether or not the Subject Property could have otherwise been demolished under any provision of law. The Petitioners agree to indemnify and defend the City and its agents, officers, employees, attorneys, contractors, and subcontractors for and from any and all types of claims at any time related to the Subject Property that may be asserted by any party and to indemnify the City for any expenses (including attorneys' fees and costs actually incurred) as the result of any breach of this Agreement including, but not limited to, failure to strictly comply with the Timeline.

Petitioners acknowledge that as consideration for this Agreement the City has determined not to proceed with the demolition of the Subject Property before January 12, 2014, and the Petitioners acknowledge the receipt and sufficiency of this consideration. This is in no way a waiver of any right or remedy that the City may have existing on or after January 12, 2014.

This Agreement is contractual in nature and not mere recital. This Agreement is fully enforceable in all respects as a contract. This Agreement is made and entered into in the State of Alabama, and shall in all respects be interpreted, enforced, and governed under the laws of said State. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties. Should any provision of this Agreement be declared or be determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term, or provision shall be deemed not to be a part of this Agreement. The Petitioners assert that they have the authority to enter into this Agreement and to burden the Subject Property with the provisions of this Agreement, and they acknowledge that the City is relying upon this as a material representation. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement.

REALTY INVESTMENTS, INC.

BY: 
Billy C. Franklin
ITS: President


Billy C. Franklin, Individually

CITY OF VESTAVIA HILLS, ALABAMA

BY: _____
Alberto C. Zaragoza, Jr.
ITS: Mayor

EXHIBIT A

Benjamin S. Goldman

Approximate time to finish after getting permit on

3348 Ridgely Circle

- 2 weeks: Repair electric caused by theft, reroute gas lines, etc. for inside framing inspection
- 3 weeks: Install and finish drywall, remove trees, paint interior, outside wood work
- 6 weeks: Remove hot tub and repair deck
- 3 weeks: Install interior doors, trims, and paint
- 3 weeks: Final electric, plumbing, HVAC
- 3 weeks: cabinets, flooring
- 4 weeks: clean up, landscaping, drive way

*My plan is to finish in ~~X~~ months

5 BE



Billy C. Franklin

RESOLUTION NUMBER 4474

A RESOLUTION ORDERING THE DEMOLITION OF A BUILDING OR STRUCTURE LOCATED AT 2713 MILLWOOD ROAD, VESTAVIA HILLS, ALABAMA, PARCEL ID# 28-00-28-2-002-001.000, IN COMPLIANCE WITH SECTIONS 11-40-30 THROUGH 11-40-36, SECTIONS 11-53B-1 THROUGH 11-53B-16, INCLUSIVE, OF THE *CODE OF ALABAMA*, AND IN COMPLIANCE WITH ORDINANCE NUMBER 2382 OF THE CITY OF VESTAVIA HILLS, ALABAMA; AND CALLING FOR THE CITY OF VESTAVIA HILLS TO CAUSE SAID DEMOLITION TO BE PERFORMED AND DIRECTING THE CITY ATTORNEY AND THE CITY CLERK TO CAUSE THE COST OF SUCH DEMOLITION TO BE CHARGED AGAINST THE LAND ON WHICH THE BUILDING OR STRUCTURE EXISTS AS A MUNICIPAL LIEN OR CAUSE SUCH COST TO BE RECOVERED IN A SUIT AT LAW AGAINST THE OWNER OR OWNERS

WHEREAS, the appropriate Municipal Officials determined that the condition of the building or structure located at 2713 Millwood Road, Vestavia Hills, Alabama, Parcel I.D. Number 28-00-28-2-002-001.000 is in such a condition as to make it dangerous to the life, health, property, morals, safety, or general welfare of the public or the occupants.

WHEREAS, contemporaneously with the filing of “Finding of Public Nuisance, Notice and Order to Remedy and Notice of Lis Pendens” on June 4, 2013, a copy of same was sent via certified mail, properly addressed and postage prepaid to:

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

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

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

D. All lien holders of record as shown from a search of the records of the Office of the Judge of Probate of Jefferson County, Alabama to the address set forth in the statement of lien or, if no address for the lien holder is set forth in the statement of

lien, to the address determined to be the correct address by the appropriate Municipal Officials; and

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

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

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

BE IT RESOLVED by the City Council of the City of Vestavia Hills, Alabama while in regular session on Monday, August 12, 2013 at 5:00 p.m. as follows:

Section 1. A Public Hearing was held on August 12, 2013 at 5:00 p.m. and after due deliberation, the City Council of the City of Vestavia Hills, Alabama finds that the structure standing at 2713 Millwood Road, Vestavia Hills, Alabama, Parcel ID# 28-00-28-2-002-001.000 is unsafe to the extent of becoming a public nuisance to the citizens of the City of Vestavia Hills, Alabama and is due to be condemned and demolished in compliance with Sections 11-40-30 through 11-40-36 and Sections 11-53B-1 through 11-53B-16, inclusive, of the *Code of Alabama* (1975), and Ordinance Number 2382 of the City of Vestavia Hills, Alabama;

Section 2. That the City of Vestavia Hills shall cause said demolition to be performed by its own employees and/or by contractor(s); and

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

ADOPTED this the 12th day of August, 2013.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION OF CITY CLERK

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, Rebecca Leavings, City Clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true and correct copy of a Resolution duly and legally adopted by the City Council of the City of Vestavia Hills, Alabama, on the _____ day of _____, 2013 while in regular session on Monday, August 12, 2013, and the same appears of record in the minute book of said date of said City.

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

Rebecca Leavings, City Clerk

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

June 4, 2013

VIA HAND DELIVERY

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

RE: Lis Pendens

Dear Becky:

Please find enclosed five copies of the filed-stamped Lis Pendens notice for the demolition of real property located at 2713 Millwood Road. One copy of this notice is for your file. The other four copies need to be posted in the following locations within three days of today:

1. 2713 Millwood Road.
2. Vestavia Hills Municipal Center.
3. Vestavia Hills Library in the Forest.
4. Vestavia Hills Civic Center.

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

Very truly yours,



Kelly Thrasher Fox

Enclosures

cc: Mark T. Waggoner, Esq.
Benjamin S. Goldman, Esq.

537258

5/14/13

IN THE PROBATE COURT OF JEFFERSON COUNTY, ALABAMA

CITY OF VESTAVIA HILLS, ALABAMA)
v.)
LAFAYETTE RUDOLPH HANNA;)
SARAH PEAY HANNA;)
JEFFERSON COUNTY SEWER SERVICE)
OFFICE;)
BIRMINGHAM WATER WORKS)
See below for legal description)



20130604000579690 1/10
Bk: LR201314 Pg: 19989
Jefferson County, Alabama
I certify this instrument filed on:
06/04/2013 11:57:47 AM LN
Judge of Probate- Alan L. King

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

TAKE NOTICE that:

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

STREET ADDRESS:

2713 Millwood Road, Vestavia Hills, AL 35243

LEGAL DESCRIPTION:

That part of the Northwest 1/4 of the Northwest 1/4 of Section 28, Township 18
South, Range 2 West lying East of the Easterly line of Lot 26, according to the
Amended Map of Millbrook Estates, as recorded in Map Book 54, Page 91, in the
Probate Office of Jefferson County, Alabama, and South of the Southerly right of
way line of Millwood Road as shown by map and plat.

That part of the Northeast 1/4 of the Northwest 1/4 of Section 28, Township 18
South, Range 2 West, situated in Jefferson County, Alabama, and being more
particularly described as follows:

Commence at the Northwest corner of the Northeast 1/4 of the Northwest 1/4 of
Section 28, Township 18 South, Range 2 West, Jefferson County, Alabama;

thence in a Southerly direction along the West line of said Northeast 1/4 of Northwest 1/4, 150.07 feet to the point of beginning, said point being a point on the South boundary of a 50 foot wide right of way for a public road; thence continuing in the same Southerly direction on said West line 264.98 feet; thence 120 degrees 20 minutes to the right in a Northeasterly direction 238.32 feet to the Southwesterly right of way line of 40 foot wide right of way for a public road; thence 90 degrees 04 minutes to the left to tangent to a curve to the right having a radius of 330 feet and being subtended by a central angle of 2 degrees 36 minutes 16 seconds; thence along the arc of said curve and along said right of way line 15.0 feet; thence tangent to said curve in a Northwesterly direction along said right of way line 144.53 feet to a point 150 feet from measured at right angles to the North line of said Section 28, said point being on the South boundary of a 50 foot wide right of way for a public road; thence 60 degrees 34 minutes to the left in a Westerly direction parallel to said North line of said Section 28 and along said South boundary of said right of way 131.05 feet to the point of beginning. Minerals and mining rights excepted.

PARCEL IDENTIFICATION NUMBER:

28-00-28-2-002-001.000

The City provides further notice as follows:

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

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

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

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

(1) Exclusive of the foundation, the building shows thirty-three (33) percent, or more, of damage or deterioration of one (1) or more supporting members, or fifty (50) percent of damage or deterioration of the non-supporting enclosing or outside walls or covering;

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

(3) The building has been damaged by fire, wind, earthquake, flood, sinkhole, deterioration, neglect, abandonment, vandalism, or any other cause so as to have become dangerous to life, health, property, morals, safety, or general welfare of the public or the occupants;

(4) The building has become or is so damaged, dilapidated, decayed, unsafe, unsanitary, lacking in maintenance, vermin or rat infested, containing filth or contamination, lacking proper ventilation, lacking sufficient illumination, or so utterly fails to provide the amenities essential to decent living that it is unfit for human habitation, or is likely to cause sickness or disease, so as to work injury to the life, health, property, morals, safety, or general welfare of the public or the occupants;

(5) The building has light, air, heating, cooling, and sanitation facilities which are inadequate to protect the life, health, property, morals, safety, or general welfare of the public or the occupants;

(6) The building does not provide minimum safeguards to protect or warn occupants in the event of fire;

(7) The building is so damaged, decayed, dilapidated, structurally unsafe, or of such fault construction or unstable foundation that partial or complete collapse is possible;

(8) The building has parts thereof which are so attached that they may fall and damage property or injure the public or the occupants;

(9) The building, or any portion thereof, is clearly unsafe for its use or occupancy;

(10) The building is neglected, damaged, dilapidated, unsecured, or abandoned so as to become an attractive nuisance to children who might play in or on the building, structure, part of building or structure, party wall, or foundation to their danger, has become a harbor for

vagrants, criminals, or immoral persons, or enables persons to resort to the building, structure, part of building or structure, party wall, or foundation for committing a nuisance or an unlawful act; and

(11) The building is, because of its condition, unsafe, unsanitary, or dangerous to the life, health, property, morals, safety, or general welfare of the public or the occupants.

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

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

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

8. A public hearing as provided for by Section 5-146(a) set forth in Ordinance No. 2382 shall be held on the finding of the Appropriate Municipal Officials in the Council Chambers at the Vestavia Hills Municipal Center, 513 Montgomery Highway, Vestavia Hills, AL 35216, on the 12th day of August, 2013, at 5:00 p.m. At that time, the City Council shall hold a public hearing to receive any objections to the finding by the Appropriate Municipal Officials that the building or structure is unsafe to the extent of becoming a public nuisance. A written request for a public hearing is not necessary. At the public hearing, the City Council shall also receive any written objections to the finding by the Appropriate Municipal Officials. Any such written objection must be submitted to the

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

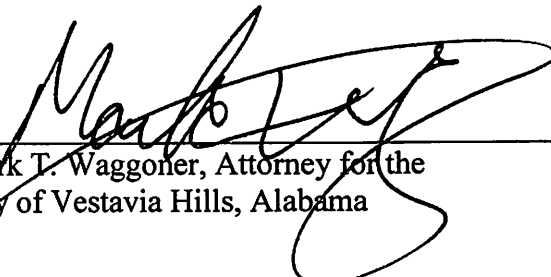
9. A failure by the Vestavia Hills City Council to act on the findings of the Appropriate Municipal Officials within ninety (90) days from the date of this “Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*” shall constitute an abdication of the Appropriate Municipal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

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

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

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

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



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


OF COUNSEL:

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


VERIFICATION OF THE APPROPRIATE MUNICIPAL OFFICIALS

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

DONE this the 4th day of ~~May~~^{June}, 2013.



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



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

This Instrument Prepared By:

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

CERTIFICATE OF SERVICE

Contemporaneously with the filing of this "Finding of Public Nuisance, Notice and Order to Remedy, and Notice of *Lis Pendens*," a copy of the same has been sent via certified mail, properly addressed and postage prepaid to all of the following persons on this the 4th day of ^{June} ~~May~~, 2013:

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

Sarah Peay Hanna
2713 Millwood Road
Vestavia Hills, AL 35243

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

Lafayette Rudolph Hanna
Sarah Peay Hanna
2713 Millwood Road
Vestavia Hills, AL 35243

Lafayette Rudolph Hanna
Sarah Peay Hanna
501 Lathrop Avenue
Homewood, AL 35209

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

There are no mortgagees of record.

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

if no address for the lien holder is set forth in the statement of lien, to the address determined to be the correct address by the Appropriate Municipal Official:

There are no lien holders of record.

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

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

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

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

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

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

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

Keith Blanton

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

Greg Gilchrist

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

Rebecca Leavings

Rebecca Leavings, City Clerk
City of Vestavia Hills, Alabama

20130604000579690 10/10
Bk: LR201314 Pg:19989
Jefferson County, Alabama
06/04/2013 11:57:47 AM LN
Fee - \$43.00

Total of Fees and Taxes-\$43.00
SCOTTK

RESOLUTION NUMBER 4476

A RESOLUTION CHANGING THE CITY OFFICIALS DESIGNATED AND AUTHORIZED TO SIGN CHECKS AND DRAFTS FOR PAYMENTS FROM CITY OF VESTAVIA HILLS ACCOUNTS ON DEPOSIT IN THE NATIONAL BANK OF COMMERCE.

BE IT RESOLVED by the Mayor and City Council of the City of Vestavia Hills, Alabama, as follows:

1. That the National Bank of Commerce be, and hereby is, designated as the depository of the City of Vestavia Hills Capital Projects Reserve Account, Money Market Reserve Account and the CD Emergency Reserve CD Account, and that the officers and employees of said City named herein below are hereby authorized to endorse, in the name of the City, for the purpose of deposit and collection, in and with said bank, checks, drafts, notes and other like obligations issued and drawn to and owned by said City; and it is further resolved that endorsement for deposit and collection may be by the written or stamped endorsement of the City without designation of the party making the endorsement.

2. That said bank be, and hereby is, authorized to pay out the funds of this corporation on deposit with it from time to time upon said depository and signed in the name of this corporation by any two (2) of the following, whether said checks are payable to cash, bearer, or the order of the corporation, or to any third party, or to the order of any signing or countersigning officer of the corporation or any other corporation officer, in either their individual or official capacity, without further inquiry or regard to the authority of said officer(s) and/or other person(s) or the use of said checks, drafts, and orders or the proceeds thereof;

Jeffrey Downes
City Manager

Alberto C. Zaragoza, Jr.
Mayor

Rebecca Leavings
City Clerk

Melvin Turner, III
Finance Director/City Treasurer

3. That the said bank shall not be, in any manner whatsoever, responsible for or required to see the application of any of the funds of this corporation deposited with it, checked out, or borrowed from it, or secured by the discount of notes and other obligations to it as hereinbefore provided, and all such transactions shall be conclusively presumed to be legally binding upon this corporation.

4. That Rebecca Leavings, the City Clerk of this municipality, shall file with the said bank a certified copy of this resolution under the corporate seal of this corporation and shall also file with the said bank a certified list of the persons at the present time holding offices of City Manager, Mayor, City Clerk and City Treasurer in this

corporation, and it shall be conclusively and presumed that the persons so certified as holding such offices continue respectively to hold the same until the said bank is otherwise notified in writing by the City of Vestavia Hills by duly authorized Resolution.

5. Any and all resolutions heretofore approved and adopted by the City Council of the City of Vestavia Hills, Alabama in conflict with this Resolution Number 4476 are hereby rescinded.

6. That this resolution shall be in full force and effect and binding upon this municipality as of August 26, 2013 and shall remain in full force and effect until it shall have been rescinded and written notice of such recession under the corporate seal have been delivered to said bank.

ADOPTED and APPROVED this the 12th day of August, 2013.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I the undersigned qualified Clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true copy of a Resolution lawfully passed and adopted by the City Council of the City named therein, at a regular meeting of such Council held on the 12th day of August, 2013, and that such Resolution is of record in the Minute Book of the City at page ___ thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on this _____ day of _____, 2013.

Rebecca Leavings
City Clerk

SEAL

RESOLUTION NUMBER 4479

A RESOLUTION CHANGING THE CITY OFFICIALS DESIGNATED AND AUTHORIZED TO SIGN CHECKS AND DRAFTS FOR PAYMENTS FROM CITY OF VESTAVIA HILLS ACCOUNTS ON DEPOSIT IN THE REGIONS BANK.

BE IT RESOLVED by the Mayor and City Council of the City of Vestavia Hills, Alabama, as follows:

1. That the Regions Bank be, and hereby is, designated as the depository of the City of Vestavia Hills Special Court Account, Pooled Cash and Payroll Account, and that the officers and employees of said City named herein below are hereby authorized to endorse, in the name of the City, for the purpose of deposit and collection, in and with said bank, checks, drafts, notes and other like obligations issued and drawn to and owned by said City; and it is further resolved that endorsement for deposit and collection may be by the written or stamped endorsement of the City without designation of the party making the endorsement.

2. That said bank be, and hereby is, authorized to pay out the funds of this corporation on deposit with it from time to time upon said depository and signed in the name of this corporation by any two (2) of the following, whether said checks are payable to cash, bearer, or the order of the corporation, or to any third party, or to the order of any signing or countersigning officer of the corporation or any other corporation officer, in either their individual or official capacity, without further inquiry or regard to the authority of said officer(s) and/or other person(s) or the use of said checks, drafts, and orders or the proceeds thereof;

Jeffrey Downes
City Manager

Alberto C. Zaragoza, Jr.
Mayor

Rebecca Leavings
City Clerk

Melvin Turner, III
Finance Director/City Treasurer

3. That the said bank shall not be, in any manner whatsoever, responsible for or required to see the application of any of the funds of this corporation deposited with it, checked out, or borrowed from it, or secured by the discount of notes and other obligations to it as hereinbefore provided, and all such transactions shall be conclusively presumed to be legally binding upon this corporation.

4. That Rebecca Leavings, the City Clerk of this municipality, shall file with the said bank a certified copy of this resolution under the corporate seal of this corporation and shall also file with the said bank a certified list of the persons at the present time holding offices of City Manager, Mayor, City Clerk and City Treasurer in this

corporation, and it shall be conclusively and presumed that the persons so certified as holding such offices continue respectively to hold the same until the said bank is otherwise notified in writing by the City of Vestavia Hills by duly authorized Resolution.

5. Any and all resolutions heretofore approved and adopted by the City Council of the City of Vestavia Hills, Alabama in conflict with this Resolution Number 4479 are hereby rescinded.

6. That this resolution shall be in full force and effect and binding upon this municipality as of August 26, 2013 and shall remain in full force and effect until it shall have been rescinded and written notice of such recession under the corporate seal have been delivered to said bank.

ADOPTED and APPROVED this the 12th day of August, 2013.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I the undersigned qualified Clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true copy of a Resolution lawfully passed and adopted by the City Council of the City named therein, at a regular meeting of such Council held on the 12th day of August, 2013, and that such Resolution is of record in the Minute Book of the City at page ___ thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on this _____ day of _____, 2013.

Rebecca Leavings
City Clerk

SEAL

RESOLUTION NUMBER 4480

A RESOLUTION CHANGING THE CITY OFFICIALS DESIGNATED AND AUTHORIZED TO SIGN CHECKS AND DRAFTS FOR PAYMENTS FROM CITY OF VESTAVIA HILLS ACCOUNTS ON DEPOSIT IN THE SOUTHPOINT BANK.

BE IT RESOLVED by the Mayor and City Council of the City of Vestavia Hills, Alabama, as follows:

1. That the SouthPoint Bank be, and hereby is, designated as the depository of the City of Vestavia Hills Contractors Surety Account, Warrant Funds Account and the Library Capital Project Account, and that the officers and employees of said City named herein below are hereby authorized to endorse, in the name of the City, for the purpose of deposit and collection, in and with said bank, checks, drafts, notes and other like obligations issued and drawn to and owned by said City; and it is further resolved that endorsement for deposit and collection may be by the written or stamped endorsement of the City without designation of the party making the endorsement.

2. That said bank be, and hereby is, authorized to pay out the funds of this corporation on deposit with it from time to time upon said depository and signed in the name of this corporation by any two (2) of the following, whether said checks are payable to cash, bearer, or the order of the corporation, or to any third party, or to the order of any signing or countersigning officer of the corporation or any other corporation officer, in either their individual or official capacity, without further inquiry or regard to the authority of said officer(s) and/or other person(s) or the use of said checks, drafts, and orders or the proceeds thereof;

Jeffrey Downes
City Manager

Alberto C. Zaragoza, Jr.
Mayor

Rebecca Leavings
City Clerk

Melvin Turner, III
Finance Director/City Treasurer

3. That the said bank shall not be, in any manner whatsoever, responsible for or required to see the application of any of the funds of this corporation deposited with it, checked out, or borrowed from it, or secured by the discount of notes and other obligations to it as hereinbefore provided, and all such transactions shall be conclusively presumed to be legally binding upon this corporation.

4. That Rebecca Leavings, the City Clerk of this municipality, shall file with the said bank a certified copy of this resolution under the corporate seal of this corporation and shall also file with the said bank a certified list of the persons at the present time holding offices of City Manager, Mayor, City Clerk and City Treasurer in this corporation, and it shall be conclusively and presumed that the persons so certified as

holding such offices continue respectively to hold the same until the said bank is otherwise notified in writing by the City of Vestavia Hills by duly authorized Resolution.

5. Any and all resolutions heretofore approved and adopted by the City Council of the City of Vestavia Hills, Alabama in conflict with this Resolution Number 4480 are hereby rescinded.

6. That this resolution shall be in full force and effect and binding upon this municipality as of August 26, 2013 and shall remain in full force and effect until it shall have been rescinded and written notice of such recession under the corporate seal have been delivered to said bank.

ADOPTED and APPROVED this the 12th day of August, 2013.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I the undersigned qualified Clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true copy of a Resolution lawfully passed and adopted by the City Council of the City named therein, at a regular meeting of such Council held on the 12th day of August, 2013, and that such Resolution is of record in the Minute Book of the City at page __ thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on this _____ day of _____, 2013.

Rebecca Leavings
City Clerk

SEAL

RESOLUTION NUMBER 4481

A RESOLUTION CHANGING THE CITY OFFICIALS DESIGNATED AND AUTHORIZED TO SIGN CHECKS AND DRAFTS FOR PAYMENTS FROM CITY OF VESTAVIA HILLS ACCOUNTS ON DEPOSIT IN THE WELLS FARGO BANK.

BE IT RESOLVED by the Mayor and City Council of the City of Vestavia Hills, Alabama, as follows:

1. That the Wells Fargo Bank be, and hereby is, designated as the depository of the City of Vestavia Hills Transport Account, and that the officers and employees of said City named herein below are hereby authorized to endorse, in the name of the City, for the purpose of deposit and collection, in and with said bank, checks, drafts, notes and other like obligations issued and drawn to and owned by said City; and it is further resolved that endorsement for deposit and collection may be by the written or stamped endorsement of the City without designation of the party making the endorsement.

2. That said bank be, and hereby is, authorized to pay out the funds of this corporation on deposit with it from time to time upon said depository and signed in the name of this corporation by any two (2) of the following, whether said checks are payable to cash, bearer, or the order of the corporation, or to any third party, or to the order of any signing or countersigning officer of the corporation or any other corporation officer, in either their individual or official capacity, without further inquiry or regard to the authority of said officer(s) and/or other person(s) or the use of said checks, drafts, and orders or the proceeds thereof;

Jeffrey Downes
City Manager

Alberto C. Zaragoza, Jr.
Mayor

Rebecca Leavings
City Clerk

Melvin Turner, III
Finance Director/City Treasurer

3. That the said bank shall not be, in any manner whatsoever, responsible for or required to see the application of any of the funds of this corporation deposited with it, checked out, or borrowed from it, or secured by the discount of notes and other obligations to it as hereinbefore provided, and all such transactions shall be conclusively presumed to be legally binding upon this corporation.

4. That Rebecca Leavings, the City Clerk of this municipality, shall file with the said bank a certified copy of this resolution under the corporate seal of this corporation and shall also file with the said bank a certified list of the persons at the present time holding offices of City Manager, Mayor, City Clerk and City Treasurer in this corporation, and it shall be conclusively and presumed that the persons so certified as holding such offices continue respectively to hold

the same until the said bank is otherwise notified in writing by the City of Vestavia Hills by duly authorized Resolution.

5. Any and all resolutions heretofore approved and adopted by the City Council of the City of Vestavia Hills, Alabama in conflict with this Resolution Number 4481 are hereby rescinded.

6. That this resolution shall be in full force and effect and binding upon this municipality as of August 26, 2013 and shall remain in full force and effect until it shall have been rescinded and written notice of such recession under the corporate seal have been delivered to said bank.

ADOPTED and APPROVED this the 12th day of August, 2013.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I the undersigned qualified Clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true copy of a Resolution lawfully passed and adopted by the City Council of the City named therein, at a regular meeting of such Council held on the 12th day of August, 2013, and that such Resolution is of record in the Minute Book of the City at page ___ thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on this _____ day of _____, 2013.

Rebecca Leavings
City Clerk

SEAL

RESOLUTION NUMBER 4482

**A RESOLUTION APPROVING ALCOHOL LICENSE
FOR VESTAVIA TEXACO D/B/A/ FOOD MAX LLC;
MAX MCMOEZAM, EXECUTIVES**

WHEREAS, the City Council of the City of Vestavia Hills, Alabama, approves the alcohol license for Vestavia Texaco d/b/a/ Food Max LLC, located at 1487 Montgomery Highway, Vestavia Hills, Alabama, for the off-premise sale of 050 – Retail Beer and 070 – Retail Table Wine; Max McMoezam, Executive.

APPROVED and ADOPTED this the 12th day of August, 2013.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

INTEROFFICE MEMORANDUM


DATE: August 5, 2013
TO: Dan Rary, Acting Police Chief
FROM: Rebecca Leavings, City Clerk
RE: Alcohol License Request –

Please find attached information submitted by Max McMoezam who requests an alcohol license to sell off-premises at the Vestavia Texaco d/b/a/ Food Max LLC, 1487 Montgomery Hwy, Vestavia Hills, Alabama.

I am scheduling this case to be heard by the City Council on 12th day of August at 5:00 PM (Monday). Please advise me of your recommendation for this license. If you have any questions, please contact me.

Reply

I have reviewed the available background information on the above referenced applicant and submit the following to the City Council:

	Application cleared by P.D. This indicates that there are NO convictions for drug trafficking, convictions regarding arrest involving danger to children, weapon charges, violent felony crimes against persons, felony sexual offenses or habitual alcohol related arrests
	Needs further review. This indicates that the Police Chief has found records of some convictions of alcohol related arrests
	Does not recommend. This indicates that the Police Chief has found records of convictions for drug trafficking, convictions regarding arrest involving danger to children, weapon charges, violent felony crimes against persons, felony sexual offenses or habitual alcohol related arrests

Reviewed: _____





STATE OF ALABAMA

ALCOHOLIC BEVERAGE CONTROL BOARD

ALCOHOL LICENSE APPLICATION



Confirmation Number: 20120529101126053

Type License: 050 - RETAIL BEER (OFF PREMISES ONLY) **State:** \$150.00 **County:** \$75.00

Type License: 070 - RETAIL TABLE WINE (OFF PREMISES ONLY) **State:** \$150.00 **County:** \$75.00

Trade Name: VESTAVIA TEXACO **Filing Fee:** \$100.00

Applicant: FOOD MAX LLC **Transfer Fee:**

Location Address: 1487 MONTGOMERY HWY VESTAVIA HILLS, AL 35216

Mailing Address: 1487 MONTGOMERY HWY VESTAVIA HILLS, AL 35216

County: JEFFERSON **Tobacco sales:** YES **Tobacco Vending Machines:** 0

Sale of Products Containing Ephedrine: NO **Type Ownership:** LLC

Book, Page, or Document info: 31950 **Do you sell Draft Beer:** N

Date Incorporated: 01/27/2012 **State incorporated:** AL **County Incorporated:** SHELBY

Date of Authority: 01/27/2012 **Alabama State Sales Tax ID:** R008160070

Name: **Title:** **Date and Place of Birth:** **Residence Address:**

Name:	Title:	Date and Place of Birth:	Residence Address:
MAX MCMOEZAM 4697764 - AL	PRESIDENT	06/03/1950 ESFAHAN, IRAN	1012 OLD MILL RUN LEEDS, AL 35094

Has applicant complied with financial responsibility ABC RR 20-X-5-.14? YES

Does ABC have any actions pending against the current licensee? NO

Has anyone, including manager or applicant, had a Federal/State permit or license suspended or revoked? NO

Has a liquor, wine, malt or brewed license for these premises ever been denied, suspended, or revoked? NO

Are the applicant(s) named above, the only person(s), in any manner interested in the business sought to be licensed? YES

Are any of the applicants, whether individual, member of a partnership or association, or officers and directors of cooperation itself, in any manner monetarily interested, either directly or indirectly, in the profits of any other class of business regulated under authority of this act? NO

Does applicant own or control, directly or indirectly, hold lien against any real or personal property which is rented, leased or used in the conduct of business by the holder of any vinous, malt or brewed beverage, or distilled liquors permit or license issued under authority of this act? NO

Is applicant receiving, either directly or indirectly, any loan, credit, money, or the equivalent thereof from or through a subsidiary or affiliate or other licensee, or from any firm, association or corporation operating under or regulated by the authority of this act? NO

Contact Person: MAX MCMOEZAM

Business Phone: 205-979-5681

Fax:

Home Phone: 205-540-1595

Cell Phone:

E-mail: NASSER.BANILOHI@GMAIL.COM

PREVIOUS LICENSE INFORMATION:

Trade Name:

Applicant:

Previous License Number(s)

License 1:

License 2:



STATE OF ALABAMA
ALCOHOLIC BEVERAGE CONTROL BOARD
ALCOHOL LICENSE APPLICATION



Confirmation Number: 20120529101126053

If applicant is leasing the property, is a copy of the lease agreement attached? YES
 Name of Property owner/lessor and phone number: HOLMES OIL 205-994-0661
 What is lessors primary business? OIL AND GAS
 Is lessor involved in any way with the alcoholic beverage business? NO
 Is there any further interest, or connection with, the licensee's business by the lessor? NO

Does the premise have a fully equipped kitchen? NO
 Is the business used to habitually and principally provide food to the public? NO
 Does the establishment have restroom facilities? YES
 Is the premise equipped with services and facilities for on premises consumption of alcoholic beverages? NO

Will the business be operated primarily as a package store? NO
 Building Dimensions Square Footage: 600 Display Square Footage:
 Building seating capacity: 10 Does Licensed premises include a patio area? NO
 License Structure: ONE STORY License covers: ENTIRE STRUCTURE
 Number of licenses in the vicinity: 6 Nearest: 1
 Nearest school: 6 blocks Nearest church: 8 blocks Nearest residence: 3 blocks
 Location is within: CITY LIMITS Police protection: CITY

Has any person(s) with any interest, including manager, whether as sole applicant, officer, member, or partner been charged (whether convicted or not) of any law violation(s)?

Name: **Violation & Date:** **Arresting Agency:** **Disposition:**

Name:	Violation & Date:	Arresting Agency:	Disposition:



STATE OF ALABAMA

ALCOHOLIC BEVERAGE CONTROL BOARD

ALCOHOL LICENSE APPLICATION



Confirmation Number: 20120529101126053

Initial each

Signature page

MM
MM

In reference to law violations, I attest to the truthfulness of the responses given within the application.
In reference to the Lease/property ownership, I attest to the truthfulness of the responses given within the application.

MM

In reference to ACT No. 80-529, I understand that if my application is denied or discontinued, I will not be refunded the filing fee required by this application.

NA

In reference to Special Retail or Special Events retail license, I agree to comply with all applicable laws and regulations concerning this class of license, and to observe the special terms and conditions as indicated within the application.

NA

In reference to the Club Application information, I attest to the truthfulness of the responses given within the application.

MM

In reference to the transfer of license/location, I attest to the truthfulness of the information listed on the attached transfer agreement.

MM

In accordance with Alabama Rules & Regulations 20-X-5-.01(4), any social security number disclosed under this regulation shall be used for the purpose of investigation or verification by the ABC Board and shall not be a matter of public record.

MM

The undersigned agree, if a license is issued as herein applied for, to comply at all times with and to fully observe all the provisions of the Alabama Alcoholic Beverage Control Act, as appears in Code of Alabama, Title 28, and all laws of the State of Alabama relative to the handling of alcoholic beverages.
The undersigned, if issued a license as herein requested, further agrees to obey all rules and regulations promulgated by the board relative to all alcoholic beverages received in this State. The undersigned, if issued a license as herein requested, also agrees to allow and hereby invites duly authorized agents of the Alabama Alcoholic Beverage Control Board and any duly commissioned law enforcement officer of the State, County or Municipality in which the license premises are located to enter and search without a warrant the licensed premises or any building owned or occupied by him or her in connection with said licensed premises. The undersigned hereby understands that he or she violate any provisions of the aforementioned laws his or her license shall be subject to revocation and no license can be again issued to said licensee for a period of one year. The undersigned further understands and agrees that no changes in the manner of operation and no deletion or discontinuance of any services or facilities as described in this application will be allowed without written approval of the proper governing body and the Alabama Alcoholic Beverage Control Board.

MM

I hereby swear and affirm that I have read the application and all statements therein and facts set forth are true and correct, and that the applicant is the only person interested in the business for which the license is required.

Applicant Name (print): *Max McMoran*

Signature of Applicant: *Max McMoran*

Notary Name (print): *Christina*

Notary Signature: *Christina*

Commission expires: *8/12/13*

Application Taken: *5/29/12* App. Inv. Completed:
Submitted to Local Government:
Received in District Office: Reviewed by Supervisor:

Forwarded to District Office:
Received from Local Government:
Forwarded to Central Office:

RESOLUTION NUMBER 4477

A RESOLUTION CHANGING THE CITY OFFICIALS DESIGNATED AND AUTHORIZED TO SIGN CHECKS AND DRAFTS FOR PAYMENTS FROM CITY OF VESTAVIA HILLS ACCOUNTS ON DEPOSIT IN THE PINNACLE BANK.

BE IT RESOLVED by the Mayor and City Council of the City of Vestavia Hills, Alabama, as follows:

1. That the Pinnacle Bank be, and hereby is, designated as the depository of the City of Vestavia Hills Library Account, and that the officers and employees of said City named herein below are hereby authorized to endorse, in the name of the City, for the purpose of deposit and collection, in and with said bank, checks, drafts, notes and other like obligations issued and drawn to and owned by said City; and it is further resolved that endorsement for deposit and collection may be by the written or stamped endorsement of the City without designation of the party making the endorsement.

2. That said bank be, and hereby is, authorized to pay out the funds of this corporation on deposit with it from time to time upon said depository and signed in the name of this corporation by any one (1) of the following [two (2) if any single transaction is in excess of \$1,000], whether said checks are payable to cash, bearer, or the order of the corporation, or to any third party, or to the order of any signing or countersigning officer of the corporation or any other corporation officer, in either their individual or official capacity, without further inquiry or regard to the authority of said officer(s) and/or other person(s) or the use of said checks, drafts, and orders or the proceeds thereof;

Jeffrey Downes
City Manager

Alberto C. Zaragoza, Jr.
Mayor

Rebecca Leavings
City Clerk

Melvin Turner, III
Finance Director/City Treasurer

Taneisha Young-Tucker
Library Director

Dr. Jimmy Bartlett
Chair, Vestavia Hills Library Board

Jason Gardner
Vice Chair, Vestavia Hills Library Board

3. That the said bank shall not be, in any manner whatsoever, responsible for or required to see the application of any of the funds of this corporation deposited with it, checked out, or borrowed from it, or secured by the discount of notes and other obligations to it as hereinbefore provided, and all such transactions shall be conclusively presumed to be legally binding upon this corporation.

4. That Rebecca Leavings, the City Clerk of this municipality, shall file with the said bank a certified copy of this resolution under the corporate seal of this corporation and shall also file with the said bank a certified list of the persons at the present time holding offices of City Manager, Mayor, City Clerk and City Treasurer in this corporation, and it shall be conclusively and presumed that the persons so certified as holding such offices continue respectively to hold the same until the said bank is otherwise notified in writing by the City of Vestavia Hills by duly authorized Resolution.

5. Any and all resolutions heretofore approved and adopted by the City Council of the City of Vestavia Hills, Alabama in conflict with this Resolution Number 4477 are hereby rescinded.

6. That this resolution shall be in full force and effect and binding upon this municipality as of April 8, 2013 and shall remain in full force and effect until it shall have been rescinded and written notice of such recession under the corporate seal have been delivered to said bank.

ADOPTED and APPROVED this the 12th day of August, 2013.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I the undersigned qualified Clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true copy of a Resolution lawfully passed and adopted by the City Council of the City named therein, at a regular meeting of such Council held on the 12th day of August, 2013, and that such Resolution is of record in the Minute Book of the City at page ___ thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on this _____ day of _____, 2013.

Rebecca Leavings
City Clerk

SEAL

RESOLUTION NUMBER 4478

A RESOLUTION CHANGING THE CITY OFFICIALS DESIGNATED AND AUTHORIZED TO SIGN CHECKS AND DRAFTS FOR PAYMENTS FROM CITY OF VESTAVIA HILLS ACCOUNTS ON DEPOSIT IN THE REGIONS BANK.

BE IT RESOLVED by the Mayor and City Council of the City of Vestavia Hills, Alabama, as follows:

1. That the Regions Bank be, and hereby is, designated as the depository of the City of Vestavia Hills Court Bond Account, and that the officers and employees of said City named herein below are hereby authorized to endorse, in the name of the City, for the purpose of deposit and collection, in and with said bank, checks, drafts, notes and other like obligations issued and drawn to and owned by said City; and it is further resolved that endorsement for deposit and collection may be by the written or stamped endorsement of the City without designation of the party making the endorsement.

2. That said bank be, and hereby is, authorized to pay out the funds of this corporation on deposit with it from time to time upon said depository and signed in the name of this corporation by any one (1) of the following, whether said checks are payable to cash, bearer, or the order of the corporation, or to any third party, or to the order of any signing or countersigning officer of the corporation or any other corporation officer, in either their individual or official capacity, without further inquiry or regard to the authority of said officer(s) and/or other person(s) or the use of said checks, drafts, and orders or the proceeds thereof;

Jeffrey Downes
City Manager

Alberto C. Zaragoza, Jr.
Mayor

Rebecca Leavings
City Clerk

Melvin Turner, III
Finance Director/City Treasurer

Nancy Chadbourne
Court Clerk/Magistrate

Margean Cummings
Magistrate

Melanie Higgins
Court Clerk

3. That the said bank shall not be, in any manner whatsoever, responsible for or required to see the application of any of the funds of this corporation deposited with it, checked out, or borrowed from it, or secured by the discount of notes and other obligations to it as hereinbefore provided, and all such transactions shall be conclusively presumed to be legally binding upon this corporation.

4. That Rebecca Leavings, the City Clerk of this municipality, shall file with the said bank a certified copy of this resolution under the corporate seal of this corporation and shall also file with the said bank a certified list of the persons at the present time holding offices of City Manager, Mayor, City Clerk and City Treasurer in this corporation, and it shall be conclusively and presumed that the persons so certified as holding such offices continue respectively to hold the same until the said bank is otherwise notified in writing by the City of Vestavia Hills by duly authorized Resolution.

5. Any and all resolutions heretofore approved and adopted by the City Council of the City of Vestavia Hills, Alabama in conflict with this Resolution Number 4478 are hereby rescinded.

6. That this resolution shall be in full force and effect and binding upon this municipality as of August 26, 2013 and shall remain in full force and effect until it shall have been rescinded and written notice of such recession under the corporate seal have been delivered to said bank.

ADOPTED and APPROVED this the 12th day of April, 2013.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I the undersigned qualified Clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true copy of a Resolution lawfully passed and adopted by the City Council of the City named therein, at a regular meeting of such Council held on the 12th day of August, 2013, and that such Resolution is of record in the Minute Book of the City at page ___ thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on this _____ day of _____, 2013.

Rebecca Leavings
City Clerk

SEAL

RESOLUTION NUMBER 4483

**A RESOLUTION GRANTING ALABAMA POWER COMPANY A
UTILITY EASEMENT FOR CONNECTION OF ELECTRICAL
SERVICE**

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

1. The Mayor is hereby authorized to sign an agreement with Alabama Power Company to grant an easement, right and privilege as described in said agreement (copy attached); and
2. Resolution Number 4483 shall become effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 12th day of August, 2013.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CITY OF VESTAVIA HILLS
DEPARTMENT OF PUBLIC SERVICES
INTER-DEPARTMENT MEMO

August 7, 2013

To: Jeff Downes, City Manager
Rebecca Leavings, City Clerk
CC: Brian Davis, Director of Public Services

From: Christopher Brady, City Engineer

RE: Alabama Power Easements, Wald Park and Cahaba Heights sports fields

I have reviewed the proposed easement agreements with Alabama Power Company to perform services to upgrade electrical service to Wald Park tennis courts and Cahaba Heights sports fields. These upgrades will facilitate the new lighting installation at these areas. I recommend approval to proceed with the City acceptance of these easement agreements.

Please let me know if you have questions or would like to discuss in detail.

Sincerely,
-Christopher



Tennis Courts - World Park

EASEMENT - DISTRIBUTION FACILITIES

STATE OF ALABAMA
COUNTY OF JEFFERSON
W.E. No. A6173-06-AH13

APCO Parcel No. 70257403

Transformer No. 3012

This instrument prepared by: Dean Fritz

Alabama Power Company
P. O. Box 2641
Birmingham, Alabama 35291

KNOW ALL MEN BY THESE PRESENTS, That City of Vestavia Hills

as grantor(s), (the "Grantor", whether one or more) for and in consideration of One and No/100 Dollar (\$1.00) and other good and valuable consideration paid to Grantor in hand by Alabama Power Company, a corporation, the receipt and sufficiency of which are hereby acknowledged, does hereby grant to Alabama Power Company, its successors and assigns (the "Company"), the easements, rights and privileges below.

Overhead and/or Underground. The right from time to time to construct, install, operate and maintain, upon, over, under and across the Property described below, all poles, towers, wires, conduits, fiber optics, cables, communication lines, translosures, transformers, anchors, guy wires and other facilities useful or necessary in connection therewith (collectively, "Facilities"), for the overhead and/or underground transmission and distribution of electric power and communications, along a route selected by the Company, as generally shown on the Company's drawing attached hereto and made a part hereof, but which is to be determined by the actual location(s) in which the Company's facilities are installed. The width of the Company's easement will depend on whether the Facilities are underground or overhead: for underground, the easement will extend five (5) feet on each side of said Facilities as and where installed; for overhead Facilities, the easement will extend fifteen (15) feet on each side of the centerline of said Facilities as and where installed. The Company is granted the right to clear, and keep clear, all trees, undergrowth and other obstructions on a strip of land extending five (5) feet from each side of said underground Facilities, and to clear, and keep clear, all trees, undergrowth and other obstructions on a strip of land extending fifteen (15) feet from each side of the centerline of said overhead Facilities and the right in the future to install intermediate poles and facilities on said strip. Further, with respect to overhead Facilities, the Company is also granted the right to trim and cut, and keep trimmed and cut, all dead, weak, leaning or dangerous trees or limbs outside of the thirty (30) foot strip that, in the sole opinion of the Company, may now or hereafter endanger, interfere with, or fall upon any of said overhead Facilities.

Grantor hereby grants to the Company all easements, rights and privileges necessary or convenient for the full enjoyment and use thereof, including without limitation the right of ingress and egress to and from said Facilities, as applicable, and the right to excavate for installation, replacement, repair and removal thereof; and also the right to cut, remove and otherwise keep clear any and all structures, obstructions or obstacles of whatever character, on, under and above said Facilities, as applicable.

The easements, rights and privileges granted hereby shall apply to, and the word "Property" as used in this instrument shall mean, the following described real property situated in Jefferson County, Alabama (the "Property"); a parcel of land located in the NE 1/4 of the NW 1/4 of Section 31 Township 18 South, Range 2 West, more particularly described in that certain instrument recorded in deed book 6590, page 182, in the office of the Judge of Probate of said County.

In the event it becomes necessary or desirable for the Company from time to time to move any of the Facilities in connection with the construction or improvement of any public road or highway in proximity to the Facilities, Grantor hereby grants to the Company the right to relocate the Facilities and, as to such relocated Facilities, to exercise the rights granted above; provided, however, the Company shall not relocate said Facilities on the Property at a distance greater than ten feet (10') outside the boundary of the right of way of any such public road or highway as established or re-established from time to time. This grant and agreement shall be binding upon and shall inure to the benefit of Grantor, the Company and each of their respective heirs, personal representatives, successors and assigns and the words "Company" and "Grantor" as used in this instrument shall be deemed to include the heirs, personal representatives, successors and assigns of such parties.

TO HAVE AND TO HOLD the same to the Company, its successors and assigns, forever.

Print name ↓

IN WITNESS WHEREOF, the said Grantor, has caused this instrument to be executed by _____,
its authorized representative, as of the _____ day of _____, 20_____.

ATTEST (if required) or WITNESS:

City of Vestavia Hills
(Grantor - Name of Corporation/Partnership/LLC)

By: _____ *Y* By: _____ (SEAL)

Its: _____ *title* Its: _____
[indicate: President, General Partner, Member, etc.]

Notarize →

SKETCH OF PROPOSED WORK - SIMPLIFIED W.E.

Map Center UTM: 1704631 12136198

Map Center LatLon: 33.431285 -86.78945

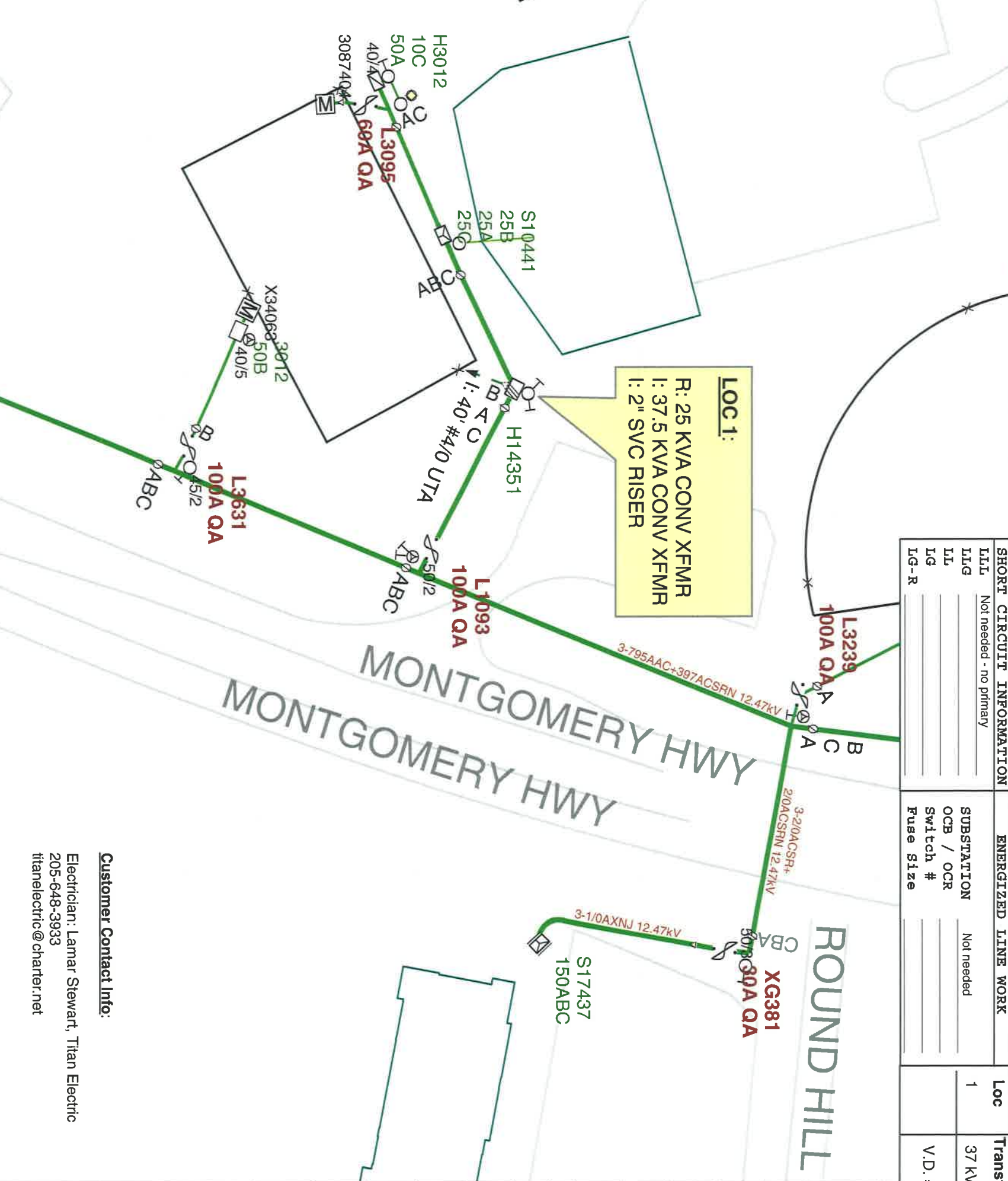
Customer City of Vestavia	Location Wald Park Tennis Courts 1973 Merryvale Rd	Cmtd. Svc Date 11/30/2013	County Jefferson	Section 31	Township 18S	Range 02W	Add'l Info.	Estimate No. A6173-06-AH13
Division Birmingham	District Metro-South	Town Birmingham	UserID dawboyd	Created: 7/29/2013	Substation X_39844		Y_ L1093	MISSALL#

Notes:

- Supporting Statement:**
Upgrade existing transformer H14351 from a 25 KVA CONV to a 37.5 KVA CONV to provide single phase 120/240V to serve 12 - 1500W lights around tennis courts. Per customer request, install underground service from overhead transformer. Customer to trench and install conduit at 30" depth with minimum 24" cover with pulling through conduit. APC personnel to inspect ditch prior to it being covered.
- Cable Pull Calculations:**
Tension Out: 229.51 Max SWBP: 750



LOCATION SKETCH



LOC 1:
R: 25 KVA CONV XFMR
I: 37.5 KVA CONV XFMR
I: 2" SVC RISER

SHORT CIRCUIT INFORMATION		ENERGIZED LINE WORK	
LLL	Not needed - no primary	SUBSTATION	Not needed
LLG		OCB / OCB	
LL		Switch #	
LG		Fuse Size	
LG-R			

Loc	1	Transformer Loading	37 KVA
			V.D. = 2.74%

Voltage	12 KV 120/240
Pri	
Sec	
Phone Co.	AT&T
Cable Co.	CHARTER
Accessible	Y
Tree Crew	N
Rock Hole	N
Permits	
R/W	N
CITY	N
COUNTY	N
STATE	N
OTHER	
NTS	

Customer Contact Info:

Electrician: Lamar Stewart, Titan Electric
205-648-3933
titanelectric@charter.net



RESOLUTION NUMBER 4484

**A RESOLUTION GRANTING ALABAMA POWER COMPANY A
UTILITY EASEMENT FOR CONNECTION OF ELECTRICAL
SERVICE**

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

1. The Mayor is hereby authorized to sign an agreement with Alabama Power Company to grant an easement, right and privilege as described in said agreement (copy attached); and
2. Resolution Number 4484 shall become effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 12th day of August, 2013.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CITY OF VESTAVIA HILLS
DEPARTMENT OF PUBLIC SERVICES
INTER-DEPARTMENT MEMO

August 7, 2013

To: Jeff Downes, City Manager
Rebecca Leavings, City Clerk
CC: Brian Davis, Director of Public Services

From: Christopher Brady, City Engineer

RE: Alabama Power Easements, Wald Park and Cahaba Heights sports fields

I have reviewed the proposed easement agreements with Alabama Power Company to perform services to upgrade electrical service to Wald Park tennis courts and Cahaba Heights sports fields. These upgrades will facilitate the new lighting installation at these areas. I recommend approval to proceed with the City acceptance of these easement agreements.

Please let me know if you have questions or would like to discuss in detail.

Sincerely,
-Christopher



Source of Title:
Deed Book 200304, Page 5172

EASEMENT - DISTRIBUTION FACILITIES

STATE OF ALABAMA
COUNTY OF JEFFERSON
W.E. No. A6173-06-AG13

*Chuka Hts Elem
Ballpark*

APCO Parcel No. 70257337

Transformer No. S18477

This instrument prepared by: Dean Fritz

Alabama Power Company
P. O. Box 2641
Birmingham, Alabama 35291

KNOW ALL MEN BY THESE PRESENTS, That The City of Vestavia Hills, Alabama, a Municipal Corporation

as grantor(s), (the "Grantor", whether one or more) for and in consideration of One and No/100 Dollar (\$1.00) and other good and valuable consideration paid to Grantor in hand by Alabama Power Company, a corporation, the receipt and sufficiency of which are hereby acknowledged, does hereby grant to Alabama Power Company, its successors and assigns (the "Company"), the easements, rights and privileges below.

Overhead and/or Underground. The right from time to time to construct, install, operate and maintain, upon, over, under and across the Property described below, all poles, towers, wires, conduits, fiber optics, cables, communication lines, translosures, transformers, anchors, guy wires and other facilities useful or necessary in connection therewith (collectively, "Facilities"), for the overhead and/or underground transmission and distribution of electric power and communications, along a route selected by the Company, as generally shown on the Company's drawing attached hereto and made a part hereof, but which is to be determined by the actual location(s) in which the Company's facilities are installed. The width of the Company's easement will depend on whether the Facilities are underground or overhead: for underground, the easement will extend five (5) feet on each side of said Facilities as and where installed; for overhead Facilities, the easement will extend fifteen (15) feet on each side of the centerline of said Facilities as and where installed. The Company is granted the right to clear, and keep clear, all trees, undergrowth and other obstructions on a strip of land extending five (5) feet from each side of said underground Facilities, and to clear, and keep clear, all trees, undergrowth and other obstructions on a strip of land extending fifteen (15) feet from each side of the centerline of said overhead Facilities and the right in the future to install intermediate poles and facilities on said strip. Further, with respect to overhead Facilities, the Company is also granted the right to trim and cut, and keep trimmed and cut, all dead, weak, leaning or dangerous trees or limbs outside of the thirty (30) foot strip that, in the sole opinion of the Company, may now or hereafter endanger, interfere with, or fall upon any of said overhead Facilities.

Grantor hereby grants to the Company all easements, rights and privileges necessary or convenient for the full enjoyment and use thereof, including without limitation the right of ingress and egress to and from said Facilities, as applicable, and the right to excavate for installation, replacement, repair and removal thereof; and also the right to cut, remove and otherwise keep clear any and all structures, obstructions or obstacles of whatever character, on, under and above said Facilities, as applicable.

The easements, rights and privileges granted hereby shall apply to, and the word "Property" as used in this instrument shall mean, the following described real property situated in Jefferson County, Alabama (the "Property"): a parcel of land located in the NE¼ of the SW¼ of Section 22, Township 18 South, Range 2 West, more particularly described in that certain instrument recorded in deed book 200304, page 5172, in the office of the Judge of Probate of said County.

In the event it becomes necessary or desirable for the Company from time to time to move any of the Facilities in connection with the construction or improvement of any public road or highway in proximity to the Facilities, Grantor hereby grants to the Company the right to relocate the Facilities and, as to such relocated Facilities, to exercise the rights granted above; provided, however, the Company shall not relocate said Facilities on the Property at a distance greater than ten feet (10') outside the boundary of the right of way of any such public road or highway as established or re-established from time to time. This grant and agreement shall be binding upon and shall inure to the benefit of Grantor, the Company and each of their respective heirs, personal representatives, successors and assigns and the words "Company" and "Grantor" as used in this instrument shall be deemed to include the heirs, personal representatives, successors and assigns of such parties.

Print name

TO HAVE AND TO HOLD the same to the Company, its successors and assigns, forever.

IN WITNESS WHEREOF, the said Grantor, has caused this instrument to be executed by _____,
its authorized representative, as of the _____ day of _____, 20_____.

ATTEST (if required) or WITNESS:

The City of Vestavia Hills, Alabama, a Municipal Corporation
(Grantor - Name of Corporation/Partnership/LLC)

By: _____

X By: _____ (SEAL)

Its: _____

Its: _____
[indicate: President, General Partner, Member, etc.]

JH →

Notarize →

SKETCH OF PROPOSED WORK - SIMPLIFIED W.E.

Map Center UTM:
1720729 12143988

Map Center Latlon:
33.4526 -86.736601

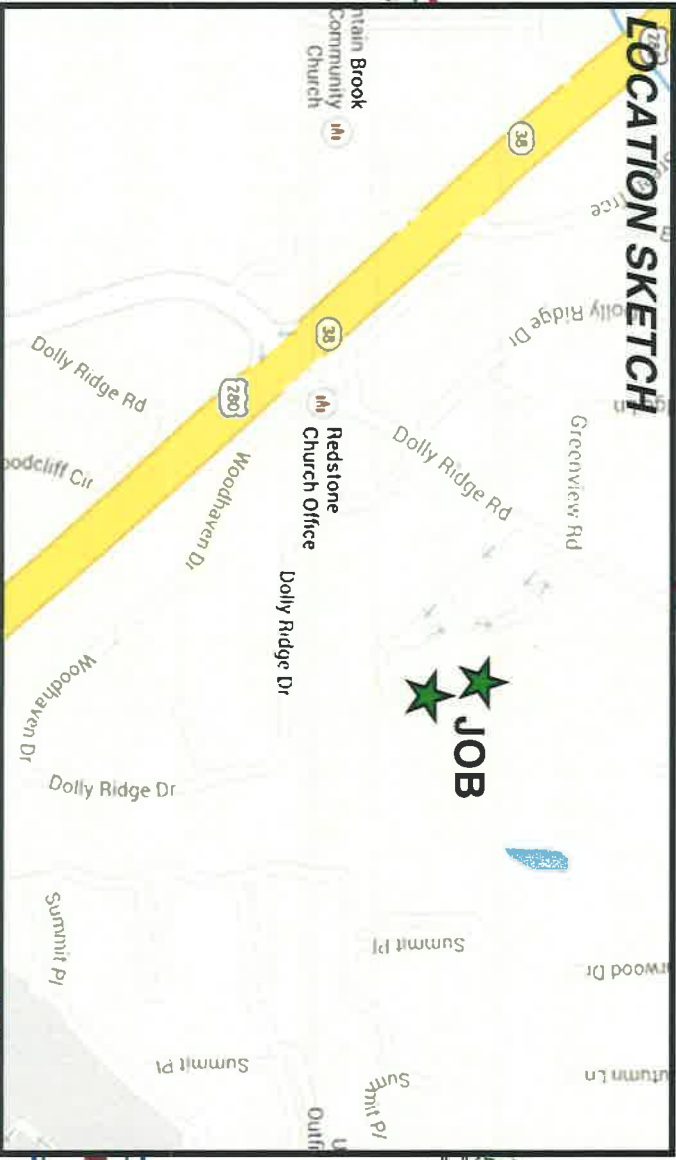
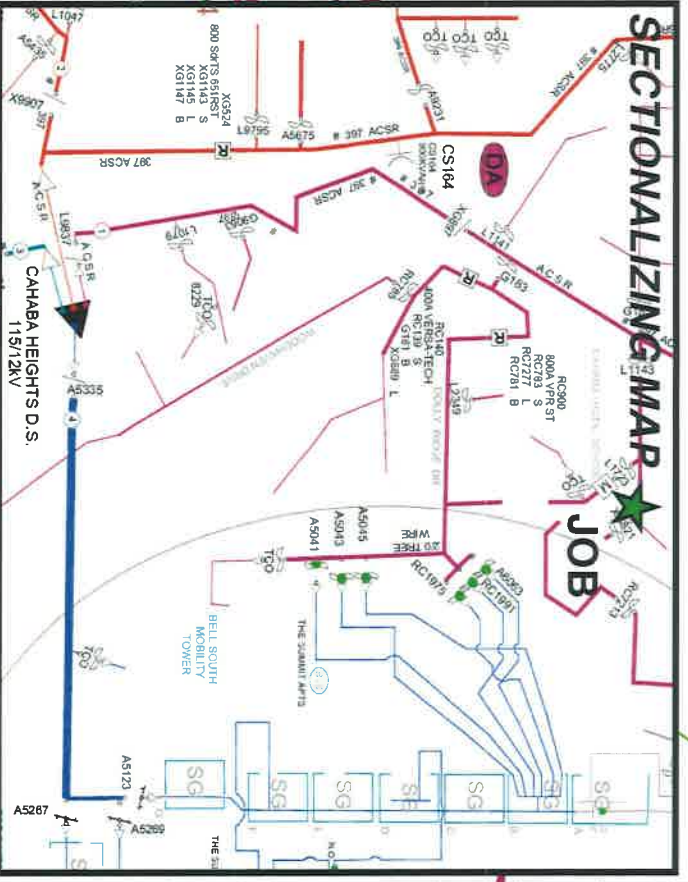
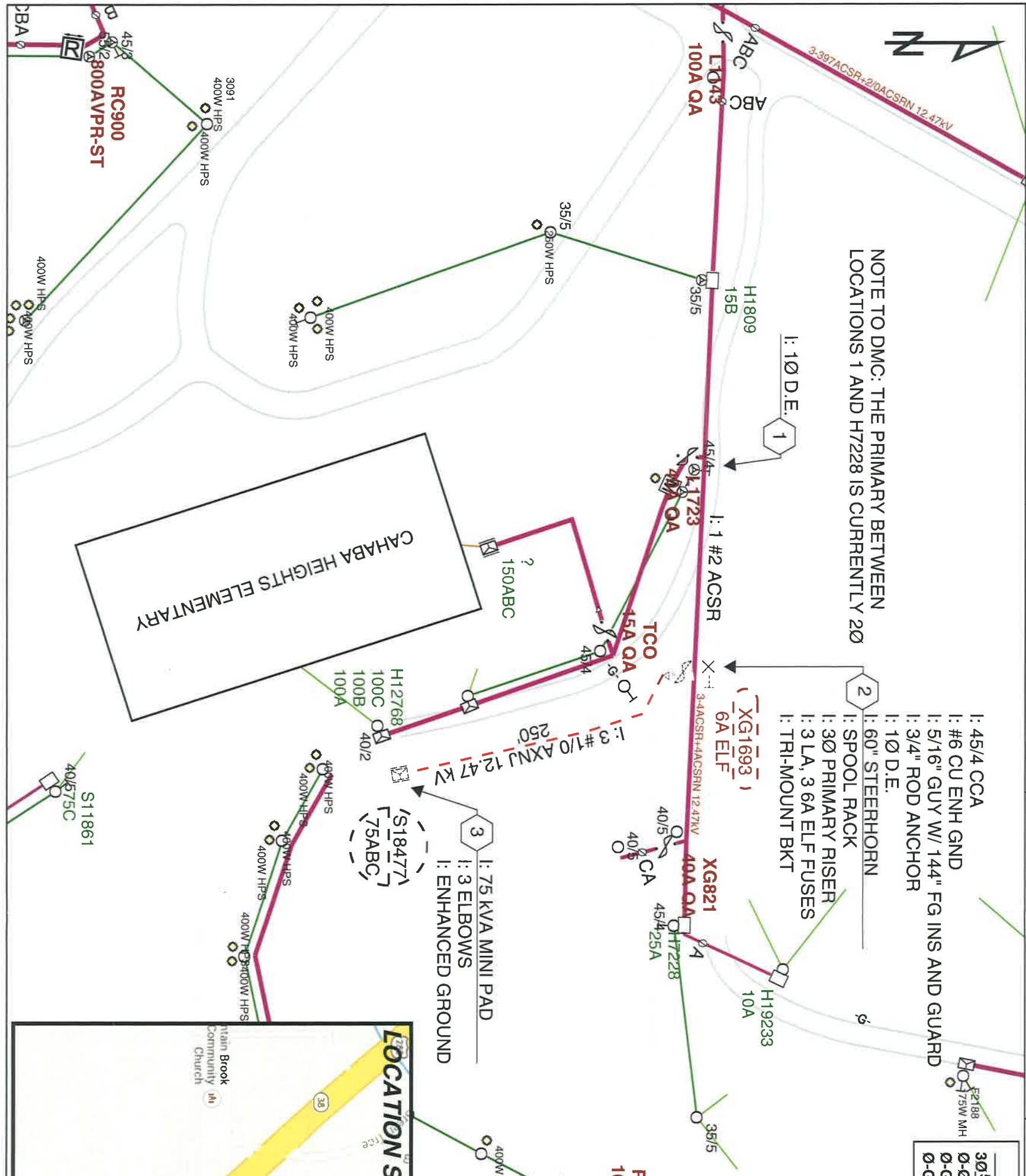
Customer CITY OF VESTAVIA	Location 4401 DOLLY RIDGE ROAD	Comtd. Svc Date 11/30/13	County JEFFERSON	Section 22	Township 18S	Range 02W	Add'l Info.	Estimate No. A6173-06-AG13
Division BIRMINGHAM	District SOUTH-HOOVER	Town VESTAVIA	UserID swolbach LINC - 10586	Created: 7/30/2013	Substation X_ 02204	Y_ L1143	MISSALL#	

SHORT CIRCUIT	ENERGIZED LINE WORK
3Ø5640 A	Sub CAHABA HEIGHTS D.S.
Ø-Ø4884 A	OCB/OCR 02204
Ø-G4276.4 A	Switch# L1143
Ø-GR280.7 A	Fuse Size 100A

Loc	Transformer Loading
	V.D. = FLICKER =



NOTE TO DMC: THE PRIMARY BETWEEN LOCATIONS 1 AND H7228 IS CURRENTLY 2Ø



Voltage	Pri	Sec
12.47 KV		120/240
Phone Co.	N	
Cable Co.	N	
Accessible	Y	
Tree Crew	N	
Rock Hole	N	
Permits		
R/W	Y	
CITY	N	
COUNTY	N	
STATE	N	
OTHER	NTS	

TO S4167
S4168
75C
S4167
75C

ORDINANCE NUMBER 2462

AN ORDINANCE RESCINDING ORDINANCE NUMBER 1687 – AN ORDINANCE ESTABLISHING THE SPEED LIMIT FOR LIBERTY PARKWAY, VESTLAKE COMMUNITIES AND ALL AREAS OF LIBERTY PARKWAY “OUTSIDE THE GATE COMMUNITIES” AND ALL AREAS OF LIBERTY PARK “WITHIN THE GATED COMMUNITIES”

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

1. That Ordinance Number 1687 – An Ordinance Rescinding Ordinance Number 1687 – An Ordinance Establishing The Speed Limit For Liberty Parkway, Vestlake Communities And All Areas Of Liberty Parkway “Outside The Gate Communities” And All Areas Of Liberty Park “Within The Gated Communities” adopted and approved by the Vestavia Hills City Council on April 7, 1997 is hereby rescinded in its entirety; and
2. If any part, section or subdivision of this ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this ordinance which shall continue in full force and effect notwithstanding such holding;
3. This Ordinance Number 2462 shall become effective immediately upon adoption and posting/publication as required by Alabama law.

DONE, ORDERED, ADOPTED and APPROVED this the 26th day of August, 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 # 2462 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 12th day of August, 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

ORDINANCE 1687

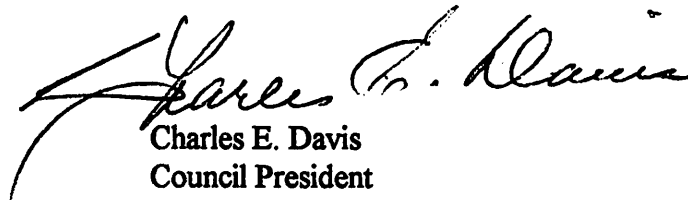
AN ORDINANCE ESTABLISHING THE SPEED LIMIT FOR LIBERTY PARKWAY, VESTLAKE COMMUNITIES AND ALL AREAS OF LIBERTY PARKWAY "OUTSIDE THE GATED COMMUNITIES" AND ALL AREAS OF LIBERTY PARK "WITHIN THE GATED COMMUNITIES"

BE IT ORDAINED, by the City Council of the City of Vestavia Hills, Alabama, as follows:

1. That the speed limit for Liberty Parkway be and is hereby established at 30 miles per hour;
2. That the speed limit for the Vestlake communities and all areas of Liberty Park "outside the gates" be and is hereby established at 25 miles per hour; and
3. That the Old Overton Communities and all areas of Liberty Park located "within the gates" be and is hereby established at 24 miles per hour.

This Ordinance shall become effective immediately upon its adoption and approval.

DONE, APPROVED and ADOPTED this the 7th day of April, 1997.


Charles E. Davis
Council President

ATTESTED BY:


Thelma Moon
City Clerk

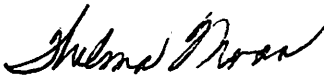
APPROVED BY:


C. Pat Reynolds
Mayor

CERTIFICATION:

I, Thelma R. Moon, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 1687 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 7th day of April, 1997, as same appears in the official records of said City.

Posted at Vestavia Hills City Hall, Vestavia Hills Richard M. Scrushy Public Library, Vestavia Hills Shopping Mall and Vestavia Hills Recreational Center this the 9th day of APRIL, 1997.


Thelma Moon
City Clerk

ORDINANCE NUMBER 2463

AN ORDINANCE TO REPEAL ORDINANCE NUMBER 2099 AND ORDINANCE NUMBER 2411, TO REAFFIRM ORDINANCE NUMBER 2209 AND ADOPT IN FULL ORDINANCE NUMBER 2463 TITLED THE “CITY OF VESTAVIA HILLS SMOKE-FREE ORDINANCE OF 2012”

WHEREAS, the Council of the City of Vestavia Hills finds that numerous studies have shown that (1) exposure to secondhand smoke, a known carcinogen, causes disease and premature death in children and adults who do not smoke; (2) children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory problems, ear infections, and asthma attacks, and that smoking by parents causes respiratory symptoms and slows lung growth in their children; (3) even occasional exposure of adults to secondhand smoke has adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer; (4) there is no risk-free level of exposure to secondhand smoke; (5) establishing smoke-free workplaces is the only effective way to ensure that secondhand smoke exposure does not occur in the workplace, because ventilation and other air cleaning technologies cannot completely control exposure of nonsmokers to secondhand smoke; and (6) evidence from peer-reviewed studies shows that smoke-free policies and laws improve health and do not have an adverse economic impact on, and may positively impact, the hospitality industry.¹

WHEREAS, the Council finds that studies have shown that during periods of active smoking, peak and average outdoor tobacco smoke levels measured in outdoor cafés and restaurant and bar patios near smokers rival indoor tobacco smoke concentrations.² Nonsmokers who spend six-hour periods in outdoor smoking sections of bars and restaurants experience a significant increase in levels of cotinine when compared to the cotinine levels in a smoke-free outdoor area.³

WHEREAS, the Council finds that studies have shown that residual tobacco contamination, or “thirdhand smoke,” from cigarettes, cigars, and other tobacco products is left behind after smoking occurs and builds up on surfaces and furnishings. This sticky, highly toxic particulate matter, including nicotine, can linger in spaces long after smoking has ceased and cling to walls and ceilings and be absorbed into carpets, draperies, and other upholsteries, and then be reemitted (off-gassed) back into the air and recombine to form harmful compounds.

Tobacco residue is noticeably present in dust throughout places where smoking has occurred.⁴ This process represents an unappreciated health hazard through dermal exposure, dust inhalation, and ingestion.⁵

WHEREAS, the Council finds that unregulated high-tech smoking devices, commonly referred to as electronic cigarettes, or “e-cigarettes,” closely resemble and purposefully mimic the act of smoking by having users inhale vaporized liquid nicotine created by heat through an electronic ignition system. The Food and Drug Administration (FDA) determined that various samples tested contained not only nicotine but also detectable levels of known carcinogens and toxic chemicals, including tobacco-specific nitrosamines and diethylene glycol, a toxic chemical used in antifreeze. The FDA’s testing also suggested that “quality control processes used to manufacture these products are inconsistent or non-existent.”⁶ “E-cigarettes” produce a vapor of undetermined and potentially harmful substances, which may appear similar to the smoke emitted by traditional tobacco products. Their use in workplaces and public places where smoking of traditional tobacco products is prohibited creates concern and confusion and leads to difficulties in enforcing the smoking prohibitions.

WHEREAS, the Council finds that the Society of Actuaries has determined that secondhand smoke costs the U.S. economy approximately \$10 billion a year: \$5 billion in estimated medical costs associated with secondhand smoke exposure and \$4.6 billion in lost productivity.⁷

WHEREAS, the Council finds that there is no legal or constitutional “right to smoke” and that business owners have no legal or constitutional right to expose their employees and customers to the toxic chemicals in secondhand smoke and instead have a common-law duty to provide their workers with a workplace that is not unreasonably dangerous.⁸

WHEREAS, the Council finds that smoking is a potential cause of fires and cigarette and cigar burns and ash stains on merchandise and fixtures cause economic damage to businesses.⁹

WHEREAS, the Council of the City of Vestavia Hills finds that secondhand smoke is a form of air pollution, a danger to health, and a material public nuisance, and deems it appropriate to enact the following ordinance to (1) protect the public health and welfare by prohibiting smoking in public places and places of employment, (2) guarantee the right of nonsmokers to breathe smoke-free air, and (3) recognize that the need to breathe smoke-free air shall have priority over the desire to smoke; and

WHEREAS, on June 25, 2012, the City Council adopted and approved Ordinance Number 2411 entitled “The City of Vestavia Hills Smoke Free Ordinance” and repealed Ordinance Number 2209. Later it was determined that the Ordinance should have repealed Ordinance 2099, the previous smoke free Ordinance enacted by the City Council.

Section 1. BE IT HEREBY ORDAINED by the Council of the City of Vestavia Hills that that Ordinance Number 2209 be and is hereby deemed to be in full force and effect, that Ordinance Numbers 2099 and 2411, as amended, are hereby repealed and the following Ordinance Number 2463 is hereby adopted to read in full as follows:

Section 2. Smoking In Public Places And Places Of Employment

(a) **Definitions.** In this Section, the following definitions shall apply:

- (1) “*Bar*” means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to: taverns, nightclubs, cocktail lounges, and cabarets.
- (2) “*Business*” means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs.
- (3) “*E-cigarette*” means any electronic oral device, such as one composed of a heating element, battery, and/or electronic circuit, which provides a vapor of nicotine or any other substances, and the use or inhalation which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an “e-cigarette”, “e-cigar”, “e-pipe”, or under any other product name or descriptor.
- (4) “*Employee*” means a person who works for an employer, whether in consideration for direct or indirect monetary wages or profit, or as a volunteer.
- (5) “*Employer*” means a person, association, trust, or a business, including a municipal corporation, with one or more employees.
- (6) “*Enclosed Area*” means all space between a floor and a ceiling that is bounded on at least two sides by walls, doorways, or windows, whether open or

closed. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent and whether or not containing openings of any kind.

- (7) “*Health Care Facility*” means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to: hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, long-term care facilities, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, psychiatrists, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.
- (8) “*Place of Employment*” means an area under the control of a public or private employer, including, but not limited to: work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, construction sites, temporary offices, and vehicles. A private residence is not a “place of employment” unless it is used as a child care, adult day care, or health care facility.
- (9) “*Private Club*” means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities, requires applications to be completed for membership, and maintains membership records that show the date of application, admission, name and address for each member, and serial number of the membership card issued. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.

- (10) “*Public Place*” means an area to which the public is permitted. A private residence is not a “public place” unless it is used as a child care, adult day care, or health care facility.
- (11) “*Restaurant*” means an eating establishment, including but not limited to: coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term “restaurant” shall include a bar area within the restaurant.
- (12) “*Service Line*” means an indoor or outdoor line in which one or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money, including but not limited to: ATM lines, concert lines, food vendor lines, movie ticket lines, and sporting event lines.
- (13) “*Shopping Mall*” means an enclosed public walkway or hall area that serves to connect retail or professional establishments.
- (14) “*Smoke*” or “*Smoking*” means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, or other tobacco or plant product intended for inhalation, in any manner or in any form. “Smoking” also includes the use of an “e-cigarette” which creates a vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this Section.
- (15) “*Sports Arena*” means a place where people assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events, including sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and bowling alleys.
- (b) ***Prohibition Of Smoking In Enclosed Public Places.*** Smoking shall be prohibited in all enclosed public places within the City of Vestavia Hills, including but not limited to, the following places:
- (1) Aquariums, galleries, libraries, and museums;
 - (2) Banks;
 - (3) Bar and lounges;

- (4) Bingo facilities;
- (5) Child care and adult day care facilities;
- (6) Convention facilities;
- (7) Educational facilities, both public and private;
- (8) Elevators;
- (9) Gaming facilities, including bingo facilities;
- (10) Health care facilities;
- (11) Hotels and motels;
- (12) Laundromats;
- (13) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities;
- (14) Polling places;
- (15) Private clubs;
- (16) Professional offices;
- (17) Public transportation vehicles, including buses and taxicabs, under the authority of the City of Vestavia Hills, and ticket, boarding, and waiting areas of public transportation facilities, including bus, train, and airport facilities;
- (18) Restaurants and retail food production and marketing establishments;
- (19) Restrooms, lobbies, reception areas, waiting rooms, hallways, and other common-use areas;
- (20) Retail service establishments;
- (21) Retail stores;
- (22) Rooms, chambers, places of meeting or public assembly, and other enclosed areas and vehicles owned, leased, or operated by the City of Vestavia Hills, including areas under the control of an agency, board, commission, or committee of the City, to the extent the place is subject to the jurisdiction of the City;
- (23) Service lines;
- (24) Shopping malls;
- (25) Sports arenas, including enclosed places in outdoor arenas; and

- (26) Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.
- (c) ***Prohibition Of Smoking In Enclosed Places Of Employment.***
- (1) Smoking shall be prohibited in all enclosed areas of places of employment within the City of Vestavia Hills, including, but not limited to: common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles. This prohibition also applies to rooms, chambers, places of meeting or public assembly, and other enclosed areas and vehicles owned, leased, or operated by the City of Vestavia Hills, including areas under the control of an agency, board, commission, or committee of the City, to the extent the place is subject to the jurisdiction of the City.
- (2) This prohibition on smoking shall be communicated to all existing employees by the effective date of this Section and to all prospective employees upon their application for employment.
- (d) ***Prohibition Of Smoking In Enclosed Residential Facilities.*** Smoking shall be prohibited in the following enclosed residential facilities:
- (1) All private and semiprivate rooms in nursing homes and
- (2) All hotel and motel rooms that are rented to guests.
- (e) ***Prohibition Of Smoking In Outdoor Public Places.*** Smoking shall be prohibited in the following outdoor places:
- (1) Within a reasonable distance of 20 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to prevent tobacco smoke from entering those areas;
- (2) In, and within 20 feet of, outdoor seating or serving areas of restaurants and bars;
- (3) In all outdoor arenas, stadiums, and amphitheaters. Smoking shall also be prohibited in, and within 20 feet of, bleachers and grandstands for use by spectators at sporting and other public events;

- (4) In, and within 20 feet of, all outdoor public transportation stations, platforms, and shelters under the authority of the City of Vestavia Hills; and
- (5) In all outdoor service lines;
- (f) **Exemptions.** Notwithstanding any other provision of this Section to the contrary, smoking shall not be prohibited in private residences, unless used as a child care, adult day care, or health care facility.
- (g) **Declaration Of Establishment Or Outdoor Area As Nonsmoking.** Notwithstanding any other provision of this Section, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 2(h) is posted.
- (h) **Posting Of Signs And Removal Of Ashtrays.** The owner, operator, manager, or other person in control of a public place or place of employment where smoking is prohibited by this Section shall:
 - (1) Clearly and conspicuously post “No Smoking” signs or the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) in that place.
 - (2) Clearly and conspicuously post at every entrance to that place a sign stating that smoking is prohibited.
 - (3) Clearly and conspicuously post on every vehicle that constitutes a place of employment under this Section at least one sign, visible from the exterior of the vehicle, stating that smoking is prohibited.
 - (4) Remove all ashtrays from any area where smoking is prohibited by this Section, except for ashtrays displayed for sale and not for use on the premises.

(i) *Nonretaliation; Nonwaiver Of Rights.*

- (1) No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, customer, or resident of a multiple-unit residential facility because that employee, applicant, customer, or resident exercises any rights afforded by this Section or reports or attempts to prosecute a violation of this Section. Notwithstanding Section 2(k), violation of this provision shall be a misdemeanor, punishable by a fine not to exceed five hundred dollars (\$500) for each violation.
- (2) An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

(j) *Enforcement.*

- (1) This Section shall be enforced by the county health officer or his or her duly authorized representative, any duly sworn police officer employed by the City of Vestavia Hills, or as otherwise allowed by law.
- (2) Notice of the provisions of this Section shall be given to all applicants for a business license in the City of Vestavia Hills.
- (3) Any resident who desires to register a complaint under this Section may initiate enforcement with an entity responsible for enforcement, such as the Jefferson County Department of Health or Police Department.
- (4) The County Health Department, the Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Section.
- (5) Any owner, manager, operator, or employee of an area regulated by this Section shall direct a person who is smoking in violation of this Section to extinguish the product being smoked. If the person does not stop smoking, the owner, manager, operator, or employee shall refuse service and immediately ask the person to leave the premises. If the person in violation refuses to leave the premises, the owner, manager, operator, or employee shall contact a law enforcement agency.

(6) Notwithstanding any other provision of this Section, an employee or private citizen may bring legal action to enforce this Section.

(7) In addition to the remedies provided by the provisions of this Section, the City of Vestavia Hills, the county health officer, or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this Section may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

(k) ***Violations and Penalties.***

(1) A person who knowingly or intentionally smokes in an area where smoking is prohibited by the provisions of this Section commits an offense, punishable by a fine of fifty dollars (\$50) per offense. A charge of violation shall be treated in the same manner as a traffic violation.

(2) Except as otherwise provided in Section I (1), a person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this Section shall be guilty of an offense, punishable by:

- a. A fine of one hundred dollars (\$100) for a first violation. A charge of violation shall be treated in the same manner as a traffic violation.
- b. A fine of two hundred dollars (\$200) for a second violation within one (1) year. A charge of violation shall be treated in the same manner as a traffic violation.
- c. A fine of five hundred dollars (\$500) for each additional violation within one (1) year. A charge of violation shall be treated in the same manner as a traffic violation.

(3) In addition to the fines established by this Section, violation of this Section by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

(4) Violation of this Section is hereby declared to be a public nuisance, which may be abated by the City of Vestavia Hills, the county health officer, or a designee by restraining order, preliminary and permanent injunction, or other means provided for

by law, and the entity or person seeking abatement may take action to recover the costs of the nuisance abatement.

(5) Each day on which a violation of this Section occurs shall be considered a separate and distinct violation.

(l) **Other Applicable Laws.** This Section shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

(m) **Liberal Construction.** This Section shall be liberally construed so as to further its purposes.

Section 3. Public Education. The City of Vestavia Hills shall engage in a continuing program to explain and clarify the purposes and requirements of this Ordinance to residents affected by it, and to guide owners, operators, and managers in their compliance with it. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this Ordinance.

Section 4. Governmental Agency Cooperation. The City of Vestavia Hills shall annually request other governmental and educational agencies having facilities within Jefferson and Shelby Counties to establish local operating procedures in cooperation and compliance with this Ordinance. This includes urging all Federal, State, County, and School District agencies to update their existing smoking regulations to be consistent with the current health findings regarding secondhand smoke.

Section 5. Severability. If any word, provision, clause, sentence, paragraph, or subsection of this Ordinance or the application thereof to any person or circumstances shall be held invalid by a court of competent jurisdiction then the remaining provisions of this Ordinance shall be in full force and effect.

Section 6. Effective Date. This Ordinance shall be effective 30 days after approval by the Council of the City of Vestavia Hills and Mayor, and publication should be made as required by law, showing the effective date.

DONE, ORDERED, ADOPTED and APPROVED this the 26th day of August, 2013.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as Acting City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2463 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 26th day of August, 2013, as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills Library in the Forest, Vestavia Hills New Merkle House and Vestavia Hills Recreational Center this the _____ day of _____, 2013.

Rebecca Leavings
City Clerk

END NOTES:

1. U.S Department of Health and Human Services. “The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General.” *U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health*, 2006.
2. Klepeis, N.; Ott, W.R.; Switzer, P. “Real-time measurement of outdoor tobacco smoke particles,” *Journal of the Air and Waste Management Association*, 57: 522-534, 2007.
3. Hall, J.C.; Bernert, J.T.; Hall, D.B.; St. Helen, G.; Kudon, L.H.; Naeher, L.P.; “Assessment of exposure to secondhand smoke at outdoor bars and family restaurants in Athens, Georgia, using salivary cotinine,” *Journal of Occupational and Environmental Hygiene* 6(11): 698-704, November 2009.
4. Singer, B.C.; Hodgson, A.T.; Nazaroff, W.W., “Effect of sorption on exposures to organic gases from environmental tobacco smoke (ETS),” *Proceedings, Indoor Air 2002*, 2002.
5. Matt, G.E.; Quintana, P.J.E.; Hovel, M.F.; Bernert, J.T.; Song, S.; Novianti, N.; Juarez T.; Floro, J.; Gehrman, C.; Garcia, M.; Larson, S., “Households contaminated by environmental tobacco smoke: sources of infant exposures,” *Tobacco Control* 13(1): 29-37, March 2004.
6. Summary of results: laboratory analysis of electronic cigarettes conducted by FDA,” Food and Drug Administration (FDA), July 22, 2009; <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm173146.htm> ; accessed on October 22, 2009
7. Behan, D.F.; Eriksen, M.P.; Lin, Y., “Economic Effects of Environmental Tobacco Smoke,” *Society of Actuaries*, March 2005.
8. Graff, S.K., “There is No Constitutional Right to Smoke: 2008,” *Tobacco Control Legal Consortium*, 2d edition, 2008.
9. “The high price of cigarette smoking,” *Business & Health* 15(8), Supplement A: 6-9, August 1997

OTHER SOURCES

- A. The Alabama Clean Indoor Air Act at Title 22-15A-2 *Code of Alabama*, 1975.
- B. Vestavia Hills Ordinance Number 2099 “An Ordinance to Prohibit Smoking in Public Places, Providing Penalties for the Violation Thereof,” adopted on June 6, 2005.

ORDINANCE NUMBER 2411

AN ORDINANCE TO REPEAL ORDINANCE 2209, ADOPTED JUNE 6, 2005, AND ADOPT IN FULL ORDINANCE NUMBER 2411 TITLED THE “CITY OF VESTAVIA HILLS SMOKE-FREE ORDINANCE OF 2012”

WHEREAS, the Council of the City of Vestavia Hills finds that numerous studies have shown that (1) exposure to secondhand smoke, a known carcinogen, causes disease and premature death in children and adults who do not smoke; (2) children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory problems, ear infections, and asthma attacks, and that smoking by parents causes respiratory symptoms and slows lung growth in their children; (3) even occasional exposure of adults to secondhand smoke has adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer; (4) there is no risk-free level of exposure to secondhand smoke; (5) establishing smoke-free workplaces is the only effective way to ensure that secondhand smoke exposure does not occur in the workplace, because ventilation and other air cleaning technologies cannot completely control exposure of nonsmokers to secondhand smoke; and (6) evidence from peer-reviewed studies shows that smoke-free policies and laws improve health and do not have an adverse economic impact on, and may positively impact, the hospitality industry.¹

WHEREAS, the Council finds that studies have shown that during periods of active smoking, peak and average outdoor tobacco smoke levels measured in outdoor cafés and restaurant and bar patios near smokers rival indoor tobacco smoke concentrations.² Nonsmokers who spend six-hour periods in outdoor smoking sections of bars and restaurants experience a significant increase in levels of cotinine when compared to the cotinine levels in a smoke-free outdoor area.³

WHEREAS, the Council finds that studies have shown that residual tobacco contamination, or “thirdhand smoke,” from cigarettes, cigars, and other tobacco products is left behind after smoking occurs and builds up on surfaces and furnishings. This sticky, highly toxic particulate matter, including nicotine, can linger in spaces long after smoking has ceased and cling to walls and ceilings and be absorbed into carpets, draperies, and other upholsteries, and then be reemitted (off-gassed) back into the air and recombine to form harmful compounds. Tobacco residue is noticeably present in dust throughout places where smoking has occurred.⁴

This process represents an unappreciated health hazard through dermal exposure, dust inhalation, and ingestion.⁵

WHEREAS, the Council finds that unregulated high-tech smoking devices, commonly referred to as electronic cigarettes, or “e-cigarettes,” closely resemble and purposefully mimic the act of smoking by having users inhale vaporized liquid nicotine created by heat through an electronic ignition system. The Food and Drug Administration (FDA) determined that various samples tested contained not only nicotine but also detectable levels of known carcinogens and toxic chemicals, including tobacco-specific nitrosamines and diethylene glycol, a toxic chemical used in antifreeze. The FDA’s testing also suggested that “quality control processes used to manufacture these products are inconsistent or non-existent.”⁶ “E-cigarettes” produce a vapor of undetermined and potentially harmful substances, which may appear similar to the smoke emitted by traditional tobacco products. Their use in workplaces and public places where smoking of traditional tobacco products is prohibited creates concern and confusion and leads to difficulties in enforcing the smoking prohibitions.

WHEREAS, the Council finds that the Society of Actuaries has determined that secondhand smoke costs the U.S. economy approximately \$10 billion a year: \$5 billion in estimated medical costs associated with secondhand smoke exposure and \$4.6 billion in lost productivity.⁷

WHEREAS, the Council finds that there is no legal or constitutional “right to smoke” and that business owners have no legal or constitutional right to expose their employees and customers to the toxic chemicals in secondhand smoke and instead have a common-law duty to provide their workers with a workplace that is not unreasonably dangerous.⁸

WHEREAS, the Council finds that smoking is a potential cause of fires and cigarette and cigar burns and ash stains on merchandise and fixtures cause economic damage to businesses.⁹

NOW, THEREFORE, the Council of the City of Vestavia Hills finds that secondhand smoke is a form of air pollution, a danger to health, and a material public nuisance, and deems it appropriate to enact the following ordinance to (1) protect the public health and welfare by prohibiting smoking in public places and places of employment, (2) guarantee the right of nonsmokers to breathe smoke-free air, and (3) recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.

Section 1. BE IT HEREBY ORDAINED by the Council of the City of Vestavia Hills that Ordinance 2209, as amended is hereby repealed and the following Ordinance Number 2411 is hereby adopted to read in full as follows:

Section 2. Smoking In Public Places And Places Of Employment

(a) **Definitions.** In this Section, the following definitions shall apply:

- (1) “*Bar*” means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to: taverns, nightclubs, cocktail lounges, and cabarets.
- (2) “*Business*” means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs.
- (3) “*E-cigarette*” means any electronic oral device, such as one composed of a heating element, battery, and/or electronic circuit, which provides a vapor of nicotine or any other substances, and the use or inhalation which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an “e-cigarette”, “e-cigar”, “e-pipe”, or under any other product name or descriptor.
- (4) “*Employee*” means a person who works for an employer, whether in consideration for direct or indirect monetary wages or profit, or as a volunteer.
- (5) “*Employer*” means a person, association, trust, or a business, including a municipal corporation, with one or more employees.
- (6) “*Enclosed Area*” means all space between a floor and a ceiling that is bounded on at least two sides by walls, doorways, or windows, whether open or closed. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent and whether or not containing openings of any kind.
- (7) “*Health Care Facility*” means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical,

- physiological, or psychological conditions, including but not limited to: hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, long-term care facilities, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, psychiatrists, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.
- (8) “*Place of Employment*” means an area under the control of a public or private employer, including, but not limited to: work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, construction sites, temporary offices, and vehicles. A private residence is not a “place of employment” unless it is used as a child care, adult day care, or health care facility.
- (9) “*Private Club*” means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities, requires applications to be completed for membership, and maintains membership records that show the date of application, admission, name and address for each member, and serial number of the membership card issued. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.
- (10) “*Public Place*” means an area to which the public is permitted. A private residence is not a “public place” unless it is used as a child care, adult day care, or health care facility.
- (11) “*Restaurant*” means an eating establishment, including but not limited to: coffee shops, cafeterias, sandwich stands, and private and public school cafeterias,

- which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term “restaurant” shall include a bar area within the restaurant.
- (12) “*Service Line*” means an indoor or outdoor line in which one or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money, including but not limited to: ATM lines, concert lines, food vendor lines, movie ticket lines, and sporting event lines.
- (13) “*Shopping Mall*” means an enclosed public walkway or hall area that serves to connect retail or professional establishments.
- (14) “*Smoke*” or “*Smoking*” means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, or other tobacco or plant product intended for inhalation, in any manner or in any form. “*Smoking*” also includes the use of an “e-cigarette” which creates a vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this Section.
- (15) “*Sports Arena*” means a place where people assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events, including sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and bowling alleys.
- (b) ***Prohibition Of Smoking In Enclosed Public Places.*** Smoking shall be prohibited in all enclosed public places within the City of Vestavia Hills, including but not limited to, the following places:
- (1) Aquariums, galleries, libraries, and museums;
 - (2) Banks;
 - (3) Bar and lounges;
 - (4) Bingo facilities;
 - (5) Child care and adult day care facilities;
 - (6) Convention facilities;
 - (7) Educational facilities, both public and private;
 - (8) Elevators;

- (9) Gaming facilities, including bingo facilities;
- (10) Health care facilities;
- (11) Hotels and motels;
- (12) Laundromats;
- (13) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities;
- (14) Polling places;
- (15) Private clubs;
- (16) Professional offices;
- (17) Public transportation vehicles, including buses and taxicabs, under the authority of the City of Vestavia Hills, and ticket, boarding, and waiting areas of public transportation facilities, including bus, train, and airport facilities;
- (18) Restaurants and retail food production and marketing establishments;
- (19) Restrooms, lobbies, reception areas, waiting rooms, hallways, and other common-use areas;
- (20) Retail service establishments;
- (21) Retail stores;
- (22) Rooms, chambers, places of meeting or public assembly, and other enclosed areas and vehicles owned, leased, or operated by the City of Vestavia Hills, including areas under the control of an agency, board, commission, or committee of the City, to the extent the place is subject to the jurisdiction of the City;
- (23) Service lines;
- (24) Shopping malls;
- (25) Sports arenas, including enclosed places in outdoor arenas; and
- (26) Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

(c) ***Prohibition Of Smoking In Enclosed Places Of Employment.***

- (1) Smoking shall be prohibited in all enclosed areas of places of employment within the City of Vestavia Hills, including, but not limited to: common work areas,

auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles. This prohibition also applies to rooms, chambers, places of meeting or public assembly, and other enclosed areas and vehicles owned, leased, or operated by the City of Vestavia Hills, including areas under the control of an agency, board, commission, or committee of the City, to the extent the place is subject to the jurisdiction of the City.

- (2) This prohibition on smoking shall be communicated to all existing employees by the effective date of this Section and to all prospective employees upon their application for employment.

(d) ***Prohibition Of Smoking In Enclosed Residential Facilities.*** Smoking shall be prohibited in the following enclosed residential facilities:

- (1) All private and semiprivate rooms in nursing homes and
- (2) All hotel and motel rooms that are rented to guests.

(e) ***Prohibition Of Smoking In Outdoor Public Places.*** Smoking shall be prohibited in the following outdoor places:

- (1) Within a reasonable distance of 20 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to prevent tobacco smoke from entering those areas;
- (2) In, and within 20 feet of, outdoor seating or serving areas of restaurants and bars;
- (3) In all outdoor arenas, stadiums, and amphitheaters. Smoking shall also be prohibited in, and within 20 feet of, bleachers and grandstands for use by spectators at sporting and other public events;
- (4) In, and within 20 feet of, all outdoor public transportation stations, platforms, and shelters under the authority of the City of Vestavia Hills; and
- (5) In all outdoor service lines;

- (f) **Exemptions.** Notwithstanding any other provision of this Section to the contrary, smoking shall not be prohibited in private residences, unless used as a child care, adult day care, or health care facility.
- (g) **Declaration Of Establishment Or Outdoor Area As Nonsmoking.** Notwithstanding any other provision of this Section, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 2(h) is posted.
- (h) **Posting Of Signs And Removal Of Ashtrays.** The owner, operator, manager, or other person in control of a public place or place of employment where smoking is prohibited by this Section shall:
- (1) Clearly and conspicuously post “No Smoking” signs or the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) in that place.
 - (2) Clearly and conspicuously post at every entrance to that place a sign stating that smoking is prohibited.
 - (3) Clearly and conspicuously post on every vehicle that constitutes a place of employment under this Section at least one sign, visible from the exterior of the vehicle, stating that smoking is prohibited.
 - (4) Remove all ashtrays from any area where smoking is prohibited by this Section, except for ashtrays displayed for sale and not for use on the premises.
- (i) **Nonretaliation; Nonwaiver Of Rights.**
- (1) No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, customer, or resident of a multiple-unit residential facility because that employee, applicant, customer, or resident exercises any rights afforded by this Section or reports or attempts to prosecute a violation of this Section. Notwithstanding Section 2(k), violation of this provision

shall be a misdemeanor, punishable by a fine not to exceed five hundred dollars (\$500) for each violation.

- (2) An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

(j) Enforcement.

- (1) This Section shall be enforced by the county health officer or his or her duly authorized representative, any duly sworn police officer employed by the City of Vestavia Hills, or as otherwise allowed by law.
- (2) Notice of the provisions of this Section shall be given to all applicants for a business license in the City of Vestavia Hills.
- (3) Any resident who desires to register a complaint under this Section may initiate enforcement with an entity responsible for enforcement, such as the Jefferson County Department of Health or Police Department.
- (4) The County Health Department, the Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Section.
- (5) Any owner, manager, operator, or employee of an area regulated by this Section shall direct a person who is smoking in violation of this Section to extinguish the product being smoked. If the person does not stop smoking, the owner, manager, operator, or employee shall refuse service and immediately ask the person to leave the premises. If the person in violation refuses to leave the premises, the owner, manager, operator, or employee shall contact a law enforcement agency.
- (6) Notwithstanding any other provision of this Section, an employee or private citizen may bring legal action to enforce this Section.
- (7) In addition to the remedies provided by the provisions of this Section, the City of Vestavia Hills, the county health officer, or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this Section may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

(k) *Violations and Penalties.*

- (1) A person who knowingly or intentionally smokes in an area where smoking is prohibited by the provisions of this Section commits an offense, punishable by a fine of fifty dollars (\$50) per offense. A charge of violation shall be treated in the same manner as a traffic violation.
- (2) Except as otherwise provided in Section I (1), a person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this Section shall be guilty of an offense, punishable by:
 - a. A fine of one hundred dollars (\$100) for a first violation. A charge of violation shall be treated in the same manner as a traffic violation.
 - b. A fine of two hundred dollars (\$200) for a second violation within one (1) year. A charge of violation shall be treated in the same manner as a traffic violation.
 - c. A fine of five hundred dollars (\$500) for each additional violation within one (1) year. A charge of violation shall be treated in the same manner as a traffic violation.
- (3) In addition to the fines established by this Section, violation of this Section by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.
- (4) Violation of this Section is hereby declared to be a public nuisance, which may be abated by the City of Vestavia Hills, the county health officer, or a designee by restraining order, preliminary and permanent injunction, or other means provided for by law, and the entity or person seeking abatement may take action to recover the costs of the nuisance abatement.
- (5) Each day on which a violation of this Section occurs shall be considered a separate and distinct violation.
- (l) ***Other Applicable Laws.*** This Section shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

- (m) **Liberal Construction.** This Section shall be liberally construed so as to further its purposes.

Section 3. Public Education. The City of Vestavia Hills shall engage in a continuing program to explain and clarify the purposes and requirements of this Ordinance to residents affected by it, and to guide owners, operators, and managers in their compliance with it. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this Ordinance.

Section 4. Governmental Agency Cooperation. The City of Vestavia Hills shall annually request other governmental and educational agencies having facilities within Jefferson and Shelby Counties to establish local operating procedures in cooperation and compliance with this Ordinance. This includes urging all Federal, State, County, and School District agencies to update their existing smoking regulations to be consistent with the current health findings regarding secondhand smoke.

Section 5. Severability. If any word, provision, clause, sentence, paragraph, or subsection of this Ordinance or the application thereof to any person or circumstances shall be held invalid by a court of competent jurisdiction then the remaining provisions of this Ordinance shall be in full force and effect.

Section 6. Effective Date. This Ordinance shall be effective 30 days after approval by the Council of the City of Vestavia Hills and Mayor, and publication should be made as required by law, showing the effective date.

DONE, ORDERED, ADOPTED and APPROVED this the 25th day of June, 2012.

Mary Lee Rice
Council President

ATTESTED BY:

Rebecca Leavings
City Clerk

APPROVED BY:

Alberto C. Zaragoza, Jr.
Mayor

CERTIFICATION:

I, Rebecca Leavings, as Acting City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2411 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 25th day of June, 2012, as same appears in the official records of said City.

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

Rebecca Leavings
City Clerk

END NOTES:

1. U.S Department of Health and Human Services. “The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General.” *U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health*, 2006.
2. Klepeis, N.; Ott, W.R.; Switzer, P. “Real-time measurement of outdoor tobacco smoke particles,” *Journal of the Air and Waste Management Association*, 57: 522-534, 2007.
3. Hall, J.C.; Bernert, J.T.; Hall, D.B.; St. Helen, G.; Kudon, L.H.; Naeher, L.P.; “Assessment of exposure to secondhand smoke at outdoor bars and family restaurants in Athens, Georgia, using salivary cotinine,” *Journal of Occupational and Environmental Hygiene* 6(11): 698-704, November 2009.
4. Singer, B.C.; Hodgson, A.T.; Nazaroff, W.W., “Effect of sorption on exposures to organic gases from environmental tobacco smoke (ETS),” *Proceedings, Indoor Air 2002*, 2002.
5. Matt, G.E.; Quintana, P.J.E.; Hovel, M.F.; Bernert, J.T.; Song, S.; Novianti, N.; Juarez T.; Floro, J.; Gehrman, C.; Garcia, M.; Larson, S., “Households contaminated by environmental tobacco smoke: sources of infant exposures,” *Tobacco Control* 13(1): 29-37, March 2004.
6. Summary of results: laboratory analysis of electronic cigarettes conducted by FDA,” Food and Drug Administration (FDA), July 22, 2009; <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm173146.htm> ; accessed on October 22, 2009
7. Behan, D.F.; Eriksen, M.P.; Lin, Y., “Economic Effects of Environmental Tobacco Smoke,” *Society of Actuaries*, March 2005.
8. Graff, S.K., “There is No Constitutional Right to Smoke: 2008,” *Tobacco Control Legal Consortium*, 2d edition, 2008.
9. “The high price of cigarette smoking,” *Business & Health* 15(8), Supplement A: 6-9, August 1997

OTHER SOURCES

- A. The Alabama Clean Indoor Air Act at Title 22-15A-2 *Code of Alabama*, 1975.
- B. Vestavia Hills Ordinance Number 2009 “An Ordinance to Prohibit Smoking in Public Places, Providing Penalties for the Violation Thereof,” adopted on June 6, 2005.

RESOLUTION NUMBER 4485

A RESOLUTION AMENDING RESOLUTION NUMBER 4425 FOR ADDITIONAL INCENTIVES FOR THE CITY OF VESTAVIA HILLS NOT TO EXCEED A MAXIMUM OF \$15 MILLION

WHEREAS, on September 12, 2011, the City Council of the City of Vestavia Hills adopted and approved Resolution Number 4232 to establish an Economic Development Incentive Policy for the City of Vestavia Hills; and

WHEREAS, on March 11, 2013, the City Council adopted and approved Resolution Number 4425 for additional incentives for the City of Vestavia Hills; and

WHEREAS, the Economic Development Director has recommended additional incentives to be added to the policy as detailed in “Exhibit A” which is attached and incorporated into this Resolution Number 4485 as though written fully therein; and

WHEREAS, said incentive policy requires validation through Jefferson County Probate Court following the approval of the execution and delivery of a Special Economic Development Agreement from certain businesses in the City in a cumulative amount not to exceed \$15 million; and

WHEREAS, the City Manager, Mayor and City Council have reviewed the attached information and feel it is in the best public interest to adopt the additional incentives up to said maximum of \$15 million.

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

1. Resolution Number 4425 is hereby amended so as to include the authorization of the City Manager and Mayor to take all actions necessary in order to validate additional incentives

for businesses in the City as detailed in the attached “Exhibit A” up to a cumulative maximum of \$15 million; and

2. The City Manager and Mayor are hereby authorized to execute any and all documentation necessary in order to validate said Incentive Package as required by Alabama Law; and
3. This Resolution Number 4485 shall become effective immediately upon adoption.

ADOPTED and APPROVED this the 26th day of August, 2013.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

Exhibit A

TEMPORARY SALES TAX REBATE PROGRAM

A portion of the City of Vestavia Hills' share of non-dedicated sales tax will be temporarily rebated to qualifying businesses located within the corporate boundaries of the City of Vestavia Hills, Alabama.

NOTE: The portion of the City's sales tax dedicated to Vestavia Schools and Capital Reserve are not included within the rebate program.

Only businesses that in whole, or in majority part, provide sales of goods and/or services subject to general sales tax will be eligible to participate in the program. In addition, each business must also meet the eligibility criteria for its corresponding category as outlined below.

New Business: New retail businesses that locate within the City of Vestavia Hills may apply for a sales tax rebate from the City. Such rebate will consist as follows:

Year	Rebate
1	50%
2	40%
3	30%
4	20%
5	10%

The rebate for new business shall not in any given year exceed \$150,000. For a business to participate in the program as a new business, the business must meet each of the following criteria:

- The business must generate a minimum of \$50,000 in annual taxable sales.
- The business must not have been established at any other location within the city limits of the City of Vestavia Hills prior to January 1, 2013.
- In order to qualify as a new business, the application must be filed with the City's Economic Development Director prior to the business receiving its initial license to do business within the City of Vestavia Hills, Alabama.

For Existing Businesses that are accepted into the program, the rebate for the five (5) years will be calculated using the baseline figure on the application from the previous 12-months sales tax remittance. If a business was closed for part of the 12-months or has been in business less than 12-months, then the base rate of the months available will be used.

Existing Business: Existing businesses currently located in the City of Vestavia Hills, Alabama, may also apply for a sales tax rebate from the City of Vestavia Hills. The rebate will apply only to the portion of taxable retail sales in excess of the business' preceding 12-month taxable sales. Such rebate will consist as follows:

Year	Rebate
1	50%
2	40%
3	30%
4	20%
5	10%

The rebate for an existing business shall not in any given year exceed \$150,000. In addition, to participate as an existing business, the business must meet at least **one** of the following criteria:

- The business must expand its interior floor space by at least 25% during the 12-month period following its application.
- The business must create at least 2 FTE jobs during the 12-month period following its application. To qualify through job creation, the job created must provide an average wage for a retail position in the City of Vestavia Hills (to be determined by the City’s Economic Development Director at time of application).
- The business must make an investment of at least \$5,000 in streetscape or façade improvements during the 12-month period following its application.

APPLICATION PROCESS OVERVIEW

Application packets can be downloaded from the City of Vestavia Hills’ website, or can also be picked up in person at the Economic Development Office in the Vestavia Hills City Hall, 513 Montgomery Highway, Vestavia Hills, Alabama.

Instructions:

1. Complete and sign application.
2. Attach the following to the application:
 - a. A copy of business license from the City of Vestavia Hills showing the address of the business and certifying that business is located within the City of Vestavia Hills, Alabama.
 - b. A copy of the Alabama Sales Tax Permit.
 - c. If existing or relocating business, previous 12-months sales tax reports.
3. Contact the Economic Development Director at City Hall to schedule an application review appointment.
4. Application submitted to City Council for acceptance into the program. First year of the program begins on the first day of the month following acceptance into the program.
5. Rebate request forms with verifications attached must be received within 90 days of 12-month anniversary of acceptance into the program.
6. Rebate requests must be submitted to the City Council from the City Manager within 60 days of submission of completed and verified rebate request. Missing or incorrect information will delay the presentation to the City Council for the rebate.

EXAMPLE OF SALES TAX REBATE COMPUTATION

Annual Retail Sales		\$10,000,000
Prior Year Annual Retail Sales		\$0
Sales for Rebate Computation		\$10,000,000
SALES TAX:		
Total	9%	\$900,000
State of Alabama	4%	\$400,000
Jefferson County	2%	\$200,000
City of Vestavia Hills	3%	\$300,000

Schools	30% of 1/12 th	\$7,500
Capital Reserve	70% of 1/12 th	\$17,500
City (Eligible of Rebate)	11/12 th	\$275,000

<u>Year</u>	<u>Rebate %</u>	<u>Rebate \$</u>	<u>Retained \$</u>
1	50%	\$137,500	\$137,500
2	40%	\$110,000	\$165,000
3	30%	\$82,500	\$192,500
4	20%	\$55,000	\$220,000
5	10%	<u>\$27,500</u>	<u>\$247,500</u>
		\$412,500	\$962,500

RESOLUTION NUMBER 4425

A RESOLUTION AMENDING RESOLUTION NUMBER 4232 FOR ADDITIONAL INCENTIVES FOR THE CITY OF VESTAVIA HILLS

WHEREAS, on September 12, 2011, the City Council of the City of Vestavia Hills adopted and approved Resolution Number 4232 to establish an Economic Development Incentive Policy for the City of Vestavia Hills; and

WHEREAS, the Economic Development Director has recommended additional incentives to be added to the policy as detailed in “Exhibit A” which is attached and incorporated into this Resolution Number 4425 as though written fully therein; and

WHEREAS, the City Manager, Mayor and City Council have reviewed the attached information and feel it is in the best public interest to adopt the additional incentives.

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

1. Resolution Number 4232 is hereby amended so as to include additional incentives as detailed in the attached “Exhibit A”; and
2. The City Manager is hereby authorized to execute any and all documentation necessary in order to validate said Incentive Package as required by Alabama Law; and
3. This Resolution Number 4425 shall become effective immediately upon adoption.

ADOPTED and APPROVED this the 11th day of March, 2013.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

TEMPORARY SALES TAX REBATE PROGRAM

“Exhibit A”

A portion of the City of Vestavia Hills’ share of non-dedicated sales tax will be temporarily rebated to qualifying businesses located within the corporate boundaries of the City of Vestavia Hills, Alabama.

NOTE: The portion of the City’s sales tax dedicated to Vestavia Schools and Capital Reserve are not included within the rebate program.

Only businesses that in whole, or in majority part, provide sales of goods and/or services subject to general sales tax will be eligible to participate in the program. In addition, each business must also meet the eligibility criteria for its corresponding category as outlined below.

New Business: New retail businesses that locate within the US-31 Corridor Redevelopment district may apply for a sales tax rebate from the City of Vestavia Hills. Such rebate will consist as follows:

Year	Rebate
1	50%
2	40%
3	30%
4	20%
5	10%

The rebate for new business shall not in any given year exceed \$150,000. For a business to participate in the program as a new business, the business must meet each of the following criteria:

- The business must generate a minimum of \$50,000 in annual taxable sales.
- The business must not have been established at any other location within the city limits of the City of Vestavia Hills prior to January 1, 2013.

For Existing Businesses that are accepted into the program, the rebate for the five (5) years will be calculated using the baseline figure on the application from the previous 12-months sales tax remittance. If a business was closed for part of the 12-months or has been in business less than 12-months, then the base rate of the months available will be used.

Existing US-31 Corridor Business: Existing businesses currently located in the City of Vestavia Hills, Alabama, may also apply for a sales tax rebate from the City of Vestavia Hills. The rebate will apply only to the portion of taxable retail sales in excess of the business’ preceding 12-month taxable sales. Such rebate will consist as follows:

Year	Rebate
1	50%
2	40%
3	30%
4	20%
5	10%

The rebate for an existing business shall not in any given year exceed \$150,000. In addition, to participate as an existing business, the business must meet at least **one** of the following criteria:

- The business must expand its interior floor space by at least 25% during the 12-month period following its application.
- The business must create at least 2 FTE jobs during the 12-month period following its application. To qualify through job creation, the job created must provide an average wage for a retail position in the City of Vestavia Hills (to be determined by the City’s Economic Development Director at time of application).
- The business must make an investment of at least \$5,000 in interior renovations, streetscaping or façade improvements during the 12-month period following its application.

APPLICATION PROCESS OVERVIEW

Application packets can be downloaded from the City of Vestavia Hills’ website, or can also be picked up in person at the Economic Development Office in the Vestavia Hills City Hall, 513 Montgomery Highway, Vestavia Hills, Alabama.

Instructions:

1. Complete and sign application.
2. Attach the following to the application:
 - a. A copy of business license from the City of Vestavia Hills showing the address of the business and certifying that business is located within the City of Vestavia Hills, Alabama.
 - b. A copy of the Alabama Sales Tax Permit.
 - c. If existing or relocating business, previous 12-months sales tax reports.
3. Contact the Economic Development Director at City Hall to schedule an application review appointment.
4. Application submitted to City Council for acceptance into the program. First year of the program begins on the first day of the month following acceptance into the program.
5. Rebate request forms with verifications attached must be received within 90 days of 12-month anniversary of acceptance into the program.
6. Rebate requests must be submitted to the City Council from the City Manager within 60 days of submission of completed and verified rebate request. Missing or incorrect information will delay the presentation to the City Council for the rebate.

EXAMPLE OF SALES TAX REBATE COMPUTATION

Annual Retail Sales	\$10,000,000		
Prior Year Annual Retail Sales	\$0		
Sales for Rebate Computation	\$10,000,000		
SALES TAX:			
Total	9%	\$900,000	
State of Alabama	4%	\$400,000	
Jefferson County	2%	\$200,000	
City of Vestavia Hills	3%	\$300,000	
Schools	30% of 1/12 th		\$7,500

Capital Reserve	70% of 1/12 th	\$17,500
City (Eligible of Rebate)	11/12 th	\$275,000

<u>Year</u>	<u>Rebate %</u>	<u>Rebate \$</u>	<u>Retained \$</u>
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5	10%	<u>\$27,500</u>	<u>\$247,500</u>
		\$412,500	\$962,500

Previous Resolution

RESOLUTION NO. 4486

A RESOLUTION AUTHORIZING A SPECIAL ECONOMIC DEVELOPMENT
AGREEMENT
BY THE CITY OF VESTAVIA HILLS, ALABAMA
AND
HOLLYWOOD IMPORTS, INC.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA (THE "COUNCIL"), AS GOVERNING BODY OF THE CITY OF VESTAVIA HILLS, ALABAMA (the "Municipality"), as follows:

Section 1. The Council, upon evidence duly presented to and considered by it, has found and determined, and does hereby find, determine and declare as follows:

(a) Pursuant to the applicable laws of the State of Alabama, the Municipality and Hollywood Imports, Inc. (the "Owner") have prepared that certain Special Economic Development Agreement to be dated the date of delivery (the "Special Economic Development Agreement"), as set forth hereinafter, for the purposes referenced therein.

(b) The Municipality is without absolute authority or power under any local constitutional amendment to do any of the actions or undertakings referenced in Amendment No. 772 of the Constitution of Alabama of 1901, as amended ("Amendment No. 772").

(c) The Municipality is authorized under Amendment No. 772 to become indebted, and to issue obligations as referenced therein, upon the full faith and credit of the Municipality, to a principal amount not exceeding 50% of the assessed value of taxable property therein, as determined for state taxation, in furtherance of the powers and authorities granted in Amendment No. 772.

(d) Pursuant to, and for the purposes of, Amendment No. 772, it is necessary, desirable and in the public interest for the Municipality to grant public funds for the economic development of the Municipality, and for such purposes to issue its Limited Obligation Economic Development Revenue Warrant in maximum principal amount of \$750,000 (the "Warrant"), pursuant to the terms of the Special Economic Development Agreement.

(e) The expenditure of public funds for the purposes specified in the Special Economic Development Agreement will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities.

(f) (1) On August 14, 2013, the Municipality caused to be published in *The Birmingham News*, which newspaper has the largest circulation in the Municipality, the notice required by Amendment No. 772(c)(2), a true and correct copy of which notice is set forth as follows:

**LEGAL NOTICE
OF
PUBLIC HEARING
OF
CITY COUNCIL OF VESTAVIA HILLS, ALABAMA**

Notice is hereby given that the City Council (the "Council") of the City of Vestavia Hills, Alabama (the "City") will meet in public session at 5:00 p.m. on August 26, 2013 at the Vestavia Hills Municipal Center in the City of Vestavia Hills, Alabama for the purpose of considering the transaction of business that may properly come before the Council, such business to include, but not be limited to, the authorization by the Council, pursuant to Amendment No. 772 of the Constitution of Alabama of 1901, as amended, of a resolution (the "Resolution") approving the execution and delivery of a Special Economic Development Agreement (the "City Agreement") by the City and Hollywood Imports, Inc., to be dated the date of delivery, pursuant to which City Agreement the City shall issue its \$750,000 maximum principal amount Limited Obligation Economic Development Revenue Warrant (the "City Warrant") to Hollywood Imports, Inc., for purposes referenced in the City Agreement.

The City Warrant shall evidence the agreement of the City to make economic development grants to Hollywood Imports, Inc. (based upon net sales tax proceeds received by the City from Hollywood Imports, Inc. in excess of a stated base amount, for a period of five years), for the purpose of promoting the economic development of the City and in consideration of the improvement and operation of commercial and related facilities in the City.

The City seeks to achieve, by undertaking its obligations pursuant to the City Agreement and the Resolution, to promote the local economic and industrial development of the City, to increase employment in the City, and to increase the tax and revenue base of the City.

The business entities to whom or for whose benefit the City propose to lend its credit or grant public funds or thing of value is Hollywood Imports, Inc.

All interested persons may examine and review the City Agreement, the Resolution, and all relevant documents pursuant to which the City Warrant is to be issued and secured, and make copies thereof at personal expense, at the offices of the City Manager during normal business hours, before and after the meeting referenced herein.

Further information concerning the information in this notice can be obtained from the City Clerk at the offices thereof during normal business hours.

(2) The information set forth in said notice is true and correct.

(3) Publication of said notice is hereby ratified and confirmed.

(h) (1) The assessed valuation of the taxable property in the Municipality for the preceding fiscal year (ending September 30, 2012 and on the basis of which taxes became due and payable on October 1, 2012) was not less than \$622,104,176.

(2) The total indebtedness of the Municipality chargeable against the debt limitation for the Municipality prescribed by Section 225 of the Constitution of Alabama of 1901, as amended, (which indebtedness does not include the Warrant issued under Amendment No. 772), is not more than twenty percent of said assessed valuation.

(3) The total indebtedness of the Municipality chargeable against the debt limitation for the Municipality prescribed by Amendment No. 772(a)(4) (which indebtedness does include the Warrant), is not more than fifty percent of said assessed valuation.

Section 2. The Council does hereby approve, adopt, authorize, direct, ratify and confirm:

(a) the agreements, covenants, and undertakings of the Municipality set forth in the Special Economic Development Agreement, and

(b) the terms and provisions of the Special Economic Development Agreement, in substantially the form and of substantially the content as set forth as follows, with such changes thereto (by addition or deletion) as the President shall approve, which approval shall be conclusively evidenced by execution and delivery of the Special Economic Development Agreement as hereinafter provided:

Section 3.

(a) The Mayor and the City Manager are each hereby authorized and directed to execute and deliver the Special Economic Development Agreement and the Warrant for and on behalf of and in the name of the Municipality. The City Clerk is hereby authorized and directed to affix the official seal of the Municipality to the Special Economic Development Agreement and the Warrant and to attest the same.

(b) The Mayor, the City Manager, and the officers of the Municipality are each hereby authorized and directed to take all such actions, and execute, deliver and perform all such agreements, documents, instruments, notices, and petitions and proceedings, with respect to the Special Economic Development Agreement and the Warrant, as the Mayor and such officers shall determine to be necessary or desirable to carry out the provisions of this resolution or the Special Economic Development Agreement or duly and punctually observe and perform all agreements and obligations of the Municipality under the Special Economic Development Agreement.

Section 4. The Municipality desires, before the issuance of the Warrant referenced in the Special Economic Development Agreement, to validate the legality of all proceedings had or taken in connection therewith, the validity of the means provided for the payment of the Warrant, and the validity of all covenants and provisions contained in this resolution and the Special Economic Development Agreement and the Warrant, by filing a petition against the taxpayers and citizens of the Municipality in the Circuit Court of Jefferson County, Alabama. A complaint to validate such Warrant, proceedings, and covenants shall be filed and validation proceedings shall be instituted in the name of the Municipality and the members of the governing body of the Municipality. Maynard, Cooper & Gale, P.C., Birmingham, Alabama, and Patrick H. Boone, Esq., are hereby designated and appointed as the attorneys of the Municipality to file such complaint, institute such proceedings, and to take all steps necessary to complete such validation proceedings in accordance with the provisions of Article 17 of Chapter 6 of Title 6 of the CODE OF ALABAMA 1975. Any actions heretofore taken by such attorneys in connection with the filing of such petition or such validation proceedings are hereby ratified and confirmed.

Section 5. All prior actions taken, and agreements, documents or notices executed and delivered, by the Mayor or any officer or member of the Council or other representative of the Municipality, in connection with the agreements, covenants, and undertakings of the Municipality hereby approved, or in connection with the preparation of the Special Economic Development Agreement and the terms and provisions thereof, are hereby approved, ratified and confirmed.

Section 6. All ordinances, resolutions, orders, or parts of any thereof, of the Council in conflict, or inconsistent, with any provision of this resolution hereby are, to the extent of such conflict or inconsistency, repealed.

Section 7. This resolution shall take effect immediately.

After said resolution had been discussed and considered in full by the Council, it was moved by Councilmember _____ that said resolution 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 resolution, 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

SEAL

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 August 26, 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 ____ day of August, 2013.

Clerk of the City of Vestavia Hills,
Alabama

SEAL

**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 Vestavia Hills Municipal Center in the City of Vestavia Hills, Alabama, at 5:00 p.m. on August 26, 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:

SPECIAL ECONOMIC DEVELOPMENT AGREEMENT

Dated [Date of Delivery]

by

CITY OF VESTAVIA HILLS, ALABAMA

and

HOLLYWOOD IMPORTS, INC.

This Special Economic Development Agreement was prepared by Heyward C. Hosch of Maynard, Cooper & Gale, P.C., 1901 Sixth Avenue North, 2400 Regions/Harbert Plaza, Birmingham, Alabama 35203-2618.

SPECIAL ECONOMIC DEVELOPMENT AGREEMENT

This **SPECIAL ECONOMIC DEVELOPMENT AGREEMENT** is made and entered as of [Date of Delivery] by the **CITY OF VESTAVIA HILLS, ALABAMA**, an Alabama municipal corporation (the "Municipality"), and **HOLLYWOOD IMPORTS, INC.** (the "Owner").

Recitals

The Owner expects and intends to expand and increase the tax and revenue base of the Municipality by development of commercial enterprises within the corporate limits of the Municipality.

The Municipality has agreed to provide the Owner, as provided herein, the within referenced Annual Economic Development Payments.

Pursuant to the applicable laws of the State of Alabama, and for the purposes, referenced herein, the Municipality and the Owner have delivered this Agreement.

Agreement

NOW, THEREFORE, for and in consideration of the premises, and the mutual covenants and agreements herein contained, the Municipality and the Owner hereby covenant and agree as follows:

ARTICLE 1

DEFINITIONS

For purposes of this Agreement the following terms shall have the following meanings:

Annual Economic Development Payments shall mean an amount equal to the lesser of:

- (a) the amount of \$150,000; or
- (b) the amount by which the applicable percentage of the Municipality Net Sales Tax Proceeds actually received by the Municipality from the Owner during the annual period for which such Annual Economic Development Payment is determined exceeds \$52,044, determined as follows for each annual applicable period set forth below:

Applicable Percentage of Municipality Net Sales Tax Proceeds	<u>Applicable Annual Period</u>
50%	Date of Delivery to _____ 1, 2014
40%	_____ 1, 2014 to _____ 1, 2015
30%	_____ 1, 2015 to _____ 1, 2016
20%	_____ 1, 2016 to _____ 1, 2017
10%	_____ 1, 2017 to _____ 1, 2018

Annual Payment Date shall mean that date established by the Municipality for payment of the Annual Economic Development Payment in each year, which shall be within 45 days after the receipt by the Municipality of the certificate therefor from the Owner pursuant to Section 4.03(a).

Date of Delivery shall mean [Date of Delivery].

Date of Termination shall mean that date on which the Municipality shall have no obligation to make any payment of Annual Economic Development Payments under this Agreement or the Warrant in accordance with Section 4.02(4).

Date of Validation shall mean that date on which a judgment entered by the Circuit Court of Jefferson County, Alabama validating and confirming the Warrant shall have become forever conclusive in accordance with, and as provided in, Section 6-6-755 of the Code of Alabama 1975.

Enabling Law shall mean Amendment No. 772 of the Constitution of Alabama of 1901, as amended, as at any time amended or supplemented, or any successor provision of law.

Municipality Sales Tax shall mean collectively the privilege license and excise taxes levied by the Municipality (commonly called sales and use taxes) which consist of (i) a privilege or license (commonly called sales) tax on persons engaged in the business of selling at retail any tangible personal property within the Municipality (subject to exemption of certain property as provided by law) or in the business of conducting places of amusement or entertainment within the Municipality, generally measured by the gross sales or receipts of such businesses and (ii) an excise (commonly

called a use) tax on the storage, use or other consumption of tangible personal property (subject to exemptions of certain property as provided by law) within the Municipality, generally measured by the sales price of such property.

Municipality Net Sales Tax Proceeds for any year shall (a) mean and include all proceeds and receipts of the Municipality Sales Tax less and except proceeds of the Municipality Sales Tax dedicated for public school purposes and capital reserves, and (b) not include any proceeds or receipts received by the Municipality (i) from the levy by the Municipality of privilege license or excise taxes not described in the definition of Municipality Sales Tax or (ii) from the levy of privilege license or excise taxes of any kind, type or nature by taxing authorities other than the Municipality or (iii) from any increase in the Municipality Sales Tax enacted after the Date of Delivery.

Owner shall mean Hollywood Imports, Inc., and the successors and assigns thereof.

Total Municipality Tax Commitment shall mean the amount of Seven Hundred Fifty Thousand Dollars (\$750,000).

Warrant shall have the meaning set forth in Section 4.04.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES

SECTION 2.01 The Municipality.

The Municipality hereby represents as follows:

(1) The Municipality has corporate power and authority to enter into this Agreement, pursuant to the Enabling Law and to carry out its obligations hereunder and by proper corporate action the Municipality has duly authorized the execution, delivery and performance of this Agreement.

(2) The Warrant shall be issued, sold and delivered upon condition, and purchased by the Owner thereof in the reliance, that this Agreement is enforceable against the Municipality in accordance with the terms hereof.

(3) The issuance of the Warrant and the application of the proceeds thereof for the purposes set forth in this Agreement (i) will result in direct financial benefits to the Municipality and (ii) will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities.

(4) The Municipality represents and certifies that the indebtedness of the Municipality incurred pursuant to the Enabling Law is less than 50 percent of the assessed value of the taxable property in the Municipality as determined for state taxation for the fiscal year immediately preceding the Date of Delivery.

SECTION 2.02 The Owner.

The Owner hereby represents and warrants as follows:

- (1) The Owner is duly organized and validly existing as a corporation under the laws of the State of Alabama and has duly authorized the execution, delivery and performance of this Agreement.
- (2) The execution, delivery and performance of this Agreement by the Owner does not conflict with or result in a violation of any agreement, contract, instrument, order, writ, judgment or decree to which the Owner is a party or is subject.
- (3) No consent or approval by, or filing with, any governmental authority in the State of Alabama is required for the execution or delivery of this Agreement by the Owner or for the full effectiveness or enforceability thereof under the laws of the State of Alabama.
- (4) There is no action, suit, proceeding, inquiry or investigation pending before any court or governmental authority, or threatened in writing against or affecting the Owner, which involves the consummation of the transactions contemplated by, or the validity of, this Agreement.

ARTICLE 3

DURATION OF AGREEMENT

The obligations of the Municipality and the Owner hereunder shall arise on the Date of Validation and shall continue until the Date of Termination, except with respect to any specific agreement or covenant which by its terms expressly survives termination of this Agreement.

ARTICLE 4

AGREEMENTS AND OBLIGATIONS OF THE MUNICIPALITY

SECTION 4.01 Financing of Economic Development Purposes.

The Owner shall use the proceeds of the Annual Economic Development Payments solely for the purpose of development and operation of the business interests of the Owner within the Municipality.

SECTION 4.02 Nature, Amount and Duration of Obligation of Municipality.

The Municipality and the Owner agree:

- (1) Purpose. Pursuant to this Agreement, the Municipality has agreed to pay to the Owner of the Warrant in installments in arrears the Annual Economic Development Payments determined by the Municipality to be due and payable in accordance with the terms hereof.

(2) Limited Obligation. The obligation of the Municipality for the payment of the Warrant:

(a) is a limited obligation payable solely from the Annual Economic Development Payments;

(b) shall never constitute a general obligation, or a charge against the general credit or taxing powers, of the Municipality within the meaning of any constitutional provision or statutory limitation whatsoever;

(c) is subject to (i) all prior pledges of the Municipality Net Sales Tax Proceeds for the benefit of long term indebtedness of the Municipality and (ii) in accordance with Johnson v. Sheffield, 183 So. 265 (Ala. 1938), the law-imposed requirement that, if necessary, there must first be paid from all Municipality Net Sales Tax Proceeds (including without limitation the Annual Economic Development Payments) the legitimate and necessary governmental expenses of operating the Municipality; and

(d) shall commence after the Date of Validation.

(3) Maximum Amount. The maximum amount the Municipality shall pay under this Agreement and the Warrant shall be limited to and shall not exceed the Total Municipality Tax Commitment.

(4) Duration and Termination. Anything in this Agreement or in the Warrant to the contrary notwithstanding, the Municipality shall have no obligation to pay any amount of Annual Economic Development Payments under this Agreement or the Warrant:

(a) prior to the Date of Validation; or

(b) after the first to occur of (i) ____ 1, 2018 or (ii) that date on which the Municipality shall have paid as Annual Economic Development Payments an aggregate amount not less than the Total Municipality Tax Commitment or (iii) termination of this Agreement by the Municipality under Section 6.02(b).

SECTION 4.03 Determination and Payment of Annual Economic Development Payments.

(1) In order to receive an Annual Economic Development Payment, the Owner shall execute and deliver to the Municipality, on or after _____ 1 in each year in which this Agreement is in effect, a certificate in form and of content as attached as Exhibit B hereto.

(2) The Municipality shall, within 45 days of receipt of such certificate, determine as provided herein, and pay to the Owner, the amount, if any, of the Annual Economic Development Payment due hereunder for the period referenced in such certificate.

(3) The Municipality will permit any attorneys, accountants or other agents or representatives designated by the Owner to visit and inspect any of the accounting systems, books of account, and financial records and properties of the Municipality which pertain to the Municipality

Net Sales Tax Proceeds and the determination of Annual Economic Development Payments, all at reasonable business times and upon reasonable notice.

SECTION 4.04 The Warrant.

(1) The obligation of the Municipality to pay the Annual Economic Development Payments hereunder shall be evidenced by a limited obligation revenue warrant, payable solely from, and secured by a pledge of, the Annual Economic Development Payments, in form and of content as the form of warrant attached to this Agreement as Exhibit A (the "Warrant").

(2) The Warrant shall not bear interest, shall be issued in an aggregate principal amount not exceeding the Total Municipality Tax Commitment, shall be dated the date of delivery, and shall mature on the Date of Termination.

(3) The Warrant shall be duly executed, sealed, and attested by the Municipality, and shall be registered by the Municipality as a conditional claim against the Annual Economic Development Payments.

(4) The Warrant shall be registered and transferred as provided therein.

SECTION 4.05 Agreements of the Municipality.

(1) All proceedings of the governing body of the Municipality heretofore had and taken, and all ordinances and resolutions adopted pursuant thereto with respect to the levy and collection of the Municipality Sales Tax, are hereby ratified and confirmed in all respects from and after the effective date thereof.

(2) The Municipality covenants and agrees the Municipality shall, as long as this Agreement and the Warrant shall be outstanding, continue to levy and to provide for the assessment and collection of the privilege license and excise taxes which provide the Municipality Net Sales Tax Proceeds at rates not less than those in effect on the date of this Agreement.

ARTICLE 5

OBLIGATIONS OF THE OWNER

(1) The Owner hereby agrees to duly and punctually observe and perform all agreements thereof under this Agreement.

(2) The Owner will pay all fees and expenses of the City, including counsel therefor, in connection with the execution and delivery of this Agreement and the issuance of the Warrant and the validation thereof.

(3) (a) The Owner agrees to defend, protect, indemnify, and hold harmless the Municipality, its agents, employees, and members of its governing body, from and against all claims or demands, including actions or proceedings brought thereon, and all costs, expenses, and liabilities of any kind relating thereto, including reasonable attorneys fees and cost of

suit, arising out of or resulting from any of the following, provided, however, that the foregoing indemnity will not extend to the negligent misconduct of the City, its agents, employees, and members of its governing body: (i) any construction activity performed by Owner, or anyone claiming by through, or under Owner; and (ii) any loss of life, personal injury, or damage to property arising from or in relation to the entry upon, construction, use, operation or occupancy of the Project, including, without limitation, tenants, customers and invitees of the Project and/or Owner.

(b) The agreements and covenants in this Article 5 shall survive the termination of this Agreement with respect to events or occurrences happening prior to or upon the termination of this Agreement and shall remain in full force and effect until commencement of an action with respect to any thereof shall be prohibited by law.

(4) The Owner shall make an investment of at least \$5,000 in interior renovations, streetscaping, or façade improvements with respect to the commercial business properties of the Owner within the Municipality during the period beginning on the Date of Delivery and ending on the first anniversary thereof.

ARTICLE 6

EVENTS OF DEFAULT AND REMEDIES

SECTION 6.01 Events of Default.

Any one or more of the following shall constitute an event of default by the Municipality or the Owner hereunder (an "Event of Default") under this Agreement:

(1) default in the performance, or breach, of any covenant or warranty of the Municipality in this Agreement, including without limitation default in the payment of any Annual Economic Development Payments under Section 4.03 hereof, and the continuance of such default or breach for a period of 30 days after there has been given, by registered or certified mail, to the Municipality by the Owner a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "notice of default" hereunder, provided that if such default is of a kind which cannot reasonably be cured within such thirty-day period, the Municipality shall have a reasonable period of time within which to cure such default, provided that it begins to cure the default promptly after its receipt of such written notice and proceeds in good faith, and with due diligence, to cure such default; or

(2) default in the performance, or breach, of any covenant or warranty of the Owner in this Agreement, and the continuance of such default or breach for a period of 30 days after there has been given, by registered or certified mail, to the Owner by the Municipality a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "notice of default" hereunder, provided that if such default is of a kind which cannot reasonably be cured within such thirty-day period, the Owner shall have a reasonable period of time within which to cure such default, provided that it begins to cure the default promptly after its receipt of such written notice and proceeds in good faith, and with due diligence, to cure such default.

SECTION 6.02 Remedies.

(1) Each party hereto may proceed to protect its rights and interests by suit in equity, action at law or other appropriate proceedings, whether for the specific performance of any covenant or agreement of any other party herein contained or in aid of the exercise of any power or remedy available at law or in equity.

(2) Anything in this Agreement to the contrary notwithstanding, the Municipality may terminate this Agreement upon the occurrence of an Event of Default under Section 6.02(b), whereupon the Municipality shall have no further obligation hereunder.

SECTION 6.03 Remedies Subject to Applicable Law.

All rights, remedies and powers provided by this Agreement may be exercised only to the extent the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that the same will not render this Agreement invalid or unenforceable.

ARTICLE 7

PROVISIONS OF GENERAL APPLICATION

SECTION 7.01 Enforceability.

The provisions of this Agreement shall be severable. In the event any provision hereof shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any of the remaining provisions hereof.

SECTION 7.02 Prior Agreements Cancelled.

This Agreement shall completely and fully supersede all other prior agreements, both written and oral, by the parties hereto relating to the matters contained herein. None of the parties hereto shall hereafter have any rights under any of such prior agreements but shall look to this Agreement for definition and determination of all of their respective rights, liabilities and responsibilities relating to the matters contained herein.

SECTION 7.03 Counterparts.

This Agreement may be executed in counterparts, each of which shall constitute but one and the same agreement.

SECTION 7.04 Binding Effect; Governing Law.

- (1) This Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective successors and assigns except as otherwise provided herein.
- (2) This Agreement shall be governed exclusively by the laws of the State of Alabama.

SECTION 7.05 Notices.

(1) All notices, demands, consents, certificates or other communications hereunder shall be in writing, shall be sufficiently given and shall be deemed given when delivered personally to the party or to an officer of the party to whom the same is directed, or mailed by registered or certified mail, postage prepaid, or sent by overnight courier, addressed as follows:

- | | |
|--|---|
| (a) if to the Municipality: | (b) if to the Owner: |
| City Hall
513 Montgomery Highway
Vestavia Hills, Alabama 35216 | _____

Vestavia Hills, Alabama 35216 |

(2) Any such notice or other document shall be deemed to be received as of the date delivered, if delivered personally, or as of three (3) days after the date deposited in the mail, if mailed, or the next business day, if sent by overnight courier.

SECTION 7.06 Delegation and Assignment of this Agreement by Owner.

- (1) The Owner shall have no authority or power to, and shall not, delegate to any Person the duty or obligation to observe or perform any agreement or obligation of the Owner hereunder.
- (2) The Owner shall not have any authority or power to, and shall not, without the prior written consent of the Municipality (which shall not be unreasonably withheld, delayed or conditioned), assign or pledge to any Person any right of the Owner hereunder or any interest of the Owner herein.

SECTION 7.07 Amendments

This Agreement may be amended or supplemented only by an instrument in writing duly authorized, executed and delivered by each party hereto.

IN WITNESS WHEREOF, the Municipality has caused this Agreement to be executed in its name, under seal, and the same attested, all by officers thereof duly authorized thereunto, and the Owner has executed this Agreement under seal, and the parties have caused this Agreement to be dated the date and year first above written.

CITY OF VESTAVIA HILLS, ALABAMA

SEAL

By _____
Mayor

ATTEST: _____
City Clerk

HOLLYWOOD IMPORTS, INC.

By: _____ (L.S.)

Its: _____

EXHIBIT A

Form of Warrant

THIS WARRANT HAS NOT BEEN REGISTERED (i) UNDER THE SECURITIES ACT OF 1933, AS AMENDED, IN RELIANCE UPON THE EXEMPTION PROVIDED BY SECTION 4(2) OF SAID ACT, OR (ii) UNDER ANY STATE SECURITIES LAW, IN RELIANCE UPON APPLICABLE EXEMPTIONS, AND MAY NOT BE TRANSFERRED WITHOUT REGISTRATION EXCEPT PURSUANT TO AN EXEMPTION THEREFROM.

THIS WARRANT DOES NOT BEAR INTEREST

UNITED STATES OF AMERICA
STATE OF ALABAMA

CITY OF VESTAVIA HILLS
LIMITED OBLIGATION ECONOMIC DEVELOPMENT REVENUE WARRANT
(HOLLYWOOD IMPORTS, INC.)

No. R-1

DATED DATE:

MATURITY DATE:

[Date of Delivery]

Date of Termination

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

HOLLYWOOD IMPORTS, INC.

or registered assigns (collectively the "Owner") in the principal amount of

_____ DOLLARS
(\$ _____)

and hereby orders and directs the Finance Director of the Issuer to pay to the Owner, solely from the Annual Economic Development Payments deposited in the Warrant Fund hereinafter designated, said principal amount, without interest, on each Annual Payment Date, until and including the Maturity Date specified above.

Authority for Issuance

This Warrant is issued pursuant to the authority of the Constitution and laws of the State of Alabama, including particularly and without limitation Amendment No. 772 of the Constitution of Alabama of 1901, as amended (collectively the "Enabling Law"), and that certain Special Economic Development Agreement dated the above Dated Date (the "Agreement") by the Issuer and Hollywood Imports, Inc..

Capitalized terms used hereinbefore and hereinafter without definition shall have the respective meanings assigned thereto in the Agreement.

Reference is made to the provisions of the Agreement, to and by which all of which provisions the Owner, by acceptance of this Warrant, assents and agrees to be bound.

Payment

Payment of this Warrant shall be made to or as directed by the Owner; provided the final payment of principal of this Warrant shall be made only upon presentation and surrender of this Warrant to the Issuer for cancellation.

Each payment of principal made on this Warrant shall be reflected by the notations made by the Issuer on its internal records (which may be kept by computer or by other means determined by the Issuer) and the Issuer is hereby authorized so to record thereon all such payments. All payments of principal on this Warrant and the aggregate unpaid principal amount of this Warrant reflected on the internal records of the Issuer (whether by computer or otherwise) shall be rebuttably presumptive evidence of the principal amount of this Warrant outstanding and unpaid.

All payments of principal of this Warrant by the Issuer shall be made at par in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts, and shall be valid and effectual to satisfy and discharge the liability of the Issuer upon this Warrant to the extent of the amounts so paid.

The person in whose name this Warrant is registered shall be deemed and regarded as the absolute owner hereof for all purposes and payment of the principal of this Warrant shall be made only to or upon the order of the Owner hereof or his legal representative, and neither the Issuer nor any agent of the Issuer shall be affected by any notice to the contrary.

Security

This Warrant is a limited obligation of the Issuer payable solely from the Annual Economic Development Payments as provided in the Agreement.

The Annual Economic Development Payments are hereby pledged to the payment, and for the benefit, of this Warrant, subject to (i) all prior pledges of the Municipality Net Sales Tax Proceeds for the benefit of long term indebtedness of the Municipality and (ii) in accordance with Johnson v. Sheffield, 183 So. 265 (Ala. 1938), the law-imposed requirement that, if necessary, there must first be paid from all Municipality Net Sales Tax Proceeds (including without limitation the Annual Economic Development Payments) the legitimate and necessary governmental expenses of operating the Municipality.

This Warrant shall never constitute a charge against the general credit or taxing powers of the Issuer within the meaning of any constitutional provision or statutory limitation whatsoever.

The Issuer has established a special fund designated "Warrant Fund" (the "Warrant Fund") for the payment of this Warrant and has obligated itself to pay or cause to be paid into the Warrant Fund, solely from the Annual Economic Development Payments, sums sufficient to provide for the payment of this Warrant.

Prepayment and Redemption

The Issuer may, on any date, pay in advance the entire unpaid principal amount of this Warrant or any lesser portion or portions thereof by paying to the Owner the principal amount to be prepaid without premium or penalty.

Registration and Transfer

This Warrant is registered in the name of the Owner on the book of registration maintained for that purpose by the Issuer. This Warrant may be transferred only upon surrender hereof to the Issuer for the transfer, together with the written request of the Owner or his legal representative addressed to the Issuer, and recordation of such transfer on said book of registration and endorsement hereon by the Issuer, and in compliance with Section 7.06 of the Agreement. Upon presentation to the Issuer for transfer, this Warrant must be accompanied by a written instrument or instruments of transfer satisfactory to the Issuer, in form of the Assignment attached hereto, duly executed by the Owner or his attorney duly authorized in writing, and the Issuer shall endorse on the schedule attached hereto for such purpose the principal amount of this Warrant unpaid. The Owner shall pay all expenses of the Issuer in connection with such transfer and any tax or other governmental charge required to be paid with respect thereto.

General

No covenant or agreement contained in this Warrant or in the Agreement shall be deemed to be a covenant or agreement of any officer, agent, employee, or member of the governing body of the Issuer in the individual capacity thereof 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.

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 this Warrant represents a valid claim against the Warrant Fund, 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 execution, registration and issuance of this Warrant, the adoption of the resolution approving the Agreement, and the execution and delivery of the Agreement, 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 Issuer, are within every debt and other limit prescribed by the Constitution and laws of the State of Alabama.

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

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 conditional claim against the City of Vestavia Hills, in the State of Alabama, and the Warrant Fund referred to herein, and the Annual Economic Development Payments pledged to the payment hereof.

Finance Director of the City of Vestavia Hills,
Alabama

VALIDATION CERTIFICATE

Validated and confirmed by judgment of the Circuit Court of Jefferson County, State of Alabama entered on the ____ day of _____, 2013.

/s/

Clerk of Circuit Court of Jefferson County,
State of Alabama

REGISTRATION OF OWNERSHIP

This Warrant is recorded and registered on the warrant register of the City of Vestavia Hills in the name of the last owner named below. The principal of this Warrant shall be payable only to or upon the order of such registered owner.

<u>Date of Registration</u>	<u>In Whose Name Registered</u>	<u>Signature of Authorized Officer of Issuer</u>
<u>Dated Date</u> _____	<u>Hollywood Imports, Inc.</u> _____	_____ _____
_____	_____	_____
_____	_____	_____

**ENDORSEMENT BY ISSUER OF UNPAID
PRINCIPAL ON DATE OF TRANSFER**

<u>Date of Transfer</u>	<u>Principal Unpaid</u>	<u>Signature of Authorized Officer of Issuer</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Assignment

For value received, _____ hereby sell(s), assign(s) and transfer(s) unto _____ this warrant and hereby irrevocably constitute(s) and appoint(s) _____ attorney to transfer this warrant on the books of the within named Issuer with full power of substitution in the premises.

Dated: _____

NOTE: The name signed to this assignment must correspond with the name of the payee written on the face of the within warrant in all respects, without alteration, enlargement or change whatsoever.

Signature Guaranteed:

(Bank or Trust Company)

By _____
(Authorized Officer)

EXHIBIT B

Request for Payment of Annual Economic Development Payments

Request for Payment of Annual Economic Development Payments

From: Hollywood Imports, Inc.

To: City of Vestavia Hills, Alabama

Date: _____, 20__

Re: **Special Economic Development Agreement dated [Date of Delivery] by City of Vestavia Hills, Alabama (the "Municipality") and Hollywood Imports, Inc. (the "Owner").**

The undersigned, as Owner under the above Agreement, hereby requests payment to the Owner by the Municipality of the Annual Economic Development Payment, to be determined by the Municipality as provided in the Agreement, for the following period:

_____ 1, 20__ to _____ 1, 20__

and in connection therewith does hereby represent, warrant and certify to the Municipality as follows:

1. The total amount paid by the Owner to the Municipality pursuant to the levy of the Municipality Sales Tax for the above period is \$_____.

2. The Owner is in full compliance with the agreements and covenants thereof under the Agreement and no Event of Default, or any event which upon notice, or lapse of time, or both shall become an Event of Default, has occurred and is continuing.

3. The Agreement is in full force and effect.

4. The Owner is in full compliance with all applicable ordinances and regulations of the Municipality.

Capitalized terms used herein shall have the respective meanings assigned in the above Agreement.

In Witness Whereof, the undersigned Owner has caused this instrument to be executed in its name, under seal, by an officer thereof duly authorized thereunto.

as Owner

By _____

Its _____