

**Vestavia Hills
City Council Agenda
March 10, 2014
5:00 PM**

1. Call to Order
2. Roll Call
3. Invocation – K. Dennis Anderson, Vestavia Hills Baptist Church
4. Pledge of Allegiance
5. Announcements, Candidate and Guest Recognition
6. City Manager’s Report
7. Councilors’ Reports –
 - a. Board of Education Announcement – John Henley
8. Approval of Minutes – February 20, 2014 (Meeting with the Mayor) and February 24, 2014 (Regular Meeting)

Old Business

9. Ordinance Number 2482 – An Ordinance Granting A Conditional Use Approval For A Feline Veterinary Hospital (*public hearing*)

New Business

10. Resolution Number 4558 – A Resolution Amending Resolution Number 4425 - Sales Tax Incentive Program For The City Of Vestavia Hills
11. Resolution Number 4559 – A Resolution Authorizing A Special Economic Development Agreement By The City Of Vestavia Hills, Alabama And Winn-Dixie Montgomery, LLD
12. Resolution Number 4565 – A Resolution Declaring Certain Personal Property As Surplus And Directing The Sale/Disposal Of Said Property
13. Ordinance Number 2483 - Declaring Real Property Located At 513 Montgomery Highway As Surplus And Authorizing The Mayor And City Manager To Execute And Deliver An Agreement With CFA For Sale Of Said Property

New Business (Unanimous Consent Requested)

14. Resolution Number 4560 – A Resolution Declaring A Recent Snow Event As An Emergency And Authorizing The City Manager To Remit Towing Fees To Vestavia Tire Express For Towing Services During Said Event (*public hearing*)
15. Resolution Number 4561 – A Resolution Authorizing The City Manager To Execute And Deliver An Agreement With Walter Schoel Engineering Co., Inc. For CWSRF Funding In Fiscal Year 2014 For Little Shades Creek/Meadowlawn Project (*public hearing*)

First Reading (No Action Taken At This Meeting)

16. Resolution Number 4562 - A Resolution Requesting Funding For Brand Extension Initiatives For The City Of Vestavia Hills (*public hearing*)
17. Resolution Number 4563 – A Resolution Authorizing The City Manager To Purchase Field Signage For Fields At Sicard Hollow Athletic Complex (*public hearing*)
18. Resolution Number 4564 – A Resolution Authorizing The City Manager To Purchase A Monument Sign For Sicard Hollow Athletic Complex (*public hearing*)
19. Citizens Comments
20. Motion For Adjournment

CITY OF VESTAVIA HILLS
CITY COUNCIL
MEETING WITH THE MAYOR
MINUTES
FEBRUARY 20, 2014

The City Council of Vestavia Hills met in a regularly scheduled work session on this date at 4:30 PM following posting/publishing pursuant to Alabama law. The Mayor called the meeting to order and the acting City Clerk checked 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
Conrad Garrison, City Planner, Acting Clerk
Dan Rary, Police Chief
Jim St. John, Fire Chief
Tommy Hale, Battalion Chief
Melvin Turner, Finance Director
George Sawaya, Deputy Finance Director

The Mayor called the work session to order.

Chief St. John and Chief Hale discussed E-911 funding.

Mr. Downes gave an update on the following: Citizens survey, funding for Meadowlawn flooding buyout, gas tax funding, adjacent shopping centers, Northport possible relocation and towing charges for the most recent ice storm.

The Mayor gave an update on the legislation for issuance of tags in the City, Jefferson County Personnel Board bill, the demolition of the Motor Lodge and his research and discussion on urban hens in the City.

Mr. Ammons discussed a problem that has been occurring in carpool lines - drivers texting while attempting to maneuver the lines. The SRO's have been reporting that it is becoming a very real problem.

MOTION Motion to adjourn was by Mr. Pierce and second was by Mr. Sharp.
Meeting adjourned at 5:55 PM.

Alberto C. Zaragoza, Jr.
Mayor

Attested by:

Conrad Garrison
City Planner, Acting Clerk

CITY OF VESTAVIA HILLS

CITY COUNCIL

MINUTES

FEBRUARY 24, 2014

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
Patrick Boone, City Attorney
Rebecca Leavings, City Clerk
Melvin Turner, Finance Director
George Sawaya, Deputy Treasurer
Jim St. John, Fire Chief
Danny Rary, Police Chief
Tim Holcomb, Deputy Police Chief
Christopher Brady, City Engineer

Invocation was given by Joe Comer, Horizon Church.

ANNOUNCEMENTS, GUEST RECOGNITION

- Perryn Carroll introduced herself and declared that she is a candidate for Jefferson County Circuit Judge, Place 10.
- David Wheeler, 2532 Crossgate Place, introduced himself and declared that he is a candidate for State House District 47.
- Steve Ammons declared that he is a candidate for Jefferson County Tax Collector.

CITY MANAGER REPORT

- Mr. Downes stated that the City has been working with Winn Dixie in Cahaba Heights to begin a transformation and update of the store which will include approximately \$3.5 million of improvements. He stated that the City is taking

steps to partner in this upgrade in the form of incentives which will be presented at a later meeting.

- Northport has consented to due diligence for a new location for their proposed building at Patchwork Farms. This item is time sensitive and Mr. Downes stated that he is asking the Council to give unanimous consent to consideration of an agreement with Northport to assist in this due diligence. He introduced Doug Neil, Daniel Corporation, who is assisting the City as master developer for Patchwork and explained the tentative agreement.
- Bobby Horton will perform at the Library in the Forest on March 8. The event is expected to be very popular. Mr. Downes invited everyone to attend.

COUNCILOR REPORTS

- Mr. Henley stated that the Council will begin receiving applications on March 11, 2014 for an upcoming vacancy on the Vestavia Hills Board of Education. He stated that the deadline to submit this application is April 14 which will be followed by an interview and the new appointment will be announced on April 28. He invited interested individuals to prepare and file an application as soon as its open.
- Mr. Henley reminded everyone of the upcoming Special Municipal Election for renewal of a School Tax on March 11, 2014. Polling hours are 7 AM to 7 PM. Ms. Leavings indicated that voter cards were sent to all registered voters in the City.
- The Mayor announced that Unanimous Consent will be requested for Resolution Number 4557 tonight to authorize the City Manager to enter into an agreement with Northport Holdings as discussed by Mr. Downes.

FINANCE REPORTS

Melvin Turner, Finance Director, presented the financial reports for month ending January. He read and explained the balances.

APPROVAL OF MINUTES

The minutes of the February 10, 2014 (Regular Meeting) were presented for approval.

MOTION Motion to dispense with the reading of the minutes of the meeting of February 10, 2014 (Regular Meeting) and approve them as presented was by Mr. Pierce and second by Mr. Henley. Roll Call vote as follows:

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

OLD BUSINESS

RESOLUTION NUMBER 4553

Resolution Number 4553 - A Resolution Authorizing The City Manager To Enter Into An Agreement With Neel-Schaffer For Massey Road Improvement Designs (*public hearing*)

MOTION Motion to approve Resolution Number 4553 was by Mr. Ammons and second was by Mr. Pierce.

Mr. Downes stated that this Resolution authorizes the execution of an agreement with Neel-Schaffer for the design of needed improvements along Massey Road. The grant provides for an 80/20 funding match from the City.

Mr. Brady described the provisions of the agreement and the anticipated timeline for turnaround of the designs. Once completed, it will be sent to ALDOT for approvals.

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

Roll call vote, as follows:

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

RESOLUTION NUMBER 4554

Resolution Number 4554 - A Resolution Authorizing The Mayor And City Manager To Enter Into An Agreement With Ingenuity For Registration And Licensing Application (*public hearing*)

MOTION Motion to approve Resolution Number 4554 was by Mr. Henley and second was by Mr. Ammons.

Mr. Downes stated that this is an agreement with Ingenuity to obtain software for the issuance of vehicle tags. Ingenuity provides this same software to several area counties and since the legislation has now passed to allow the City to issue tags, this is needed to do the job. He described the terms of the agreement.

The Mayor stated that this issue has been studied in-depth and plans have been made to begin issuance of tags on April 1. He stated that Vestavia Hills offered to be the pilot City for the program.

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

Roll call vote as follows:

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

NEW BUSINESS

RESOLUTION NUMBER 4555

Resolution Number 4555 – A Resolution Declaring Certain Personal Property As Surplus And Directing The Sale/Disposal Of Said Property

MOTION Motion to approve Resolution Number 4555 was by Mr. Ammons and second was by Mr. Sharp.

Mr. Downes stated that this Resolution surpluses several police vehicles and some obsolete park equipment.

There being no further discussion, the Mayor called for the question. Roll call vote as follows:

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

RESOLUTION NUMBER 4556

Resolution Number 4556 – A Resolution Authorizing The Mayor And City Manager To Execute And Deliver Agreements With PRA Government Services, LLC D/B/A RDS For Revenue Enhancement Services

MOTION Motion to approve Resolution Number 4556 was by Mr. Pierce and second was by Mr. Henley.

Mr. Downes stated that this Resolution renews various agreements with PRA Government Services, d/b/a RDS to administer and collect the business license and sales tax discovery and collection.

There being no further discussion, the Mayor called for the question. Roll call vote as follows:

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

RESOLUTION NUMBER 4557

Resolution Number 4557 - A Resolution Authorizing The Mayor And City Manager To Execute And Deliver An Agreement With Northport Holding LLC For Possible Relocation Of A Construction Project (Public Hearing)

The Mayor opened the floor for unanimous consent for the immediate consideration and action of Resolution Number 4557.

MOTION Motion for unanimous consent for the immediate consideration and action of Resolution Number 4557 was made by Mr. Ammons. Second was by Mr. Pierce. Roll call vote as follows:

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

MOTION Motion to approve Resolution Number 4557 was by Mr. Ammons and second was by Mr. Henley.

Mr. Downes stated that this agreement allows for Northport Holdings LLC to begin due diligence to relocate their proposed rehabilitation center to another area of Patchwork. He explained the terms of the agreement and thanked Northport for their willingness to work with the City in efforts to finally develop the Patchwork area.

Doug Neil, Daniel Corporation, further explained the agreement and indicated it was a good move by all parties.

Mr. Boone stated that he has reviewed the agreement. The proposed funding is for a public purpose; and, in his opinion, everything meets the requirements of Alabama law.

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

Roll call vote as follows:

Mr. Pierce – yes	Mr. Henley – yes
Mr. Sharp – yes	Mr. Ammons – 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 on March 10, 2014 at 5 PM.

- Ordinance Number 2482 – An Ordinance Granting A Conditional Use Approval For A Feline Veterinary Hospital (*public hearing*)

CITIZENS COMMENTS

Mr. Sharp welcomed Pete Yonce, PRA/RDS to the meeting.

MOTION Motion to adjourn was by Mr. Pierce and second was by Mr. Henley.
Meeting adjourned at 5:45 PM.

Alberto C. Zaragoza, Jr.
Mayor

Attested by:

Rebecca Leavings
City Clerk

ORDINANCE NUMBER 2482

**AN ORDINANCE GRANTING A CONDITIONAL USE
APPROVAL FOR A FELINE VETERINARY HOSPITAL**

WHEREAS, on December 13, 2010 the City Council of the City of Vestavia Hills, Alabama approved and adopted Ordinance Number 2331 entitled the Vestavia Hills Zoning Code and establishing a conditional use approval for certain uses not permissible by right in zoning classifications; and

WHEREAS, on January 7, 2014 Dr. Jackie A. Holmes, DVM submitted an application for operation of a veterinary hospital limited to felines on the property located at 4221 Dolly Ridge Road currently zoned Vestavia Hills B-3; and

WHEREAS, Table 6 of the Vestavia Hills Zoning Code limits veterinary hospitals of any kind within a B-3 zoning district to be operated only with a Conditional Use Approval; and

WHEREAS, Dr. Holmes has indicated that her veterinary hospital is limited to felines only with no outdoor facilities or runs for any animal; and

WHEREAS, the Vestavia Hills Planning and Zoning Commission at its regular meeting of February 13, 2014 voted unanimously to recommend approval of Dr. Holmes' request for a veterinary hospital limited to feline care only be approved as requested; and

WHEREAS, a copy of said application dated August 7, 2013 is attached and hereby incorporated into this Ordinance Number 2482.

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

1. Conditional Use Approval is hereby approved for Dr. Jackie A. Holmes, DVM for a veterinary hospital limited to feline care only as described in the

above-referenced application for the property located at 4221 Dolly Ridge Road outlined as follows:

- (1) “Veterinary Hospital shall be limited to the care of felines only; no veterinary care shall be rendered to any other type of animal except in cases of extreme emergency;
 - (2) No outdoor facilities shall be constructed or maintained for animals including, but not limited to outdoor runs, play areas, etc;
 - (3) All animal waste shall be disposed of in accordance with the City’s Zoning Code;
 - (4) The activity carried on as veterinary hospital and shall be limited to the hours between 7:00 AM and 10:00 PM;
2. A City of Vestavia Hills Business License shall be issued upon application and payment by Dr. Holmes subject to the rules and regulations outlined in the Vestavia Hills Business License code and shall be renewed each year that the use is operated from the location at 4221 Dolly Ridge Road, Vestavia Hills, Alabama.
 3. At any time should Dr. Holmes vacate the premises located at 4221 Dolly Ridge Road, Vestavia Hills, Alabama, discontinue and/or relocate her veterinary hospital, this Conditional Use Approval shall continue in full force and effect with said restrictions to a new owner should the business be purchased or shall be nullified and said Ordinance Number 2482 shall be repealed should the business close.

ADOPTED and APPROVED this the 10th day of March, 2014.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

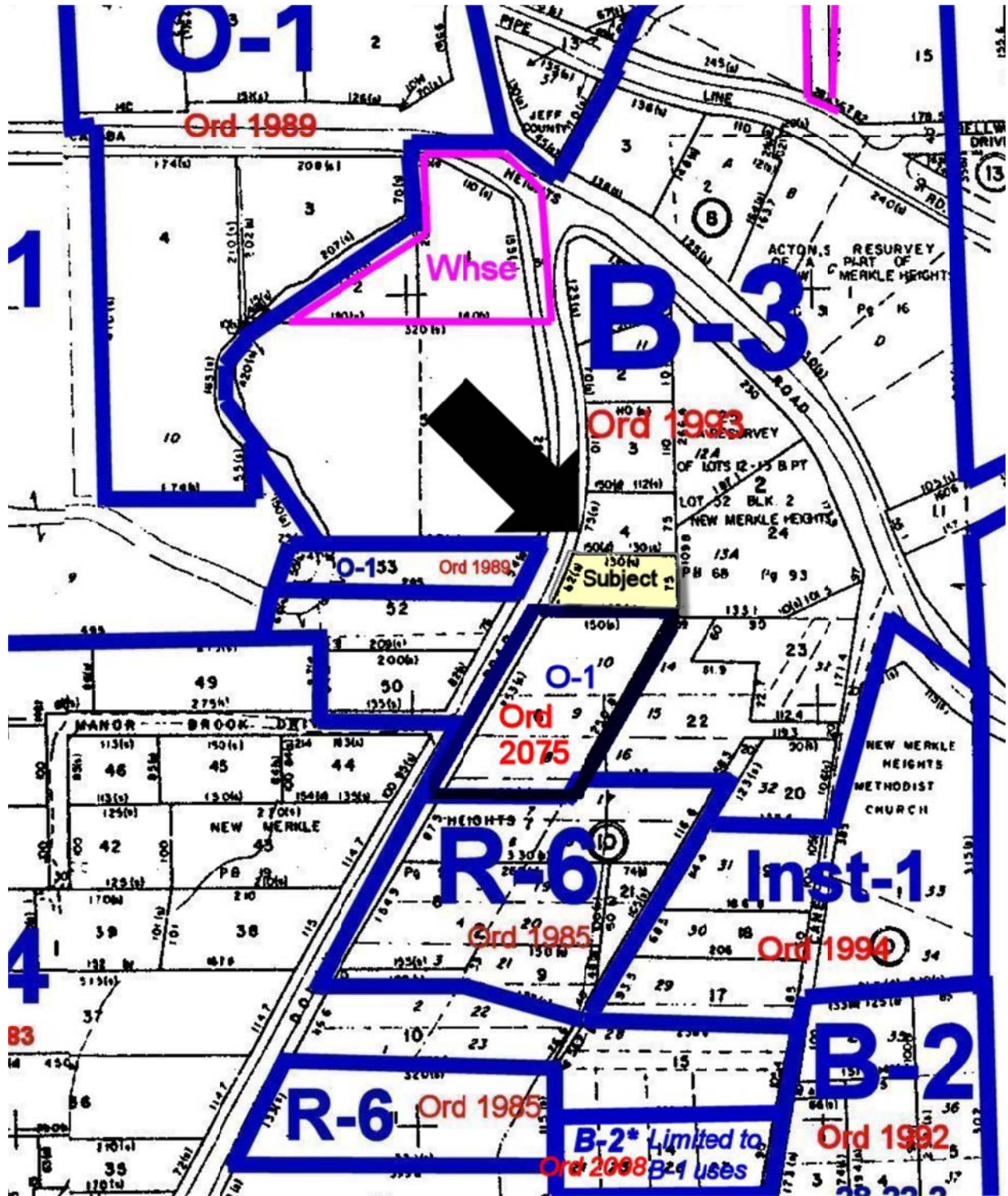
Rebecca Leavings
City Clerk

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 # 2482 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 10th day of March, 2014 as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills Library in the Forest, New Merkle House and Vestavia Hills Recreational Center this the _____ day of _____, 2014.

Rebecca Leavings
City Clerk



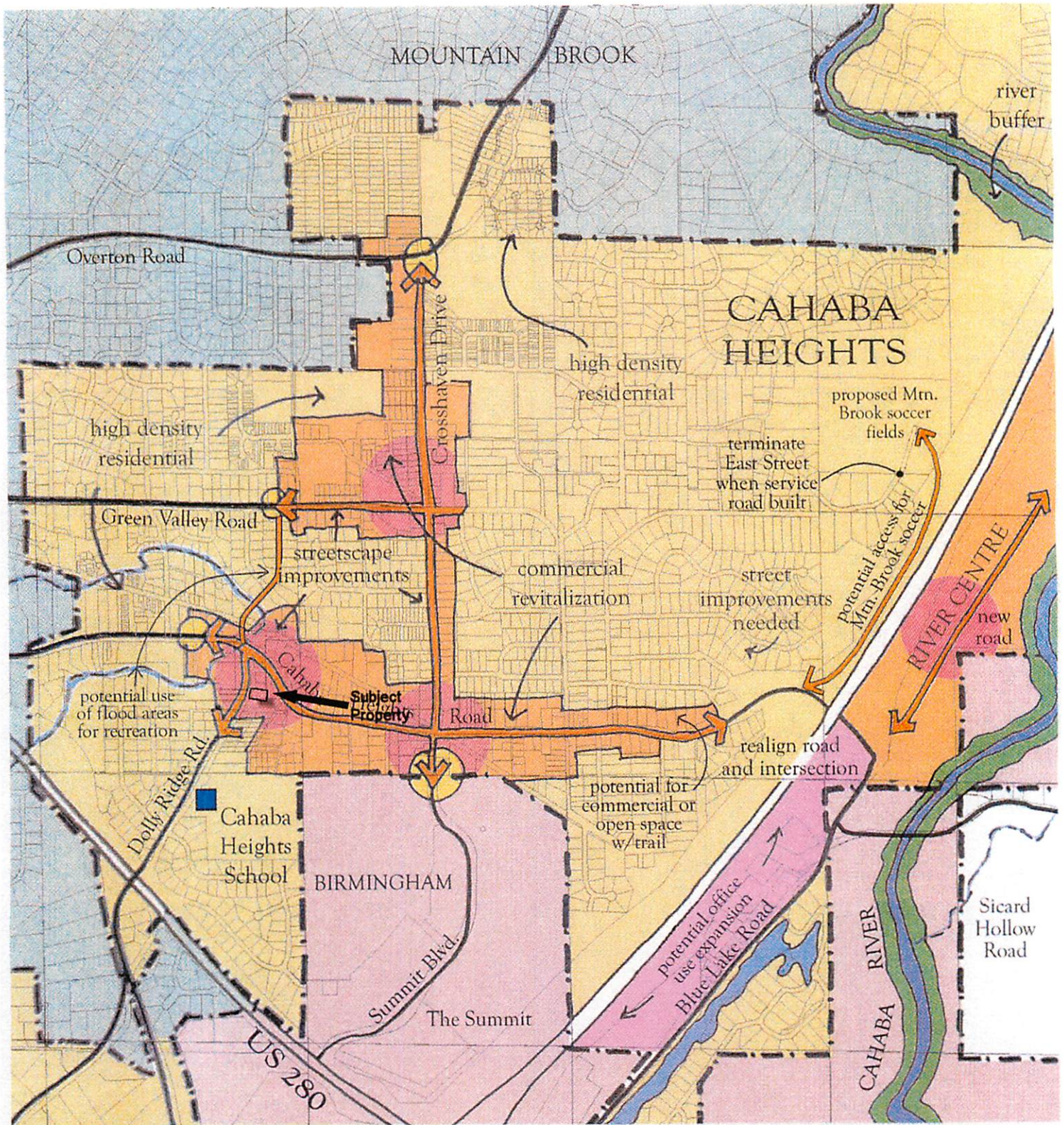
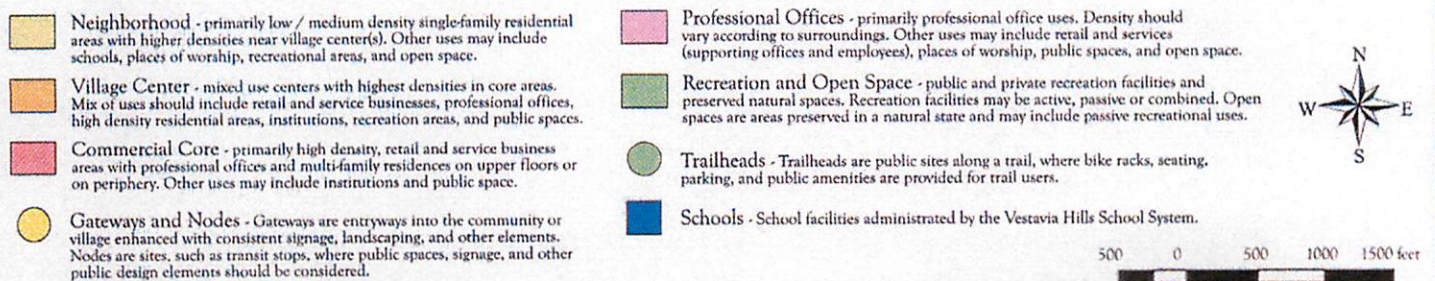









Figure 19: Cahaba Heights
Land Use Analysis



Future Land Use

- | | | |
|--|---|--|
|  Low-Density Residential |  Retail/Mixed Use |  Institutional |
|  Medium-Density Residential |  Limited Mixed Use |  Parks and Open Space |
|  High-Density Residential |  Planned Mixed Use | |
|  Birmingham |  Jefferson County |  Mountain Brook |

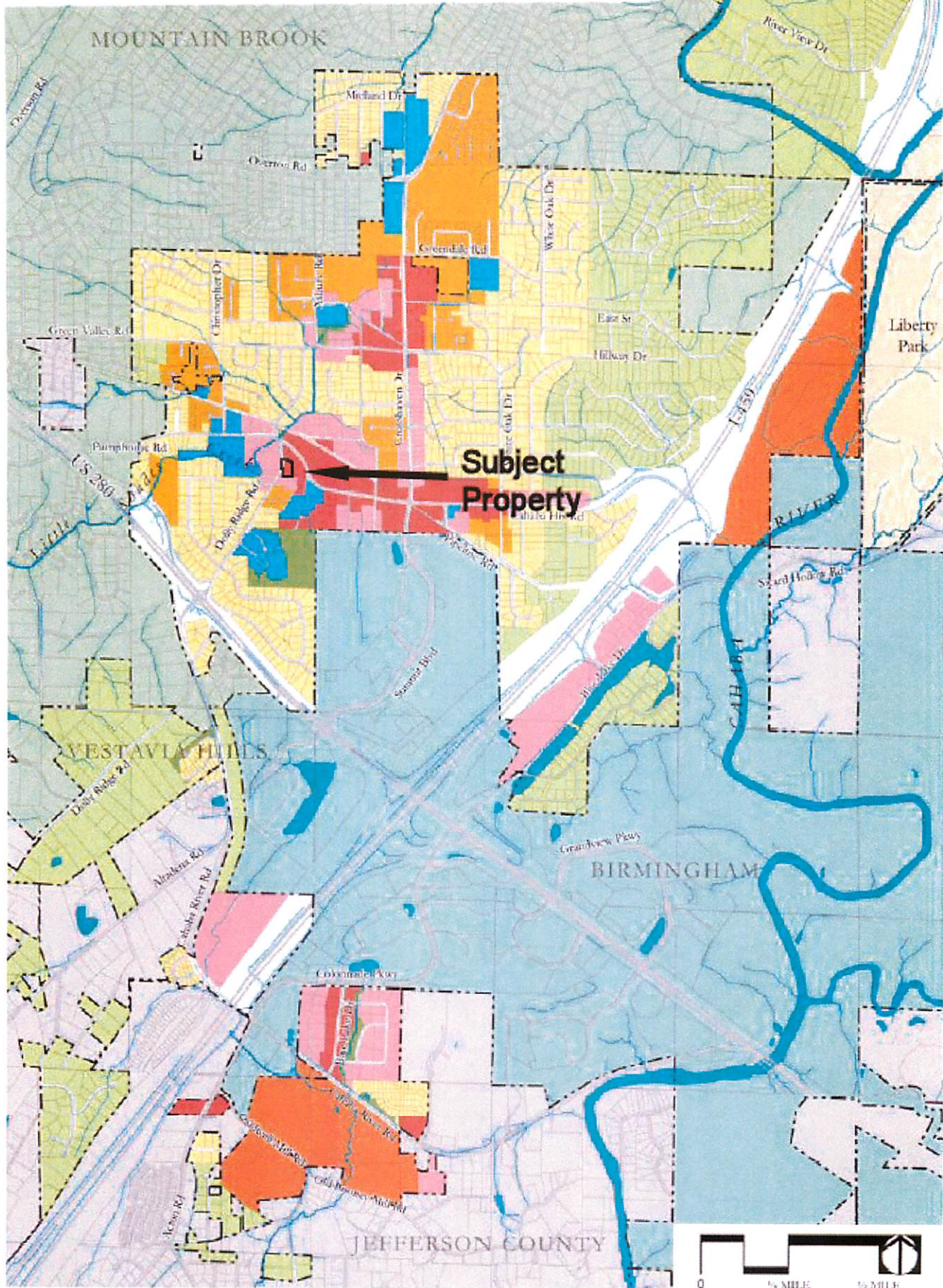


Figure 4: Future Land Use Map

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

Date: **FEBRUARY 13, 2014**

- **CASE:** P-0214-01
- **REQUESTED ACTION:** Conditional Use Approval for a feline only veterinary hospital
- **ADDRESS/LOCATION:** 4221 Dolly Ridge Rd.
- **APPLICANT/OWNER:** Cotton Properties of Alabama
1527 Roseland Dr.
Homewood, AL 35208
413-1962
- **REPRESENTING AGENT:** Dr. Jackie A. Holmes, DVM
- **GENERAL DISCUSSION:** The applicant wishes to build a two-story office building on 4221 Dolly Ridge Rd. The top floor of this commercial/office building would be home to a feline only veterinary hospital. The facility would employ three staff members as well as Dr. Holmes. The facility could potentially serve 21-24 cats. All services would be performed inside and there would be no outside run. The parcel is zoned Vestavia Hills B-3. All veterinary services require a conditional use permit. Currently, Dr. Holmes has her office outside of Liberty Park but is seeking to relocate her practice. The first floor of the building would be rented out for an office/retail use.
- **CAHABA HEIGHTS COMMUNITY PLAN:** This request is consistent with the 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: I recommend the Commission recommend approval.

2. **City Engineer Review:** I have reviewed the application and I have no issues with this request.
3. **City Fire Marshal Review:** I have reviewed the application and I have no issues with this request.
4. **Building Safety Review:** I have reviewed the application and I have no issues with this request.

MOTION: Motion to recommend approval of Conditional Use Application P-0214-01 for a feline veterinary clinic at 4221 Dolly Ridge Rd. was made by Mr. House. Second was made by Mr. Visintainer. Motion was carried on a roll call; vote as follows:

Mr. Goodwin – yes
Mr. Gilchrist – yes
Mr. Visintainer – yes
Motion carried.

Mr. Brooks – yes
Mr. House – yes
Mr. Larson – yes

CITY OF VESTAVIA HILLS

APPLICATION

PLANNING AND ZONING COMMISSION

I. INSTRUCTIONS AND INFORMATION:

- (1) The Vestavia Hills Planning and Zoning Commission meets regularly on the second Thursday of each month at 6:00 PM in Council Chambers at the Municipal Center.
- (2) All materials and information relating to a zoning/rezoning request or conditional use approval before the Planning and Zoning Commission must be submitted to the Office of the City Clerk no later than **25 working days prior to the scheduled meeting at which it shall be considered.** All information relating to Preliminary Map approvals must be submitted to the Office of the City Clerk no later than 20 days prior to the scheduled meeting at which is shall be considered. All information relating to Final Map approvals must be submitted to the Office of the City Clerk no later than 15 days prior to the scheduled meeting at which it is to be considered.
- (3) This application must be filled out in its entirety complete with zip codes.
- (4) All applicable fees shall accompany this application prior to its being considered complete. Fees include an application fee of \$100.00 along with applicable postage per property owner to be notified for Commission meeting. Fees may also include notification fees for City Council meeting and publication fees which will be billed to applicant at a later date. ***No permits will be issued until all fees have been paid.*
- (5) Appropriate plats and maps with proper legal description shall accompany this application. **Please refer to attached checklist.**

II. APPLICANT INFORMATION: (owner of property)

NAME: Cotton Properties of Alabama (Trey Goldstein)

ADDRESS: 4221 Dolly Ridge Road
Birmingham, AL 35243

MAILING ADDRESS (if different from above) 1527 ROSELAND DR
HOMEWOOD, AL 35209

PHONE NUMBER: Home _____ Office 413-1762

NAME OF REPRESENTING ATTORNEY OR OTHER AGENT: Jackie Holmes
7360 Kings Mountain Road Vestavia, AL 35242

cell # 205-602-3464

*Representing Agent will be responsible for paying postage

2014
2014
JAN - 16
VESTAVIA HILLS
CITY CLERKS OFFICE

4221 Dolly Ridge Rd.

Conditional Use for Feline Clinic

Cotton Properties of Alabama

B3

III. ACTION REQUESTED

Request that the above described property be approved conditional use approval pursuant to Section _____ of the Vestavia Hills Zoning Code.

Current Zoning of Property: B3

Requested Conditional use For the intended purpose of: Feline Only

Veterinary Hospital

(Example: From "VH R-1" to "VH O-1" for office building)

if additional information is needed, please attached full description of request

IV. PROPERTY DESCRIPTION: (address, legal, etc.)

4221 Dolly Ridge

Vestavia, AL 35243

Property size: ~150 feet X ~75 feet. Acres: ~.24 - .25

V. INFORMATION ATTACHED:

Attached Checklist complete with all required information.

Application fees submitted.

VI. I do hereby declare the above statements are true and that I, the owner, and/or my duly appointed representative will be at the scheduled hearing.

[Signature]

Owner Signature/Date

[Signature] 1-7-14

Representing Agent (if any)/date

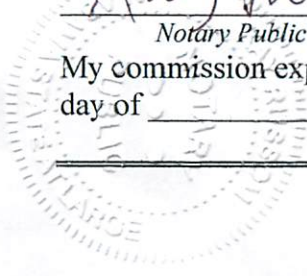
Given under my hand and seal this 7th day of January, 2014.

Kay Russon

Notary Public

My Commission Expires

My commission expires November 18, 2016 day of _____, 20____.



RESOLUTION NUMBER 4558

A RESOLUTION AMENDING RESOLUTION NUMBER 4425 FOR SALES TAX 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, on March 11, 2013, the City Council adopted and approved Resolution Number 4232 to amend Resolution Number 4425 to include additional incentives; and

WHEREAS, the City Manager has recommended amendments to the existing policy as written into the new policy detailed in “Exhibit A” which is attached and incorporated into this Resolution Number 4558 as though written fully therein; and

WHEREAS, the 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 4225 is hereby amended so as to include the incentive policy 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 4558 shall become effective immediately upon adoption.

ADOPTED and APPROVED this the 10th day of March, 2014.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

TEMPORARY SALES TAX REBATE PROGRAM

A portion of the City of Vestavia Hills' share of non-dedicated sales tax may be rebated, as provided herein, to qualifying businesses located within the corporate boundaries of the City of Vestavia Hills, Alabama provided the business demonstrates a financial need or gap that would otherwise preclude its entry into the City of Vestavia Hills or its ability to improve or expand its operating capacity as determined by review and approval of the Vestavia Hills City Council. ***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.

The rebate for new business **under this program** shall be in effect for a stated number of years determined by the City and shall not exceed a maximum amount of \$150,000 in any year. 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 Manager prior to the business receiving its initial license to do business within the City of Vestavia Hills, Alabama.
- Demonstrate a barrier to entry into the City of Vestavia Hills that is resolved as a result of the financial incentive provided through this program.

For Existing Businesses that are accepted into the program, a rebate will be calculated with consideration of a baseline figure calculated 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. The program is intended to base the rebate upon the growth in sales from the baseline figure in an attempt to remove any barrier to expanded operational capacity by the applying business.

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.

The rebate for an existing business **under this program** shall be in effect for a stated number of years determined by the City and shall not exceed a maximum amount of \$150,000 in any year. 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.
- The business must make an investment of at least \$50,000 in streetscape or façade improvements during the 12-month period following its application.

AND

- Demonstrate a barrier to expanded operational capacity that is resolved as a result of the financial incentive provided through this program.

General:

The following provisions apply to rebate agreements for both new and existing business:

1. The determination by the City to rebate any amount to a business under this program shall be set forth in a written agreement by the City and the business.
2. The amounts to be paid by the City to a business under this program and such agreement shall:
 - a. Be payable solely from that amount of sales tax proceeds actually received by the City from the business (after deduction from such proceeds of the portion dedicated to City schools and the capital reserve program) and shall not constitute a general claim against the City;
 - b. Be payable on stated dates in arrears, without interest, upon submission of a written payment request by the business as provided in the written agreement.
3. The written agreements for rebate are subject to approval under the constitution and laws of the State of Alabama.

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 City Manager's 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 City Manager 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.

EXAMPLE OF A POTENTIAL 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 for 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 NO. 4559

**A RESOLUTION AUTHORIZING A SPECIAL ECONOMIC DEVELOPMENT AGREEMENT
BY THE CITY OF VESTAVIA HILLS, ALABAMA
AND
WINN-DIXIE MONTGOMERY, LLC**

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 Winn-Dixie Montgomery, LLC (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 February 26, 2014, 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 March 10, 2014 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 Winn-Dixie Montgomery, LLC, 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 Winn-Dixie Montgomery, LLC, for purposes referenced in the City Agreement.

The City Warrant shall evidence the agreement of the City to make economic development grants to Winn-Dixie Montgomery, LLC (based upon net sales tax proceeds received by the City from Winn-Dixie Montgomery, LLC 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 Winn-Dixie Montgomery, LLC

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, 2013 and on the basis of which taxes became due and payable on October 1, 2013) was not less than \$630,314,820.

(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:

SPECIAL ECONOMIC DEVELOPMENT AGREEMENT

Dated Date of Delivery

by

CITY OF VESTAVIA HILLS, ALABAMA

and

WINN-DIXIE MONTGOMERY, LLC

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 January 1, 2014 by the **CITY OF VESTAVIA HILLS, ALABAMA**, an Alabama municipal corporation (the "Municipality"), and **WINN-DIXIE MONTGOMERY, LLC** (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 Payments is determined, exceeds \$313,795, determined as follows for each annual applicable period set forth below:

<u>Applicable Percentage of Municipality Net Sales Tax Proceeds</u>	<u>Applicable Annual Period</u>
50%	Date of Delivery to December 31, 2014
50%	January 1, 2015 to December 31, 2015
50%	January 1, 2016 to December 31, 2016
25%	January 1, 2017 to December 31, 2017
10%	January 1, 2018 to December 31, 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 4.02(a).

Date of Delivery shall mean _____, 2014.

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 4.01(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 Winn-Dixie Montgomery, LLC, 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 4.03.

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) (a) The Owner is duly organized and validly existing as a limited liability company under the laws of the State of Florida.
- (b) The Owner is duly registered to do business in the State of Alabama.
- (2) The Owner has duly authorized the execution, delivery and performance of this Agreement.
- (3) 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.
- (4) 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.
- (5) 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 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) December 31, 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(2).

SECTION 4.02 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 January 31 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, on the Annual Payment Date, 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 4.03 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 4.04 Agreements of the Municipality.

(1) All proceedings of the governing body of the Municipality heretofore had and taken, and all resolutions 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 shall make a new investment of not less than \$3,000,000 within twenty-four months of the Date of Delivery for the capital improvement of the commercial properties of the Owner within the Municipality, including, without limitation, architectural improvements, landscaping and hardscaping improvements, and structural improvements.

(3) 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.

(4) 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.

(5) (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.

(6) The Owner agrees that if the Owner fails to perform the obligations thereof under Article 5(2), (a) the Owner shall, upon written demand by and at the sole option of the City, repay to the City an amount equal to the total amount of Annual Economic Development payments the Owner, or any permitted assignee, shall have received from the City hereunder prior to the date of such demand by the City, and (b) the City may, at the sole option thereof, suspend, withhold, or terminate, in whole or in part, payment of the Annual Economic Development Payments to the Owner, or any permitted assignee, from and after the said date of such demand for repayment thereof by the City under Article 5(6)(a), until such date as the City shall determine the Owner is in compliance with Article 5(2), whereupon the City shall thereafter make Annual Economic Development Payments in accordance with the terms hereof; provided, however, the City shall have no liability or obligation to pay any Annual Economic Development Payments for the period in which such payments were suspended, withheld, or terminated under this Article 5(6)(b).

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 4.02 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 6.01(2), 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 | | 5050 Edgewood Court |
| | 513 Montgomery Highway | | Jacksonville, Florida 32254 |
| | 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.

SECTION 7.08 Agreement Not To Be a Negotiable Instrument; Registration of Agreement and Assignment or Pledge of this Agreement

(a) This Agreement (i) shall not operate or be construed as a negotiable instrument under the laws of the State of Alabama (including without limitation the Uniform Commercial Code as at any time in effect in Alabama) and (ii) may not be assigned, pledged, or transferred except in accordance with this Section.

(b) This Agreement shall be registered in the name of the Owner, or any permitted assignee, on the books of the City maintained for such purpose. The Owner, or any permitted assignee in whose name this Agreement shall be registered as provided herein, may, upon prior compliance with Section 7.06, assign or pledge any right hereunder or interest herein only upon (i) surrender of this Agreement to the City, (ii) recordation of such assignment or pledge on such books, and (iii) endorsement of such assignment or pledge by the City on the Registration of Ownership attached hereto. The Owner, or any such permitted assignee, shall pay all expenses of the City in connection with compliance with Section 7.06 and this Section.

(c) Each permitted assignee shall take this Agreement subject to all payments of Annual Economic Development Payments that shall have been made hereunder, and all amendments, modifications and supplements that shall have been made hereto, prior to the date of registration of this Agreement in the name of such permitted assignee.

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

By _____
Mayor

By _____
City Manager

SEAL

ATTEST: _____
City Clerk

WINN-DIXIE MONTGOMERY, LLC

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
(WINN-DIXIE MONTGOMERY, LLC)**

No. R-1

DATED DATE:

_____, 2014

MATURITY DATE:

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

WINN-DIXIE MONTGOMERY, LLC

or registered assigns (collectively the "Owner") in a principal amount not exceeding

**SEVEN HUNDRED FIFTY THOUSAND DOLLARS
(\$750,000)**

as determined pursuant to the within-referenced Agreement, 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 Winn-Dixie Montgomery, LLC.

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 as to principal and interest 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 written direction of the registered owner or his legal representative, addressed to the Municipality, presentation of this Warrant to the Municipality accompanied by a written instrument of transfer, satisfactory to the Municipality, duly executed by the registered owner or his attorney duly authorized in writing, and compliance with Section 7.06 of the Agreement. Upon presentation of this Warrant to the Municipality for transfer, the Municipality shall record such transfer on the said book of registration and execute and deliver, in exchange for this Warrant, a new warrant or warrants of like tenor hereof, registered in the name of the transferee in an aggregate principal amount equal to the unpaid or unredeemed portion of the principal of this Warrant. No charge shall be made for the privilege of transfer, but the registered owner of this Warrant requesting any such transfer shall pay 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 _____, 2014.

/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>Winn-Dixie Montgomery, LLC</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: Winn-Dixie Montgomery, LLC

To: City of Vestavia Hills, Alabama

Date: _____, 20__

Re: **Special Economic Development Agreement dated the Date of Delivery by City of Vestavia Hills, Alabama (the "Municipality") and Winn-Dixie Montgomery, LLC (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 resolutions 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.

Winn-Dixie Montgomery, LLC
as Owner

By _____

Its _____

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 resolution 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

Mayor Pro-Tem

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 March 10, 2014, the original of which is on file and of record in the minute book of the City Council in my custody; (4) the resolution set forth in such excerpts is a complete, verbatim and compared copy of such resolution as introduced and adopted by the City Council on such date; and (5) said resolution 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 _____, 2014.

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 March 10, 2014. 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:

* * *

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

* * *

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

RESOLUTION NUMBER 4565

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

WITNESSETH THESE RECITALS

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

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

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

1. The City Manager is hereby authorized to sell and/or dispose of the above-referenced surplus personal property; and
2. This Resolution Number 4565 shall become effective immediately upon adoption and approval.

DONE, ORDERED, APPROVED and ADOPTED on this the 10th day of March, 2014.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

**City of Vestavia Hills Public Services
513 Montgomery Highway
Vestavia Hills, AL 35216
205.978.0150**

Interoffice Memo

March 5, 2014

TO: Jeff Downes
City Manager

FROM: Brian C. Davis *bcd*
Public Services Director

RE: Surplus Vehicle Property

Our new truck has arrived and we would like to declare a 1995 Ford F250 vin# 1FTEF25N6TNA31717 as surplus property.

Once declared surplus it can be sold on govdeals.com.

Please let me know if you have any questions.

**City of Vestavia Hills Public Services
513 Montgomery Highway
Vestavia Hills, AL 35216
205.978.0150**

Interoffice Memo

March 5, 2014

TO: Jeff Downes
City Manager

FROM: Brian C. Davis *bcd*
Public Services Director

RE: Surplus Property

We have ordered and scheduled construction of 10 bleachers at Wald Park. The existing bleachers have reached their life end. I would like to declare the existing 10 bleachers surplus in order to remove them from service when the new ones are set in place.

Once declared surplus they can be sold as scrap metal or on govdeals.com.

Please let me know if you have any questions.

ORDINANCE NUMBER 2483

AN ORDINANCE DECLARINIG THE PROERTY LOCATED AT 513 MONTGOMERY HIGHWAY (VESTAVIA HILLS MUNICIPAL CENTER) AS SURPLUS AND AUTHORIZING AND DIRECTING THE SALE OF SAID REAL ESTATE.

THIS ORDINANCE NUMBER 2483 is approved and adopted by the City Council of the City of Vestavia Hills, Alabama on this the 10th day of March, 2014.

WITNESSETH THESE RECITALS:

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

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

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

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

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

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

WHEREAS, the City of Vestavia Hills, Alabama (“City”) is the owner of real property situated in the City of Vestavia Hills, Jefferson County, Alabama, which said

real estate shall hereinafter be referred to as the “subject property” and is more particularly described as follows:

See Exhibit A of Purchase Agreement marked as “Exhibit 1”; and

WHEREAS, Chick-Fil-A, Inc. (“CFA”), a Georgia corporation, has requested that the City declare said property as surplus and offer for sale to CFA; and

WHEREAS, the City finds and determines that it is willing to accept the offer by CFA for an amount equivalent to One Million, Five Hundred Thousand and No/100 Dollars (\$1,500,000) pursuant to the terms and conditions of a Purchase and Sale Agreement between the City of Vestavia Hills and Chick-Fil-A, Inc., a copy of which is marked as “Exhibit 1,” attached to and incorporated into this Ordinance Number 2448 as though written fully therein; and

WHEREAS, the Mayor and City Council of the City of Vestavia Hills, Alabama finds and determines that the subject property is not needed for municipal or public purposes.

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

1. The subject property is found and determined to not be needed for public or municipal purposes by the City of Vestavia Hills and is hereby declared as surplus property all in accordance with the requirements of Title 11-47-20, *Code of Alabama, 1975*.

2. The Mayor and City Manager are hereby authorized and directed to execute and deliver all documents required to close said sale for and on behalf of the City of Vestavia Hills, Alabama.

3. A copy of said real estate closing documents, along with said payment, will be submitted upon closing and kept on file in the office of the City Clerk of the City of Vestavia Hills, Alabama for inspection by members of the general public.

4. Upon approval, adoption and enactment of this Ordinance Number 2483 the Mayor and City Manager are hereby authorized and directed to take any and all legal action necessary to close the sale of the subject property all in accordance with the terms, provisions and conditions previously described.

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

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

DONE, ORDERED, APPROVED and ADOPTED this the 10th day of March, 2014.

CITY OF VESTAVIA HILLS, ALABAMA

By _____
Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2483 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 10th day of March, 2014 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 _____, 2014.

Rebecca Leavings
City Clerk

PURCHASE AND SALE AGREEMENT

by and between

CITY OF VESTAVIA HILLS, ALABAMA,

as Seller,

and

CHICK-FIL-A, INC.,

as Purchaser

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PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "**Agreement**") is made and entered into as of the ____ day of February, 2014 (the "**Effective Date**") by and between **CITY OF VESTAVIA HILLS, ALABAMA**, an Alabama municipal corporation ("**Seller**"), and **CHICK-FIL-A, INC.**, a Georgia corporation ("**Purchaser**").

A. Seller desires to sell and Purchaser desires to acquire the property described in this Agreement on the terms and conditions in this Agreement.

B. In consideration of the mutual covenants and agreements in this Agreement, and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are expressly acknowledged, Seller and Purchaser agree as follows:

1. Description of Property; Agreement to Buy and Sell. Subject to the terms and conditions in this Agreement, Purchaser agrees to buy and Seller agrees to sell the real property containing approximately 1.32 acres commonly known as 513 Montgomery Highway, in Vestavia Hills, Jefferson County, Alabama, as depicted on Exhibit "A" (the "**Land**"), together with any and all improvements, appurtenances, rights, privileges and easements benefiting, belonging or pertaining to the Land (collectively, the "**Property**").

2. Earnest Money and Title Company. Within five (5) business days after the Effective Date, Purchaser will deliver to Chicago Title Insurance Company, 5655 Glenridge Connector, Suite 300, Atlanta, Georgia 30319, Attn: Laura Kaltz (the "**Title Company**") the sum of Five Thousand and No/100 Dollars (\$5,000.00) (the "**Earnest Money**"). Seller, Purchaser and Title Company have executed the Earnest Money Escrow Agreement attached as Exhibit "C".

3. Purchase Price. The "**Purchase Price**" of the Property is ONE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,500,000.00) and is subject to adjustments and prorations as provided in this Agreement. At Closing, the Purchase Price will be paid to Seller by wire transfer of immediately available funds to an account designated by Seller.

4. Critical Dates. Seller and Purchaser agree as follows:

(a) The period commencing on the Effective Date of this Agreement and expiring at 6:00 p.m., Eastern Time, on the day which is ninety (90) days after the Effective Date is the "**Inspection Period**".

(b) The period expiring at 6:00 p.m., Eastern Time, on the day which is two hundred ten (210) days after the Inspection Period is the "**Permitting Period**".

(c) The **Closing** (defined in Section 9) will be at 11:00 a.m., Eastern Time, on the day which is thirty (30) days after the expiration of the Permitting Period (unless otherwise agreed in writing by Seller and Purchaser).

The dates in this Section are subject to extension only as expressly set forth in this Agreement.

5. Terms and Conditions of Inspection Period; Seller's Delivery of Due Diligence Items.

(a) Purchaser shall have the right, from and after the Effective Date and prior to the Closing Date, to enter upon the Property for the purpose of conducting and performing such tests, evaluations, inspections, investigations and reviews of the Property (collectively, the "**Inspections**") as Purchaser may desire. The Inspections may include, without limitation, reviewing the Title Commitment, as hereinafter defined, preparing the Survey, as hereinafter defined, reviewing and approving all plans, documents and instruments submitted to Purchaser by Seller as hereinafter provided, obtaining all necessary consents and approvals of proposed development and construction plans for the Property, reviewing all applicable title matters affecting any of the Property, evaluating and/or conducting all architectural, engineering, topographical, geological, floodway, soil, surface, subsurface, environmental, storm water drainage, traffic, utility availability, subdivision and zoning inquiries and otherwise conducting and performing all other tests and evaluations affecting the Property as Purchaser may require. Purchaser covenants and agrees that if it elects to cancel and terminate this Agreement for any reason, any damage to the Property shall be promptly repaired and replaced by Purchaser and that the completion of such repairs and replacements to the Property to Seller's reasonable satisfaction. Prior to any entry upon the Property, Purchaser shall provide Seller with a certificate of insurance confirming that Purchaser (or its consultants entering upon the Property) maintains a comprehensive general liability policy with coverage in an amount of not less than \$1,000,000.00, naming Seller as an additional insured under such policy. Purchaser does hereby indemnify, agree to defend and hold Seller harmless from and against any and all claims, costs, expenses and liabilities, including reasonable attorneys' fees and expenses suffered, paid or incurred by Seller arising out of or by virtue of (i) any injury or damage to person (including death) or property caused by any act or omission of Purchaser, its agents, employees, representatives or contractors in conducting or performing any of the Inspections, (ii) Purchaser's failure to pay all bills, invoices, costs and other charges relating to the Inspections and (iii) Purchaser's failure to repair and replace any damage to the Property caused by, resulting from or arising out of any of the Inspections. The indemnification obligations of Purchaser set forth herein shall survive the Closing or the termination and cancellation of this Agreement.

(b) If, at any time on or before the expiration of the Inspection Period, Purchaser determines, in its sole and absolute discretion, that any of the Inspections or any other matters or things relating to the Property are unacceptable in any respect to Purchaser, then Purchaser shall have the unqualified right, at its option, to cancel and terminate this Agreement upon written notice to Seller given at any time on or before the expiration of the Inspection Period in which event the Earnest Money shall be refunded to Purchaser, this Agreement shall be deemed canceled and terminated and, except for the indemnification obligations of Purchaser set forth in Section 5(a) above, neither party shall have any further obligation or liability to the other hereunder. If Purchaser does not timely elect to cancel and terminate this Agreement on or before the expiration of the Inspection Period, then (i) Purchaser shall be deemed to have waived its right to terminate this Agreement pursuant to this Section 5(b) and (ii) except as otherwise expressly provided in this Agreement or in any document executed by Seller in connection with the Closing, Purchaser shall be deemed to have accepted and approved all aspects of the Property and otherwise be satisfied with all other Inspections relating to the Property.

(c) Purchaser acknowledges and agrees that (i) Purchaser has been given the absolute and unfettered right during the Inspection Period to conduct such Inspections of the Property as Purchaser, in its sole discretion, may determine necessary in order to satisfy itself of all conditions and other aspects of the Property, (ii) Purchaser has available to it such resources, expertise, consultants and advisors so that it can make a sound and reasoned judgment as to the condition of the Property as well as to all economic conditions, suitability requirements and all other matters affecting the proposed use, development and ownership of the Property by Purchaser, (iii) no employee, agent, contractor or

representative of the Seller has any right or authority to make any statements, evaluations, speculations, opinions, prognoses, determinations, covenants, representations or warranties on behalf of Seller and (iv) except as otherwise expressly provided in this Agreement or in any document executed by Seller in connection with the Closing, Purchaser assumes the risk of adverse physical characteristics and existing conditions regarding the Property which may not have been revealed or discovered by Purchaser by the Inspections.

(d) Seller will deliver to Purchaser, within five (5) business days after the Effective Date, true and complete copies of all due diligence materials related to the Property in the possession or control of Seller. The materials will include, but are not limited to, environmental and soils reports, prior inspection reports, prior title policies, title exceptions, surveys, and the most recent property tax bills and assessments (collectively, "**Site Information**"). Purchaser acknowledges and agrees that all of the Site Information provided by Seller, its agents, employees or representatives to Purchaser or to any third parties shall be and is provided without warranty as to any of the matters set forth therein and Purchaser hereby acknowledges and agrees that no warranties, either express or implied, shall be deemed to have been given or made by Seller, its agents, employees or representatives as to the content, authenticity, truthfulness, correctness or otherwise with respect to any of the Site Information. In the event the Closing hereunder does not occur for any reason, Purchaser agrees to return to Seller or to destroy all of the Site Information.

(e) Purchaser acknowledges and agrees that, except as otherwise provided for in this Agreement or any document executed by Seller in connection with Closing, (i) Seller has not made and does not make any covenant, representation or warranty, either express or implied, regarding the physical condition of the Property or any portion thereof, the suitability of the Property for any particular purpose or use whatsoever, utility availability for the Property, whether the Property is subject to surface or subsurface contamination by toxic or hazardous waste or with respect to any other matters affecting the Property or Purchaser's contemplated use thereof, (ii) Purchaser has been given the absolute and unfettered right during the Inspection Period to conduct such Inspections of the Property as Purchaser, in its sole discretion, may determine necessary in order to satisfy itself of all conditions and other aspects of the Property and (iii) Purchaser has available to it such resources, expertise, consultants and advisors so that it can make a sound and reasoned judgment as to the condition of the Property as well as to all economic conditions, suitability requirements and all other matters affecting the use, development and ownership of the Property. Purchaser acknowledges and agrees that, except as otherwise provided for in this Agreement or any document executed by Seller in connection with Closing: (i) the Property is to be sold and conveyed to, and accepted by, Purchaser in its present condition, "AS IS, WHERE IS AND WITH ALL FAULTS", and (ii) Purchaser hereby assumes the risk that adverse physical characteristics and existing conditions may have not been revealed by the Inspections.

6. Terms and Conditions of Permitting Period. Purchaser's obligations under this Agreement are contingent on the receipt of all private approvals and easements required from third parties and all permits, allocation of public water and sewer capacity and other governmental authorizations deemed necessary or appropriate by Purchaser for the development and operation of the Land as a restaurant with a "drive-thru", pylon or monument sign and a children's play facility (collectively, including third party approvals, the "**Permits**"). Purchaser agrees to make its initial submittal for the Permits (which will be applied for and pursued in the order appropriate in the relevant jurisdiction) no later than thirty (30) days after the expiration of the Inspection Period. Purchaser will use commercially reasonable efforts to obtain the Permits. Seller will cooperate with Purchaser, at no expense to Seller, in obtaining the Permits.

If Purchaser does not obtain the Permits on or before the expiration of the Permitting Period, then Purchaser may (i) extend the Permitting Period for a period not to exceed forty-five (45) days, or (ii) terminate this Agreement. In the event Purchaser elects to extend and the Permits have not been obtained (or the condition is not waived by Purchaser in writing) by the end of the forty-five (45) day extension, then Purchaser may (y) extend the Permitting Period for a second period not to exceed forty-five (45) days, or (z) terminate this Agreement. In the event Purchaser elects to extend the Permitting Period a second time and the Permits have not been obtained (or the condition is not waived by Purchaser in writing) by the end of the second forty-five (45) day extension, Purchaser may, on written notice to Seller, elect to terminate this Agreement. On any termination, all rights and obligations of Seller and Purchaser will be of no further force or effect except for obligations expressly stated as surviving termination of this Agreement.

If Purchaser does not obtain the Permits on or before the expiration of the Permitting Period, then Purchaser shall have the unqualified right, at its option, to cancel and terminate this Agreement upon written notice to Seller given at any time on or before the expiration of the Permitting Period in which event the Earnest Money shall be refunded to Purchaser, this Agreement shall be deemed canceled and terminated and, except for the indemnification obligations of Purchaser set forth in Section 5(a) above, neither party shall have any further obligation or liability to the other hereunder. If Purchaser does not timely elect to cancel and terminate this Agreement on or before the expiration of the Permitting Period, then (i) Purchaser shall be deemed to have waived its right to terminate this Agreement pursuant to this Section 6 and (ii) Purchaser shall be deemed to have either obtained, or waived its right to obtain, all such Permits.

7. Restrictions on Land and Adjoining Property. Seller is also the owner of the property that adjoins the Land to the north and is generally depicted on Exhibit "A" (the "**Adjoining Property**"). Seller and Purchaser shall cause a separate, recorded declaration of restrictive covenants ("**Restrictive Covenants**"), running with the land, in favor of and enforceable by the owners of the Property and the Adjoining Property, in form acceptable to Purchaser and Seller, binding on Seller and Purchaser and their respective successors and assigns, to be executed and delivered at Closing by Purchaser, Seller and all other owners and mortgagees of the Property and the Adjoining Property, providing as follows:

(a) For so long as the principal, primary use of the Property is for the continuous operation of a "Chick-fil-A" restaurant which is open for business at least 12-hours a day, 6 days a week (exclusive of any state or federal holidays and other than by reason of: (x) construction, renovation, reconstruction, repair or an event of force majeure, or (y) one (1) closure for any reason for up to three (3) months):

(i) Seller will not lease, rent, sell or occupy, or permit to be leased, rented, sold or occupied, any portion of the Adjoining Property for any use other than (1) municipal uses, including a fire station which may include emergency medical services or (2) a first-class retail use;

(ii) Purchaser will not lease, rent, sell or occupy, or permit to be leased, rented, sold or occupied, any portion of the Land for any use other than a first-class retail use (which includes, without limitation, a restaurant selling or serving chicken as a principal menu item);

(iii) No portion of the Land or the Adjoining Property will be leased, rented, sold or occupied for any of the following: a theater of any kind; bowling alley, skating rink, amusement park, carnival or circus; sporting event or other sports facility; a gym or fitness center; mortuary or funeral parlor; establishment selling cars or other motor vehicles, motor vehicle maintenance

or repair shop or gas station, any establishment selling trailers; billiard parlor; tavern, pub, bar or liquor store; pawn shop; or amusement center, flea market, massage parlor, "disco" or other dance hall, tattoo or body piercing parlor; casino, gaming room, or "off track betting" operation; for the sale of paraphernalia for use with illicit drugs or for the sale of medicinal marijuana; or for the sale, rental or display of pornographic materials; or for a meeting hall, place of instruction, auditorium or like place of public assembly (provided, however, that for so long as the principal use of the Adjoining Property is a fire station, then the use of the Adjoining Property for incidental uses such as meeting hall, place of instruction, auditorium or like place of public assembly shall be authorized and allowed);

(iv) No restaurant will be permitted on any portion of the Adjoining Property or the Land unless the restaurant independently maintains a parking ratio of not less than the number of spaces required by law (without a variance);

(v) No portion of the Adjoining Property will be leased, used or occupied as a restaurant selling or serving chicken as a principal menu item. For purposes of this Agreement, "a restaurant selling or serving chicken as a principal menu item" means a restaurant deriving twenty-five percent (25%) or more of its gross sales from the sale of chicken; and

(vi) No portion of the Adjoining Property will be leased, used or occupied by or for any of the following uses: McDonald's, Wendy's, Arby's, Boston Market, Kenny Roger's, Kentucky Fried Chicken, Popeye's, Church's, Bojangle's, Mrs. Winner's, Carl's Jr., Hardees, In-N-Out Burger, Chicken Out, Willie May's Chicken, Biscuitville, Zaxby's, Ranch One, El Pollo Loco, Koo-Koo Roo, Pollo Campero, Pollo Tropical, Charo Chicken, Raising Cane's, Chester's or Bush's Chicken.

For purposes of this Section 7, an "event of force majeure" is any one of the following: strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, terrorist acts, public health concerns not in the control of Purchaser that materially interfere with Purchaser's operations at the Property, insurrection, war, fire, other casualty or acts of God. Lack of funds will not be a basis for an event of force majeure under this Section 7.

If Purchaser elects to utilize its one-time closure right pursuant to clause (y) above, Purchaser will provide Seller with written notice of same. If Seller believes that Purchaser has exhausted the one-time closure in clause (y) above and failed to provide Seller with the notice required under the previous sentence, Seller will notify Purchaser in writing of Purchaser's exhaustion of the one-time right. Upon the lapsing of the restrictive covenants in this Section 7(a), Seller, upon providing Purchaser with thirty (30) days' advance written notice, may record an affidavit in the Probate Office of Jefferson County, Alabama regarding such lapse.

(b) Seller agrees that the covenants and restrictions will run with the title to the Land and the Adjoining Property. Seller further agrees that the covenants and restrictions will also be set forth in any lease or deed that Seller enters into after the Effective Date leasing or conveying any portion of the Adjoining Property, subject to automatic termination if the Closing hereunder does not timely occur. Purchaser will be entitled to injunctive relief and any other appropriate relief as may be available at law or in equity for any violation. Seller acknowledges that Purchaser is relying on the foregoing restrictions and covenants in executing this Agreement.

(c) The foregoing restrictions and covenants will be set forth in a separate, commercially reasonable agreement, in recordable form, to be executed by Seller and Purchaser (and its

lender, if applicable) at Closing. Seller shall prepare and deliver to Purchaser a draft of the Restrictive Covenants at least fourteen (14) days prior to the expiration of the Inspection Period.

8. Subdivision of the Land. Purchaser's obligations under this Agreement are conditioned upon Purchaser's ability to subdivide the Land into a separate, legal parcel of land prior to the expiration of the Permitting Period (the "**Subdivision**"). Seller agrees to cooperate in good faith with Purchaser in its efforts to subdivide the Land, including filing and executing any documentation that Purchaser is unable to file or execute itself. The plat of subdivision prepared by Purchaser will be subject to Seller's written approval, which will not be unreasonably withheld. Seller will respond to any request for approval of the subdivision plat promptly but in no event later than ten (10) business days after receipt from Purchaser.

9. Closing and Closing Date. Subject to the conditions in this Agreement, the sale of the Property (the "**Closing**") will be held at the office of the Title Company on the last date for the closing established pursuant to Section 4(c) of this Agreement (the "**Closing Date**"). Seller and Purchaser agree to cooperate with one another to deliver documents in escrow to the Title Company in order to eliminate the need for representatives of Seller and Purchaser to attend the Closing. Seller will deliver to Purchaser full and exclusive possession of the Land on the Closing Date, subject only to the Permitted Exceptions (as defined in Section 11) and Seller's right to remain in possession of the Property as provided in Section 22 below.

At least two (2) business days prior to the Closing Date, Seller will execute and deliver to the Title Company (a) a statutory warranty deed (the "**Deed**") conveying fee simple title to the Property in the form attached hereto as Exhibit "D", (b) an owner's affidavit in the form attached hereto as Exhibit "E", (c) an affidavit of Seller as required by Section 1445 of the Internal Revenue Code of 1986, as amended, (d) evidence of Seller's authority as reasonably required by the Title Company, (e) the information required for Purchaser to file IRS Form 1099-S, (f) the Restrictive Covenants and the Ground Lease (as defined in Section 22 below), (g) a real estate broker's affidavit in form reasonably required by the Title Company, and (h) such other documents as may be reasonably required to properly consummate the purchase and sale transaction contemplated herein.

At the Closing, Purchaser shall deliver to Seller (i) by wire transfer to an account designated by Seller, currently available federal funds in an amount equal to the Purchase Price (less the Earnest Money) subject to such credits, prorations and adjustments as are provided herein, (ii) the Restrictive Covenants and the Ground Lease, and (iii) such other documents as may be reasonably required to properly consummate the purchase and sale transaction contemplated herein or which may be required by the Title Company. At the Closing, the Title Company shall deliver the Earnest Money to Seller.

10. Expenses and Prorations at the Closing. The Property is currently exempt from ad valorem taxes and, accordingly, there shall be no proration of ad valorem taxes at the Closing. Seller will cooperate with Purchaser to obtain a separate tax parcel identification number for the Land after the Closing if the Land is not separately assessed.

Except as otherwise provided herein to the contrary, Purchaser and Seller shall be responsible for their own respective attorneys' fees. The costs of the Title Policy and any other title coverages and endorsements shall be paid by Purchaser as provided in Section 11 below. Purchaser shall pay all costs and expenses relating to the Inspections, recording the plat of subdivision and the recording fees for recording the Deed and the Restrictive Covenants. Any escrow fees charged by the Title Company shall be paid by Purchaser. Purchaser will pay all transfer, grantor or documentary taxes due with the recording of the Deed.

The obligations of Seller and Purchaser in this Section 10 will survive the Closing.

11. Title; Survey; Existing Use Restrictions; Covenants of Seller. Purchaser will have until the expiration of the Inspection Period to examine title to the Property and obtain a survey (the "**Survey**") of the Land and to advise Seller in writing of any title or survey objections. Purchaser may update the effective date of its title examination or Survey and give notice to Seller of all objections appearing subsequent to the effective date of its previous title examination or Survey, as the case may be. The matters described in the Deed and those encumbrances disclosed by Purchaser's title examination and/or Survey and not objected to by Purchaser (or which are objected to by Purchaser but Seller does not elect to cure) are referred collectively referred to as the "**Permitted Exceptions**"; provided, however, that as provided below, Seller shall be obligated to eliminate any existing mortgages, liens or other encumbrances encumbering the Property which were created by Seller and can be removed by the payment of money. In addition, if Purchaser subsequently waives an objection in writing, that encumbrance will be included in the Permitted Exceptions.

The Deed from Seller to Purchaser will utilize the legal description for the Property set forth on the plat of Subdivision. Upon Seller's approval of the Survey (which approval will not be unreasonably withheld), Seller agrees to also execute in favor of Purchaser at the Closing a quitclaim deed to Purchaser attaching the legal description from Purchaser's Survey.

Within fourteen (14) days from the Effective Date, Purchaser shall order a title insurance commitment (the "**Title Commitment**") for the issuance by the Title Company of an owner's title insurance policy (the "**Title Policy**"), in the amount of the Purchase Price covering title to the Property. Purchaser shall have until the end of the Inspection Period to review and approve the Title Commitment and all title exceptions and title matters affecting the Property. Except for the elimination of any existing mortgages, liens or other encumbrances encumbering the Property which were created by Seller which can be removed by the payment of money, Seller shall have no obligation to take any affirmative action to eliminate any title objections or exceptions of Purchaser. The costs of any title search fees, copying costs, the issuance of the Title Commitment, the premium for the Title Policy and any additional title insurance coverage (including any mortgagee's title policies) and any title endorsements or special coverages required by Purchaser shall be paid for solely by Purchaser.

Seller covenants and agrees that between the Effective Date and the Closing (or earlier termination of this Agreement) Seller will not (i) materially change or alter the physical condition of the Land, (ii) grant, create, consent to, or modify any encumbrance benefitting or burdening the Land, (iii) unless expressly provided in this Agreement, pursue or consent to any rezoning of the Land, or (iv) market the Land for sale to any other party.

12. Representations and Warranties of Seller. Seller represents and warrants to Purchaser that, as of the date hereof:

(a) There is no action, litigation, investigation, condemnation or proceeding of any kind pending or, to the best of Seller's knowledge, threatened against Seller or the Property which could adversely affect the Property, any portion thereof or title thereto or Seller's obligations or agreements set forth in this Agreement (collectively, "**Litigation**"). Seller shall give Purchaser prompt written notice if any such Litigation is commenced or, to the best of Seller's knowledge, threatened prior to the Closing Date (the "**Notice of Litigation**");

(b) To Seller's actual knowledge, the Property has not been used for the generation, transportation, storage, treatment, or disposal of any hazardous waste, hazardous substance, pollutant, or

contaminant, including petroleum, as defined under federal, state or local law, nor are such materials located in or on the Property;

(c) To Seller's actual knowledge, Seller has provided Purchaser with copies of all environmental site assessments, audits and similar reports covering the Land and Adjoining Property in Seller's possession or control;

(d) To Seller's actual knowledge, there are no wells located on the Property and there are no underground storage tanks located on the Property;

(e) Seller has full power and authority to enter into and perform this Agreement in accordance with its terms;

(f) Seller owns fee title to the Land, subject to the Permitted Exceptions, and there are no outstanding options or rights of first refusal with respect to any of the Property;

(g) The Property is, as of the Effective Date, and will be, as of the Closing, exempt from real estate taxes;

(h) To the best knowledge of Seller, neither the execution of this Agreement nor the consummation of the transactions contemplated in the Agreement will constitute or result in a violation or breach by Seller of any judgment, order, writ, injunction or decree issued against or imposed upon Seller (collectively, a "**Judgment**"), or a violation of any applicable law, order, rule or regulation of any governmental authority or a breach or violation of any agreement, indenture, mortgage or security agreement binding upon Seller. Seller shall give Purchaser prompt written notice if any such Judgment is entered against Seller which would result in any of the representations set forth in this Section 12(h) to be untrue in any respect (the "**Notice of Judgment**");

(i) No person or entity has any right or option to lease or occupy the Property. The Adjoining Property is not leased or subject to any right or option to lease except for a cell tower lease;

(j) To Seller's actual knowledge, there are no unrecorded restrictive covenants (such as a "no build" or "no change" area restriction) or so-called "exclusives" that will prevent Purchaser from constructing and operating a Chick-fil-A restaurant on the Land as such restaurants are currently being operated (which restaurants include, in addition to chicken as a principal menu item, a broad variety of other menu items such as signature coffees, blended beverages, baked goods, breakfast burritos and wraps); and

(k) To Seller's actual knowledge, no consents or other approvals are required to be obtained from any non-governmental third party (including, but not limited to, other tenants of the Adjoining Property) pursuant to any unrecorded document for Purchaser's proposed construction and operation of a Chick-fil-A restaurant on the Land or the restrictive covenants, exclusives and easements burdening the Adjoining Property as set forth in this Agreement.

(l) As used in this Section 12, the term "**to Seller's actual knowledge**" or "**to the best knowledge of Seller**" shall mean and refer to the actual knowledge of Alberto ("Butch") Zaragoza, Mayor of Seller, and Jeff Downes, City Manager of Seller, without investigation or inquiry of any other person or entity. If, at any time on or before the Closing, Purchaser shall discover that any of the foregoing representations and warranties set forth in Sections 12(a) through 12(k) above are untrue or incorrect in any material respect (a "**Discovered Material Misstatement**"), then Purchaser shall have the

right, in its sole and absolute discretion, to cancel and terminate this Agreement upon written notice given to Seller, in which event the Earnest Money shall be refunded to Purchaser, and except for the indemnification obligations of Purchaser set forth in this Agreement, this Agreement shall be deemed null and void and of no further force or effect. Notwithstanding the foregoing, if the Discovered Material Misstatement was due to the intentional act of Seller and was within the sole control of Seller, the event will constitute a default by Seller and Purchaser will have the remedies set forth in Section 13 below. If Purchaser fails to cancel and terminate this Agreement as a result of the discovery of any Discovered Material Misstatement, then Purchaser shall be deemed to have waived any Discovered Material Misstatement, Seller shall have no further obligation hereunder as a result of such Discovered Material Misstatement, and Seller shall not be deemed a violation or breach of any of the representations or warranties of Seller set forth in this Agreement.

(m) Subject to the foregoing provisions of this Section 12, Seller hereby agrees that each of the foregoing representations and warranties shall be deemed restated by Seller effective as of Closing, and shall survive Closing hereunder for a period of twelve (12) months (the "**Survival Period**") from the Closing Date. In the event any of the representations and warranties of Seller set forth in Section 12 above was or is incorrect in any material respect when made, was or is due to the intentional act of Seller and was or is within the sole control of Seller, then Seller shall be in default of this Agreement and Purchaser will have the remedies available to it under Section 13 below. Notwithstanding the foregoing, in no event shall Seller be liable for any special, punitive, speculative or consequential damages under or with respect to any representation or warranty made herein by Seller.

(n) All rights of Purchaser hereunder with respect to any surviving representation or warranty given herein by Seller shall be deemed waived if Purchaser does not, by written notice to Seller, advise Seller of any alleged breach of such representation or warranty prior to the expiration of the Survival Period. Any alleged breach of a representation or warranty as to which Purchaser has delivered a timely notice to Seller shall be deemed to have survived beyond the expiration of the Survival Period until and solely to the extent required to resolve such alleged breach. Except as otherwise stated in this Agreement or in any document executed in connection with the Closing, Purchaser is purchasing the Property in an "as is", "where is", "with all faults" condition.

13. Defaults. If Seller fails to consummate the transaction contemplated herein on the Closing Date for any reason other than a default by Purchaser, Purchaser may, by five (5) days' notice to Seller, and provided that Seller does not cure such default within such 5-day period, elect either of the following as its sole and exclusive remedy and in lieu of any other remedies provided by law or in equity: (i) terminate this Agreement, in which event the Earnest Money shall immediately be delivered to Purchaser and, except for the indemnity obligations set forth in this Agreement, neither party shall have any further liability or obligation to the other hereunder; provided, however, that if the default by Seller is material, intentional and within the sole control of Seller, then, in addition to the Earnest Money being returned to Purchaser, Purchaser will receive reimbursement from Seller for Purchaser's actual out-of-pocket due diligence costs pertaining to this transaction up to One Hundred Thousand and No/Dollars (\$100,000.00) or (ii) receive an immediate refund of its Earnest Money and avail itself of the remedy of specific performance provided that any such action for specific performance is commenced within six (6) months from the Closing Date. Upon any termination pursuant to option (i) above, Seller will pay Purchaser's expenses within ten (10) days of receipt of a written accounting of the expenses. If specific performance is not an available remedy because Seller has sold the Property, then Purchaser may pursue a suit for actual damages against Seller provided that any such action for is commenced within nine (9) months from the Closing Date. Nothing herein shall relieve Seller of any obligation to indemnify or hold harmless Purchaser as stated in this Agreement.

If Purchaser fails to consummate the transaction contemplated herein on the Closing Date for any reason other than a default by Seller, then Seller may, by five (5) days' written notice upon Purchaser, and provided that Purchaser does not cure such default within such 5-day period, as its sole and exclusive remedy and in lieu of any other remedies provided by law or equity, be entitled to terminate this Agreement, retain the Earnest Money as and for its liquidated damages and not as a penalty or forfeiture and, except for any indemnification obligations set forth in this Agreement, neither party shall have any further obligation or liability to the other hereunder. Nothing herein shall relieve Purchaser of any obligation to indemnify or hold harmless Seller as stated in this Agreement.

Except as otherwise expressly provided in this Agreement, Seller and Purchaser each hereby expressly waive any right to seek or obtain any monetary judgment or damages against the other party in the event of any default hereunder by such other party and Seller and Purchaser each acknowledge and agree that no other damages, rights or remedies shall be collectible, enforceable or available to either party in the event of any default hereunder by the other party.

In the event either Seller or Purchaser enforces the obligations of the other under this Agreement by instituting legal proceedings, then the non-prevailing party in any such proceedings will pay all out-of-pocket expenses actually incurred by the prevailing party, including court costs and reasonable attorneys' fees.

14. Condemnation. If all or any material portion of the Land, or any material portion of any land on which off-site access, parking, utility service or stormwater detention is located (and which is required for the use and development of the Land) is taken or condemned by any entity with the power of eminent domain prior to the date of the Closing, or in the event Purchaser receives notice of a proposed taking prior to the date of the Closing, then Purchaser will have the option of either (i) terminating this Agreement by giving written notice to Seller, in which event all Earnest Money will be immediately refunded to Purchaser and this Agreement and all rights and obligations created under this Agreement will be of no further force or effect, except as expressly provided to the contrary, or (ii) requiring Seller to convey the remaining portion of the Land to Purchaser pursuant to the terms and provisions of this Agreement and to transfer and assign to Purchaser at the Closing all of Seller's right, title and interest in and to any award made or to be made for the Land. Seller and Purchaser agree that Purchaser will have the right to participate in all negotiations relating to the Land or to the compensation to be paid for any portion or portions of the Land to be condemned.

15. Brokers. Purchaser and Seller acknowledge that The Shopping Center Group, LLC (the "**Broker**") has acted as the only broker in connection with the sale of the Property. At the Closing, and only in the event of the Closing, Seller will pay the Broker a real estate sales commission in the amount of four percent (4%) of the Purchase Price. In the event this transaction is not consummated for any reason, then no commission is earned and none is payable. Seller will indemnify Purchaser against any claim for any real estate sales commission, finder's fees, or like compensation in connection with this transaction and arising out of any act or agreement of Seller, including any claims asserted by the Broker. Likewise, Purchaser will indemnify Seller against any claim for any real estate sales commission, finder's fees or like compensation in connection with this transaction and arising out of any act or agreement of Purchaser, other than any claims asserted by the Broker. Seller's indemnity and Purchaser's indemnity will survive the Closing or any termination of this Agreement.

16. Notices. Notices given pursuant to this Agreement will be effective only if in writing and delivered (i) in person, (ii) by courier, (iii) by reputable overnight courier guaranteeing next business day delivery, (iv) if sent on a business day during the business hours of 9:00 a.m. until 7:00 p.m., eastern time, via facsimile, with a copy to follow by reputable overnight courier guaranteeing next business day

delivery, or (v) by United States certified mail, return receipt requested. All notices will be directed to the other party at its address provided below or such other address as either party may designate by notice given in accordance with this Section 16. Notices will be effective (i) in the case of personal delivery or courier delivery, on the date of delivery, (ii) if by overnight courier, one (1) business day after deposit with all delivery charges prepaid, (iii) if by facsimile, on the date of transmission, provided that a confirmation sheet is received and a second copy is sent as required above, and (iv) in the case of certified mail, the earlier of the date receipt is acknowledged on the return receipt for such notice or five (5) business days after the date of posting by the United States Post Office. The notice addresses for Seller and Purchaser are as follows:

If to Seller: City of Vestavia Hills, Alabama
513 Montgomery Highway
Vestavia Hills, Alabama 35217
PHONE: (205) 978-3675
FAX: (205) 978-0189
ATTN: Jeff Downes, City Manager

With a copy to: City of Vestavia Hills, Alabama
513 Montgomery Highway
Vestavia Hills, Alabama 35217
PHONE: (205) 978-3675
FAX: (205) 978-0189
ATTN: Mayor

With a copy to Seller's
counsel: Patrick H. Boone, Esq.
215 Richard Arrington Jr. Boulevard N
Suite 705
Birmingham, Alabama 35203-3720
PHONE: (205) 324-2018
FAX: (205) 324-2295

Stephen R. Monk
Bradley Arant Boult Cummings LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, Alabama 35203
PHONE: (205) 521-8429
FAX: (205) 488-6429

If to Purchaser: Chick-fil-A, Inc.
5200 Buffington Road
Atlanta, Georgia 30349
PHONE: (404) 765-8000
FAX: (404) 684-8620
ATTN: Property Management – Real Estate Legal

With a copy to: Chick-fil-A, Inc.
5200 Buffington Road
Atlanta, Georgia 30349
PHONE: (404) 765-8000

FAX: (404) 305-4780
ATTN: Real Estate Legal Department – FSU Division

With a copy to Purchaser's
counsel:

Troutman Sanders LLP
600 Peachtree Street, N.E.
Suite 5200
Atlanta, Georgia 30308-2216
PHONE: (404) 885-3416
FAX: (404) 962-6520
ATTN: Maureen Theresa Callahan, Esq.

17. General Provisions. No failure of either party to exercise any right given in this Agreement or to insist upon strict compliance with any obligation in this Agreement, and no custom or practice at variance with the terms of this Agreement, will constitute a waiver of either party's right to demand exact compliance with this Agreement. This Agreement contains the entire agreement of the parties to this Agreement, and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied in this Agreement will be of any force or effect. Any amendment to this Agreement will be binding on Seller and Purchaser only if the amendment is in writing and executed by both Seller and Purchaser. The provisions of this Agreement will be for the benefit of and be binding upon Seller and Purchaser and their respective successors and assigns. At the election of Purchaser, this transaction will be closed in the name of and the deed delivered to its nominee or assigns to the extent such nominee or assignee is an affiliate of Purchaser. For the purposes of this Agreement, an "affiliate" means any corporation or other entity which, directly or indirectly, controls or is controlled by or is under common control with Purchaser. For this purpose, "control" means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such corporation or other entity, whether through the ownership of voting securities (or other ownership interests) or by contract or otherwise, or to elect a majority of the directors of a corporation or to independently select the managing partner of a partnership, or to independently select the managing member of a limited liability company.

18. Time is of the Essence of this Agreement. This Agreement and all amendments will be governed by and construed under the laws of the state in which the Land is located. This Agreement may be executed in multiple counterparts, each of which will constitute an original, but all of which taken together will constitute one and the same agreement. This Agreement may also be executed by the parties hereto by facsimile or by pdf and executed copies of this Agreement by the parties hereto by facsimile or pdf signature shall constitute executed copies of this Agreement. All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, will include all genders, the singular will include the plural and vice versa. The headings inserted at the beginning of each section are for convenience only, and do not add to or subtract from the meaning of the contents of each section. All exhibits attached to this Agreement are incorporated by reference into this Agreement.

19. Day for Performance. Wherever there is a day or time period established for performance and the day or the expiration of such time period is a Saturday, Sunday or holiday, then the time for performance will be automatically extended to the next business day.

20. Survival of Provisions. Except as expressly provided in this Agreement to the contrary, none of the terms and provisions of this Agreement shall survive the Closing.

21. Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this

Agreement is for any reason and to any extent determined to be invalid or unenforceable, then the remainder of this Agreement and the application of the provision to other persons or circumstances will not be affected but rather will be enforced to the greatest extent permitted by law.

22. Effective Date. The "**Effective Date**" to be inserted on the first page of this Agreement is the date upon which this Agreement has been fully executed by Seller and Purchaser and each of Seller and Purchaser has received a fully executed original counterpart. The last party executing this Agreement will deliver a fully executed original counterpart to the other party by overnight delivery for receipt on the next succeeding business day and will insert the next succeeding business day on the first page of all original counterparts of this Agreement.

23. Post-Closing Lease of Property by Seller. At the Closing, Purchaser, as landlord, and Seller, as tenant, will enter into a ground lease (the "**Ground Lease**") for the Property in the form attached as Exhibit "F".

24. Opening Covenant; Repurchase Right. Not later than the date that is the three (3) year anniversary of the last day of the term of the Ground Lease, Purchaser will open and operate for one (1) day on the Land as a Chick-fil-A restaurant substantially in the manner that the majority of the Chick-fil-A restaurants are then being operated by Purchaser in the state in which the Land is located. In the event Purchaser fails to open and operate for one (1) day within such time period (unless due to a condemnation, casualty, or event of force majeure), Landlord will have, as its sole remedy, the right to the right to repurchase the entire Property upon the terms and conditions set forth below (the "**Repurchase Right**"). Seller may only exercise its Repurchase Right during the thirty (30) day period immediately following the expiration of such three (3) year period by providing written notice, within such thirty (30) day period, to Purchaser (the "**Repurchase Notice**"). Notwithstanding the foregoing, the exercise of the Repurchase Right will be null and void in the event that Purchaser gives written notice to Seller within thirty (30) days after receipt of the Repurchase Notice that Purchaser intends to open for business within one hundred twenty (120) days after receipt by Purchaser of the Repurchase Notice, and Purchaser in fact opens for business within the 120-day period. If Purchaser does not so open for business by such date, Seller will have thirty (30) days after the expiration of such 120-day period in which to re-exercise the Repurchase Right, except that Purchaser will have no further right to render the Repurchase Notice null and void.

If Seller exercises the Repurchase Right, then at the closing of the repurchase transaction, Seller will pay to Purchaser, as consideration for such conveyance, an amount equal to the fair market value of the Property in its then condition, to be determined in accordance with the following procedure: Purchaser and Seller will each promptly appoint one (1) appraiser. Those two (2) appraisers will promptly appoint a third (3rd) appraiser. Each appraiser appointed hereunder shall be a member of the American Institute of Real Estate Appraisers (or successor organization) having at least five (5) years experience in appraisal of real estate for commercial retail use in the metropolitan area in which the Property is located. If such appraisers fail to appoint such third (3rd) appraiser within ten (10) days after notice of their appointment, then either Purchaser or Seller, upon notice to the other, may request the appointment of a third (3rd) appraiser. The three (3) appraisers so appointed will jointly make the required appraisals of the fair market value of the Property, and if they cannot agree, the appraisal of the third (3rd) appraiser will be accepted by Purchaser and Seller. If, after notice by either Purchaser or Seller of the appointment of an appraiser by the party giving such notice, the other party to whom such notice is given fails, within a period of ten (10) days after such notice, to appoint an appraiser, then the appraiser so appointed by the party giving the notice will have the power to proceed as sole appraiser to make the appraisal and allocation hereunder. Seller and Purchaser shall each bear the fees and expenses of their own appraiser and one-half (1/2) of the fees and expenses of the third (3rd) appraiser.

Notwithstanding the foregoing, the portion of the repurchase price representing the value of the Land will never be less than the Purchase Price.

The terms and conditions set forth above in this Section 23 will be memorialized in a separate agreement to be executed by the parties and recorded at Closing.

[SIGNATURES COMMENCE ON FOLLOWING PAGE]

Purchaser has executed this Agreement under seal as of February __, 2014.

"PURCHASER"

CHICK-FIL-A, INC., a Georgia corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

(CORPORATE SEAL)

Federal Tax Identification Number of Purchaser:
58-0941582

IN ACCEPTANCE OF THIS AGREEMENT, Seller has executed this Agreement under seal as of February __, 2014.

"SELLER"

CITY OF VESTAVIA HILLS, ALABAMA, an
Alabama municipal corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

(CORPORATE SEAL)

Federal Tax Identification Number of Seller:

SCHEDULE OF EXHIBITS

<u>EXHIBIT "A"</u>	DEPICTION OF LAND AND ADJOINING PROPERTY
<u>EXHIBIT "B"</u>	RESERVED
<u>EXHIBIT "C"</u>	EARNEST MONEY ESCROW AGREEMENT
<u>EXHIBIT "D"</u>	FORM OF DEED
<u>EXHIBIT "E"</u>	FORM OF OWNER'S AFFIDAVIT
<u>EXHIBIT "F"</u>	FORM OF GROUND LEASE

EXHIBIT "A"

DEPICTION OF LAND AND ADJOINING PROPERTY



EXHIBIT "B"

RESERVED

EXHIBIT "C"

EARNEST MONEY ESCROW AGREEMENT

THIS EARNEST MONEY ESCROW AGREEMENT (this "**Agreement**") is made and entered into this ____ day of February, 2014, by and among **CHICK-FIL-A, INC.**, a Georgia corporation, ("**Purchaser**"), **CITY OF VESTAVIA HILLS**, a municipal corporation chartered under the laws of the State of Alabama ("**Seller**"), and **CHICAGO TITLE INSURANCE COMPANY** ("**Title Company**").

- A. Seller and Purchaser entered into that certain Purchase and Sale Agreement (the "**Contract**") executed as of February __, 2014 for certain property commonly known as 513 Montgomery Highway, located in Vestavia Hills, Jefferson County, Alabama described in Exhibit "A" to the Contract (the "**Property**").
- B. Purchaser and Seller desire that Title Company hold the Earnest Money in escrow as defined in and required under the Contract and this Agreement, subject to the **Conditions of Escrow**, attached to this Agreement.
- C. In consideration of the promises and undertakings in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties covenant and agree as follows:
 1. Purchaser and Seller hereby appoint **Chicago Title Insurance Company** as escrow agent.
 2. Purchaser will deliver and deposit with Title Company the amount of **Five Thousand and No/100 Dollars (\$5,000.00)** representing the Earnest Money as required by the Contract. Title Company will confirm, by written notice to Seller and Purchaser, receipt of the Earnest Money. Title Company agrees to deposit the funds in a money market, interest-bearing account and to hold and disburse the funds as provided in this Agreement. Any additional earnest money required by the Contract will likewise be deposited if and when due with Title Company and will be a part of the "Earnest Money" in this Agreement. Purchaser's Federal Taxpayer Identification Number is: **58-0941582**. All interest will accrue to and be reported to the Internal Revenue Service for the account of Purchaser.
 3. Upon written notification from Purchaser and Seller that the sale is consummated, Title Company will deliver the Earnest Money to Seller to be applied to the purchase price.
 4. Upon written notification from Purchaser and Seller that the sale will not take place, Title Company will deliver the Earnest Money in accordance with the release disbursement instructions also included in this Agreement. Notwithstanding the foregoing, in the event Purchaser terminates the Contract during the Inspection Period (as defined in the Contract) in accordance with the terms of the Contract, Purchaser will provide a copy of the termination to Title Company, and Title Company will immediately deliver the Earnest Money to Purchaser without requiring approval or authorization from Seller.
 5. The parties covenant and agree that in performing any of its duties under this Agreement, Title Company will not be liable for any loss, costs or damage which it may incur in the capacity of Title

Company, except for any loss, costs or damage arising out of its own default or gross negligence or willful misconduct. Accordingly, Title Company will not incur any liability with respect to (i) any action taken or omitted to be taken in good faith upon advice of counsel for the parties given with respect to any questions relating to duties and responsibilities, or (ii) any action taken or omitted to be taken in reliance upon any documents, including but not limited to, any written notice of instruction provided for in this Agreement or in the Contract, not only as to its execution and the validity and effectiveness of its provisions, but also to the truth and accuracy of any information contained in the same, which Title Company in good faith believes to be genuine, to be signed or presented by a proper person or persons and to conform with the provisions of this Agreement.

6. The parties covenant and agree that, in an event of a dispute under this Agreement, the Title Company may, in the Title Company's discretion, tender into the registry or custody of any court of competent jurisdiction sitting in the state where the Property is located, all money held under the terms of this Agreement, together with such legal pleading as is appropriate and will be discharged of its duties under this Agreement. Title Company will be reimbursed for any and all costs and expenses, including reasonable attorney's fees in connection with any such action.

7. Notices will be given in accordance with Section 16 of the Contract. The address for Title Company is:

Chicago Title Insurance Company
5655 Glenridge Connector
Suite 300
Atlanta, Georgia 30319
Phone: (404) 419-3216
Fax: (770) 325-2732
Attn: Laura Kaltz

[Signatures commence on following page]

The undersigned have caused this Agreement to be duly executed under seal as of day and year first above written.

PURCHASER:

CHICK-FIL-A, INC., a Georgia corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

(CORPORATE SEAL)

TITLE COMPANY:

CHICAGO TITLE INSURANCE COMPANY

By: _____
Name: _____
Title: _____

(CORPORATE SEAL)

SELLER:

CITY OF VESTAVIA HILLS, ALABAMA,
an Alabama municipal corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

(CORPORATE SEAL)

CONDITIONS OF ESCROW

Title Company accepts this undertaking subject to these Conditions of Escrow:

1. The Earnest Money may be processed for collection in the normal course of business by Title Company, who may commingle funds received by it with escrow funds of others in its regular escrow account at a nationally recognized bank (the "**Depository**"). Title Company will not be accountable for any incidental benefit which may be attributable to the funds so deposited.
2. Title Company will not be liable for any loss caused by the failure, suspension, bankruptcy or dissolution of the Depository;
3. Title Company will not be liable for loss or damage resulting from:
 - a. any good faith act or forbearance of Title Company;
 - b. any default, error, action or omission of any party, other than the Title Company;
 - c. any defect in the title to any property unless such loss is covered under a policy of title insurance issued by the Title Company;
 - d. the expiration of any time limit or other delay which is not solely caused by the failure of Title Company to proceed in its ordinary course of business, and in no event where such time limit is not disclosed in writing to the Title Company;
 - e. the lack of authenticity of any writing delivered to Title Company or of any signature, or the lack of authority of the signatory to sign the writing;
 - f. Title Company's compliance with all attachments, writs, orders, judgments, or other legal process issued out of any court;
 - g. Title Company's assertion or failure to assert any cause of action or defense in any judicial or administrative proceeding; and
 - h. Any loss or damage which arises after the Earnest Money has been disbursed in accordance with the terms of this Agreement.
4. Title Company will be fully indemnified by the parties for all its expenses, costs and reasonable attorney's fees incurred in connection with any interpleader action which Title Company may file, in its sole discretion, to resolve any dispute as to the Earnest Money; or which may be filed against the Title Company. Such costs, expenses or attorney's fees, as well as the fees of Title Company described below, may be deducted from the Earnest Money.
5. If Title Company is made a party to any judicial, non-judicial or administrative action, hearing or process based on acts of any of the other parties and not on the malfeasance and/or negligence of Title Company in performing its duties, the expenses, costs and reasonable attorney fees incurred by Title Company in responding to such action, hearing or process may be deducted from the funds held and the party/parties whose alleged acts are a basis for such proceedings will indemnify and hold Title Company harmless from said expenses, costs and fees incurred.
6. Title Company's fee for acting escrow agent is shown on its Escrow Services and Charges which is available upon request. These fees, which may be paid in advance or will be deducted from the account upon disbursement, are the joint and several obligation of each party to any agreement, sales contract or other writing forming the basis for this escrow undertaking.

7. All controversies, issues, interpretation and other matters relating in any way to these Conditions of Escrow will be interpreted and governed by the laws of the State of Georgia.
8. In the event of any conflict between the terms any provisions of these Conditions of Escrow and the terms and provisions of the Agreement or other document to which this is attached, the terms and provisions of these Conditions of Escrow will prevail.
9. Title Company will be fully indemnified by the other parties and such parties will hold Title Company harmless from all damages, costs, claims and expenses arising from Title Company's performance of its duties under this Agreement, including reasonable attorneys fees, except for those damages, costs, claims and expenses resulting from the gross negligence or willful misconduct of Title Company.

EXHIBIT "D"

FORM OF DEED

See Attached.

THIS INSTRUMENT PREPARED BY AND UPON
RECORDING SHOULD BE RETURNED TO:

SEND TAX NOTICE TO:

Stephen R. Monk, Esq.
Bradley Arant Boult Cummings LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, Alabama 35203

Attention: _____

STATE OF ALABAMA)
 :
COUNTY OF JEFFERSON)

STATUTORY WARRANTY DEED

THIS STATUTORY WARRANTY DEED (this "Deed") is executed and delivered as of the ____ day of _____, 20__ by **CITY OF VESTAVIA HILLS, ALABAMA**, an Alabama municipal corporation ("Grantor"), in favor of _____, a _____ ("Grantee").

KNOW ALL MEN BY THESE PRESENTS, that for and in consideration of the sum of Ten and No/100 Dollars (\$10.00), in hand paid by Grantee to Grantor and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Grantor, Grantor does by these presents, GRANT, BARGAIN, SELL and CONVEY unto Grantee that certain real property (the "Property") situated in Jefferson County, Alabama which is more particularly described in Exhibit A attached hereto and incorporated herein by reference.

The Property is conveyed subject to the following (collectively, the "Permitted Exceptions"):

- 1. Ad valorem taxes and assessments for the current tax year and for all subsequent tax years thereafter.
- 2. All easements, restrictions, rights-of-way, reservations, building setback lines and other matters of record.
- 25. 3. All matters which a current and accurate survey and a physical inspection of the Property would reveal.
- 26. 4. Any mineral and mineral rights leased, granted or retained by prior owners.
- 27.

TO HAVE AND TO HOLD unto Grantee, its successors and assigns, forever; subject, however, to the Permitted Exceptions.

IN WITNESS WHEREOF, Grantor has caused this Deed to be executed as of the day and year first above written.

CITY OF VESTAVIA HILLS, ALABAMA,
an Alabama municipal corporation

By: _____
Printed Name: Jeff Downes
Title: City Manager

By: _____
Printed Name: Albert C. Zaragoza, Jr.
Title: Mayor

STATE OF ALABAMA)
 :
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said county, in said state, hereby certify that Jeff Downes, whose name as City Manager of CITY OF VESTAVIA HILLS, ALABAMA, an Alabama municipal corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily on the day the same bears date for and as the act of such municipal corporation.

Given under my hand and official seal, this the ___ day of _____, 20__.

[NOTARIAL SEAL]

Notary Public
My Commission Expires: _____

STATE OF ALABAMA)
 :
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said county, in said state, hereby certify that Alberto C. Zaragoza, Jr. whose name as Mayor of CITY OF VESTAVIA HILLS, ALABAMA, an Alabama municipal corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily on the day the same bears date for and as the act of such municipal corporation.

Given under my hand and official seal, this the ___ day of _____, 20__.

[NOTARIAL SEAL]

Notary Public
My Commission Expires: _____

EXHIBIT A

Legal Description of Property

EXHIBIT "E"

FORM OF OWNER'S AFFIDAVIT

See Attached

STATE OF ALABAMA)
 :
COUNTY OF JEFFERSON)

OWNER'S AFFIDAVIT

Personally appeared before me, the undersigned officer duly authorized to administer oaths, _____, _____ of the CITY OF VESTAVIA HILLS, ALABAMA, an Alabama municipal corporation, who being duly sworn according to law, deposes and says on oath as follows:

1. That the City of Vestavia Hills, Alabama (the "City") is the owner of that certain real property (the "Property") described in **Exhibit A** attached hereto and by this reference incorporated herein.

2. That no improvements or repairs have been made to the Property by, for, or at the instance of, the City during the last six (6) months, the bills for which remain unpaid, and that there are no unpaid bills incurred by, for, or at the instance of, the undersigned for labor and materials used in making improvements or repairs on the Property, or for services of architects, surveyors, or engineers in connection therewith.

IN WITNESS WHEREOF, the City has caused this instrument to be duly executed this ____ day of _____, 20____.

CITY OF VESTAVIA HILLS, ALABAMA, an Alabama municipal corporation

By: _____
Printed Name: _____
Its: _____

Exhibit A

Legal Description of Property

EXHIBIT "F"

FORM OF GROUND LEASE

See Attached

GROUND LEASE

THIS GROUND LEASE ("**Lease**") is entered into by and between CHICK-FIL-A, INC., a Georgia corporation ("**Landlord**"), and CITY OF VESTAVIA HILLS, ALABAMA, an Alabama municipal corporation ("**Tenant**").

WITNESSETH:

In consideration of Ten and 00/100 Dollars (\$10.00), other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged by Landlord and Tenant, Landlord and Tenant agree as follows:

Section 1. Effective Date. _____, 20___. Landlord and Tenant agree that the "**Effective Date**" is the date upon which this Lease has been fully executed by Landlord and Tenant and each party has received a fully executed original counterpart. The party last executing this Lease will deliver a fully executed original counterpart to the other party by overnight delivery for receipt on the next succeeding business day and will insert the next succeeding business day in the space above.

Section 2. Demised Premises. Landlord leases to Tenant, and Tenant leases from Landlord, on the terms and conditions of this Lease, the parcel of land (the "**Land**") and all improvements on the Land, consisting of approximately 1.32 acres located in Jefferson County, Alabama, described on Exhibit "A", together with any and all improvements, appurtenances, rights, privileges and easements benefiting, belonging or pertaining to the Land (collectively, the "**Demised Premises**").

Section 3. Term; Tenant's Termination Right.

The term of this Lease (the "**Term**") will commence on the Effective Date and will terminate on the date that is two (2) years after the Effective Date. Notwithstanding the foregoing or any other provision of this Lease to the contrary, Tenant will have the right to terminate this Lease at any time upon providing Landlord with thirty (30) days' advance written notice.

Section 4. Rent. Tenant covenants to pay rent to Landlord, without notice or demand, and without deduction or offset. Rent in the amount of Twelve Thousand Five Hundred and No/100 Dollars (\$12,500.00) shall be payable on the first day of each month in advance for the term of the Lease. Rent for any partial months of the Term shall be prorated on a thirty (30) day month basis. All rent payable by Tenant to Landlord under this Lease will be paid at the office of Landlord set forth in Section 17, or at such other place as Landlord may designate by written notice to Tenant.

Section 5. Taxes and Utility and Maintenance Expenses.

(a) Tenant will pay all real estate taxes which arise during the term of this Lease with respect to the Land and the buildings and the personal property owned by Tenant (collectively, the "**Taxes**").

(b) Taxes will be prorated for partial calendar years included in the term of this Lease. If any Taxes are payable in installments, then Tenant may pay the same in the maximum number of permitted installments.

(c) Tenant, at its sole expense, may contest or seek review of Taxes by any lawful means (if necessary, in the name of and with the cooperation of Landlord).

(d) Any refund or rebate of Taxes paid by Tenant will belong to Tenant.

(e) Nothing contained in this Lease will require or be construed to require Tenant to pay any inheritance, estate, succession, transfer, gift, franchise, income, excise or profit taxes that are or may be imposed upon or assessed against Landlord, its successors or assigns.

(f) Tenant will also pay: (i) all charges for sewer, water, gas, electricity, and other services furnished to the Demised Premises during the term of this Lease; and (ii) any costs of maintenance, repair or replacement of the improvements on the Demised Premises (collectively, the "**Utility and Maintenance Costs**"). Notwithstanding anything to the contrary in this Lease or under applicable law, Landlord will not be responsible for any Utility and Maintenance Costs during the term of this Lease.

(g) Tenant shall pay any and all sales or rent taxes assessed against the rent payable to Landlord hereunder as and when due to the taxing authority, so long as such sales or rent taxes are in the true nature of a sales or rent tax which is levied in lieu of, or as a part of, ad valorem taxes on the Land (and is not in the nature of an income tax). Any such sales or rent taxes shall be deemed to be Taxes for purposes of this Section 5.

Section 6. Use of Demised Premises. The Demised Premises may be used by Tenant for a courthouse and city hall and ancillary municipal purposes.

Section 7. Surrender; Liens.

(a) On the expiration or termination of this Lease, Tenant will surrender the Demised Premises and the improvements and will remove all of Tenant's personal property. If Tenant fails to remove any personal property, Tenant will be deemed to have abandoned the same.

(b) During the term of this Lease, Tenant will, at its own cost and expense, promptly observe and comply with all laws, ordinances, and regulations of the federal, state, and county governments and of all other governmental authorities affecting Tenant's use and occupation of the Demised Premises.

(c) If, because of any work or services performed for Tenant (or any judgment against Tenant), any lien is filed against the interest of Landlord in the Land, Tenant will cause the lien to be discharged of record or bonded within fifteen (15) days after written notice from Landlord. Likewise, Landlord will cause any lien filed against the Land which arises by, though or under Landlord to be discharged of record or bonded within fifteen (15) days after written notice from Tenant.

Section 8. Assignment and Subletting. Tenant may not assign, mortgage or otherwise encumber this Lease or sublease all or any part of the Demised Premises without Landlord's consent, which consent may be withheld in its sole and absolute discretion.

Section 9. Hazardous Materials. Tenant will be responsible for the costs of remediating any Hazardous Materials on the Land due to the act or omission of Tenant, its employees, agents or contractors occurring during the Term. Landlord will be responsible for the costs of remediating any Hazardous Materials on the Land due to the act or omission of Landlord, its employees, agents or contractors. This subparagraph (c) will survive the termination or expiration of this Lease. The term "**Hazardous Materials**" means and refers to any "hazardous waste" or "hazardous substance," as such terms are set forth in, under or pursuant to the Environmental Laws and Regulations, oil or petroleum products or their derivatives, polychlorinated biphenyls, asbestos, radioactive materials or waste, and any other toxic, ignitable, reactive, corrosive, explosive, contaminating or polluting materials which are now

or in the future subject to governmental regulation. "**Environmental Laws and Regulations**" means any federal, state or local laws now or hereafter in effect relating to pollution or protection of the environment or emissions, discharges, spills, releases or threatened releases of any Hazardous Substance into the environment (including without limitation indoor air, ambient air, surface water, ground water or land), including without limitation, the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.*, as amended, the Comprehensive Environmental Response, Compensation and Liability Act ("**CERCLA**"), 42 U.S.C. §§ 9601 *et seq.*, as amended, the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 *et seq.*, as amended, the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, as amended, the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*, as amended, the Toxic Substance Control Act, 15 U.S.C. §§ 2601 *et seq.*, as amended, and any rules and regulations now or hereafter promulgated under any of such acts.

Section 10. Insurance.

(a) Tenant will obtain and keep in force commercial general liability insurance covering the Land with limits of at least Three Million Dollars (\$3,000,000.00) per occurrence and Five Million Dollars (\$5,000,000.00) in the aggregate for bodily injury and property damage. The limits may be met through a combination of Tenant's primary coverage and umbrella and/or excess coverage. Tenant will be permitted to maintain a self insured retention with respect to its commercial general liability coverage.

(b) Tenant will carry its insurance with a good and solvent insurance company or companies licensed to do business in the state in which the Land is located. Tenant's policy will include Landlord as an additional insured with respect to Tenant's commercial general liability policy for bodily injury or property damage resulting from Tenant's negligence. Tenant agrees to deliver a certificate of its insurance on a standard ACORD form to Landlord upon written request by Landlord. The insurance may not be cancelled without thirty (30) days prior written notice to Landlord.

Section 11. Waiver of Subrogation. All insurance policies carried by either party covering the Demised Premises will expressly waive any right on the part of the insurer against the other party. As to any loss or damage which may occur and be covered (or required by the terms of this Lease to be covered) under any insurance policy(ies), the party obligated to carry the insurance hereby releases the other from any amount of liability for such loss or damage. The release includes a release of liability for the full amount of any deductible maintained by a party under its insurance policy.

Section 12. Quiet Enjoyment. Tenant will quietly have and enjoy the Demised Premises during the term of this Lease, without hindrance or molestation by anyone, claims by, through or under Landlord.

Section 13. Defaults.

(a) The following events will constitute events of default by Tenant under this Lease:

(i) Tenant's failure to pay any installment of rent when due and the continuance of the failure for a period of five (5) days after receipt by Tenant of written notice from Landlord; or

(ii) Tenant's failure to perform, in any material respect, any of the covenants, conditions and agreements in this Lease and the continuance of the failure for a period of thirty (30) days after receipt by Tenant of written notice from Landlord (or such longer period as may

be required in order to effect such cure, provided Tenant commences the cure within such 30-day period and diligently prosecutes the cure to completion); or

(iii) if Tenant (1) files a petition commencing a voluntary case under any applicable federal or state bankruptcy, insolvency or other similar law; (2) makes a general assignment for the benefit of its creditors; (3) files an application for, or consents to, the appointment of any receiver or a permanent or interim trustee of Tenant or of all or a substantial portion of its property; (4) files a petition seeking a reorganization of its financial affairs or to take advantage of any bankruptcy, insolvency or similar law, or files an answer admitting the material allegations of a petition filed against it in any proceeding under any such law; (5) takes any action for the purpose of effecting any of the foregoing; or (6) is the subject of a decree or order for relief by a court having jurisdiction over Tenant in any involuntary case under any applicable federal or state bankruptcy, insolvency or similar law; or

(iv) if any proceedings brought against Tenant seeking any of the relief mentioned in Section 13(a)(iii) is not dismissed within sixty (60) days.

If Tenant fails to cure a default within the cure period specified in this Lease, Landlord may, as its sole and exclusive remedy, provide Tenant with written notice of election to terminate this Lease on a date that is not less than ten (10) business days after receipt of such written notice from Landlord.

Section 14. Interest and Late Charges. All rent will bear interest from the fifth (5th) day after the date due until paid at the lesser of (i) the "prime rate" (or if the "prime rate" is discontinued, the rate announced as that being charged to the most creditworthy commercial borrowers) announced by Bank of America, N.A., Atlanta, Georgia, or its successor, from time to time, or (ii) the maximum lawful contract rate per annum. In addition, if any installment of rent is not paid on or before the fifteenth (15th) day after the due date, a "late charge" of \$250.00 may be charged by Landlord.

Section 15. No Waiver. The failure of Landlord or Tenant to complain of any act or omission on the part of the other party, no matter how long the same continues, will not be deemed to be a waiver by that party of any of its rights under this Lease. No waiver by Landlord or Tenant at any time, express or implied, of any breach of any provision of this Lease will be deemed a waiver of a breach of any other provision of this Lease or a consent to any subsequent breach.

Section 16. Force Majeure. If Landlord or Tenant is delayed, hindered or prevented from the performance of any act required under this Lease by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, terrorist acts, public health concerns not in the control of Tenant that materially interfere with Tenant's operations at the Demised Premises, insurrection, the act, failure to act or default of the other party, war or any reason beyond their control, then performance of the act will be excused for the period of the delay and the period for the performance of any such act will be extended for a period equivalent to the period of such delay. Lack of funds will not be a basis for avoidance or delay of any obligation under this Lease.

Section 17. Notices. Every notice given under this Lease will be effective only if it is in writing and delivered (i) in person, (ii) by courier, (iii) by reputable overnight courier guaranteeing next business day delivery, (iv) if sent on a business day during the business hours of 9:00 a.m. until 7:00 p.m. Eastern Time, via facsimile with a copy to follow by reputable overnight courier guaranteeing next business day delivery, or (v) sent postage prepaid by United States certified mail, return receipt requested, directed to the other party at its address provided below, or such other address as either party may designate by notice given from time to time in accordance with this Section 17. Notices will be effective (i) in the

case of personal or courier delivery, on the date of delivery as evidenced by a written receipt signed on behalf of the receiving party, (ii) if by overnight courier, one (1) business day after the deposit of the notice with all delivery charges prepaid, (iii) if by facsimile, on the date of transmission, provided that the telecopier transmission is sent on a business day during the hours stated above, and provided that a confirmation sheet is received and a copy of the notice is simultaneously delivered by reputable overnight courier (with all charges prepaid) for receipt on the next business day, and (iv) in the case of certified mail, the earlier of the date receipt is acknowledged on the return receipt for such notice or five (5) business days after the date of posting by the United States Post Office. The notice addresses for Landlord and Tenant are as follows:

If to Landlord: Chick-fil-A, Inc.
5200 Buffington Road
Atlanta, Georgia 30349
PHONE: (404) 765-8000
FAX: (404) 684-8620
ATTN: Property Management – Real Estate Legal

With a copy to: Chick-fil-A, Inc.
5200 Buffington Road
Atlanta, Georgia 30349
PHONE: (404) 765-8000
FAX: (404) 305-4780
ATTN: Real Estate Legal Department – FSU Division

With a copy to Landlord's Counsel: Troutman Sanders LLP
600 Peachtree Street, N.E.
Suite 5200
Atlanta, Georgia 30308
PHONE: (404) 885-3342
FAX: (404) 962-6617
ATTN: Maureen Theresa Callahan, Esq.

If to Tenant: City of Vestavia Hills, Alabama
513 Montgomery Highway
Vestavia Hills, Alabama 35217
PHONE: (205) 978-3675
FAX: (205) 978-0189
ATTN: Jeff Downes, City Manager

With a copy to: City of Vestavia Hills, Alabama
513 Montgomery Highway
Vestavia Hills, Alabama 35217
PHONE: (205) 978-3675
FAX: (205) 978-0189
ATTN: Mayor

With a copy to Tenant's counsel: Patrick H. Boone, Esq.
215 Richard Arrington Jr. Boulevard N
Suite 705
Birmingham, Alabama 35203-3720
PHONE: (205) 324-2018
FAX: (205) 324-2295

Section 18. Governing Law; Attorneys' Fees. This Lease will be governed by the laws of the state in which the Land is located. In the case of any action or proceeding brought to enforce the terms and provisions of this Lease, the unsuccessful party in any such action or proceeding will, on the entry of a final, non-appealable judgment, pay for all costs, expenses and reasonable attorneys' fees actually incurred by the prevailing party in enforcing the covenants and agreements of this Lease.

Section 19. Partial Invalidity. If any term of this Lease is, at any time or to any extent, invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected, and each term, covenant, condition and provision of this Lease will be valid and be enforced to the fullest extent permitted by law.

Section 20. Interpretation. Wherever the singular number is used, the same will include the plural, and the masculine gender will include the feminine and neuter genders, and vice versa, as the context requires. The section headings are for reference and convenience only, and will not enter into the interpretation of this Lease. The term "Landlord" means only the owner at the time of Landlord's interest herein, and on any sale or assignment of the interest of Landlord and the assumption of this Lease, its successors in interest and/or assigns will, during the term of its ownership of its estate herein, be deemed to be Landlord. This Lease creates for all purposes an estate for years and not a usufruct.

Section 21. Entire Agreement; Modification of Lease. No oral statement or prior written matter between Landlord and Tenant with respect to the matters covered in this Lease will have any force or effect. Landlord and Tenant hereby agree that they are not relying on any representations or agreements by the other party other than the representations or agreements contained in this Lease. Except for Tenant's right to terminate this Lease as expressly provided in this Lease, this Lease will not be modified or canceled except by a writing executed by Landlord and Tenant. All exhibits attached to this Lease are incorporated in this Lease and are made a part of this Lease by reference in this Lease.

Section 22. Parties. Except as otherwise expressly provided in this Lease, the covenants, conditions and agreements contained in this Lease will bind and inure to the benefit of Landlord and Tenant and their respective heirs, successors, successors in title, administrators and assigns.

Section 23. Counterpart Execution; Form W-9. This Lease will be executed in multiple counterparts, each of which will be deemed an original, and all of which will constitute one and the same agreement. **Note:** Landlord will execute and deliver Form W-9 attached as Exhibit "E" with Landlord's counterparts.

Section 24. Day of Performance. Wherever there is a day or time period established for performance and the day or the expiration of such time period is a Saturday, Sunday or holiday, then the time for performance will be automatically extended to the next business day.

[SIGNATURES COMMENCE ON FOLLOWING PAGE]

Landlord has executed this Lease under seal as of _____, 20__.

"LANDLORD"

CHICK-FIL-A, INC., a Georgia corporation

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

(CORPORATE SEAL)

Federal Tax Identification Number of Landlord:

58-0941582

Tenant has executed this Lease under seal as of _____, 20__.

"TENANT"

CITY OF VESTAVIA HILLS, ALABAMA, an
Alabama municipal corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

(CORPORATE SEAL)

Federal Tax Identification Number of Tenant:

EXHIBIT "A"

DESCRIPTION OF LAND

RESOLUTION NUMBER 4560

A RESOLUTION DECLARING A SNOW EVENT OCCURRING JANUARY 29, 2014 THROUGH JANUARY 31, 2014 AS AN EMERGENCY AND AUTHORIZING THE CITY MANAGER TO REMIT TOWING FEES TO VESTAIVA TIRE EXPRESS TO CLEAR VEHICLES IN PUBLIC ROW

WHEREAS, an unexpected snow storm occurred and created hazardous driving conditions on the public rights-of-ways (“ROW”) of the City from January 29, 2014 through January 31, 2014 which caused many motorists to abandon vehicles within the roadways; and

WHEREAS, the City’s Police Department requested towing of vehicles in order to clear the public ROW; a detail of said towing is marked as “Exhibit A” and is attached and incorporated into this Resolution Number 4560 as though written fully therein; and

WHEREAS, the Police Chief and City Manager have reviewed said detail and recommend remittance of the charges in the amount of \$12,700 to be paid to Vestavia Tire Express.

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

1. The snow event of January 29-31, 2014 is hereby declared as an emergency event and the City Manager is hereby authorized to remit towing fees in the amount of \$12,700 to Vestavia Tire Express pursuant to attached detail; and
2. This Resolution Number 4560 shall become effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 10th day of March, 2014.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

Vestavia TIRE EXPRESS



Exhibit A - Resolution No. 4560
NASCAR

No. 85579

1456 Montgomery Highway • Vestavia, AL 35216
(205) 823-1213 • (205) 823-1261

SOLD TO Vestavia Hills Police Department DATE 2-19 2014

ADDRESS _____ PHONE _____

CITY _____ STATE _____ ZIP _____ TERMS _____ PROMISED BY _____ AM _____ PM _____

SOLD BY <u>BB</u>		CASH	C.O.D.	CHARGE	ON ACCT.	MDSE. RET'D.	PAID OUT	MISC.
MAKE	MODEL	LICENSE	MILEAGE	PURCHASE ORDER NO.				
DESCRIPTION OF WORK				DESCRIPTION OF TIRES				
ALIGN WHEELS	<input type="checkbox"/>	NO. TIRES		SIZE	TYPE	PLY		
REPAIR	<input type="checkbox"/>	SERIAL NUMBERS						
MOUNT	<input type="checkbox"/>							
ROTATE TIRES	<input type="checkbox"/>							
(3)	(4)	(5)						

QUANTITY	CODE	DESCRIPTION	EXCISE TAX		MERCHANDISE	
			UNIT	TOTAL	UNIT PRICE	TOTAL
		Towing services provided Jan 29 th - 31 st , services include vehicle ditch recovery & transport to safe location.				
		TOTAL vehicles	117		125.00	14,625.00
		Tire chains installed, city vehicles towed				N/C
		Towing services provided Feb 13. services include ditch recovery & transport to safe location.				
		TOTAL vehicles	10		125.00	1,250.00
		Police Department Discount				3,175.00

I hereby authorize the repair work to be done along with necessary materials. You and your employees may operate vehicle for purposes of testing, inspection or delivery at my risk. An express mechanic's lien is acknowledged on vehicle to secure the amount of repairs thereto. You will not be held responsible for loss or damage to vehicle or articles left in vehicle in case of fire, theft, accident or any other cause beyond your control.
In event of a default of payment of this account, purchaser agrees to pay all costs of collection, including a reasonable attorney's fee. Purchaser waives his rights of exemption under the laws of Alabama or any other state. Your FINANCE CHARGE is computed by a single periodic rate of 1 1/2% per month (minimum charge of 50 cents) which is an ANNUAL PERCENTAGE RATE of 18%.

AUTHORIZED BY _____
RECEIVED BY _____

PARTS	
LABOR	
TOWING	12,700.00
TAX	
TOTAL	12,700.00

Date - January 29th - 31st

Exhibit A Resolution No. 4500

Make & Model	Color	Tag #	Location
1) Ford Mustang	orange	ARR6637	move to Pier One
2) Ford F150	green	1B55453	move to Crab Tree
3) Mercedes Benz	white	8512ADA	move to Sol Azteca
4) Nissan Pick up	white	58BZ 537	move to Sol Azteca
5) Chevy Equinox	white	1C91T15	Shoulder on 31
6) Honda Odyssey	grey	AW45390	Shoulder on 31
7) Lexus LS 460	white	1AC6963	Shoulder on 31
8) Gmc Acadia	—	Ervin 5	Shoulder on 31
9) Nissan Altima	white	1C73F53	Shoulder on 31
10) Pontiac Vibe	white	1A9N61	Shoulder of 31
11) Honda Pilot	silver	T4A02	Shoulder of 31
12) Toyota Avalon	gold	1C88V10	Shoulder of 31
13) Toyota Camry	white	BA6442	Shoulder of 31
14) Ford Flex	silver	BC09970	Shoulder of 31
15) Honda Odyssey	grey	BD03003	Shoulder of 31
16) Nissan Pathfinder	maroon	1C1T56	Shoulder of 31
17) Chevy 1500	white	1C88V74	Wald Park
18) Volvo	gold	AR74759	Wald Park
19) Hyundai Sonata	—	58633A8	Wald Park
20) Ford Fusion	silver	1C33L27	Wald Park
21) Nissan Maxima	gold	1C53571	Shoulder of 31
22) Lexus RS350	—	Florida Tag # 3071JS	Shoulder of 31
23) Nissan Versa	—	AW41118	Shoulder of 31
24) Toyota Sequoia	grey	1C15427	Shoulder of 31
25) Toyota Van	Blue-green	1B10R98	Shoulder of 31
26) Gmc Yukon	gold	1C17Z18	Shoulder of 31
27) Ford Explorer	green		Shoulder of 31

Date -

Customer Name	Invoice #	Payment Type
28) Toyota Sequoia	white 4863AA5A1	move to Library
29) Honda Accord	Red 1A2W39A1	to Vesthaven City
30) Ford Mustang	Red BMRGAL	Shoulder of 31
31) Chevy 1500	Red BIK127	Shoulder of 31
32) Honda Accord	— 1C42K75	Shoulder of 31
33) Toyota Rav 4	Silver —	Shoulder of 31
34) BMW 525i	black 59648A7	Shoulder of 31
35) Lexus LS400	— BA01495	Shoulder of 31
36) Toyota Highlander	— REL-7	Shoulder of 31
37) Acura TL	grey 1C87S42	Shoulder of 31
38) GMC Acadia	black 1C61D79	morgan road
39) BMW 550i	silver 1C41G67	morgan road
40) Acura MDX	white C24G4	morgan road
41) Honda Accord	— 59B10H7	bottom of Vestridge
42) Ford Mustang	black 1C12843	I65 to 31 median
43) Ford Van	white 1A23216	I65 to 31 median
44) Ford F250	white BD06825	I65 to 31 median
45) Toyota Camry	gold 1611AFA	I65 to 31 median
46) Toyota Tacoma	blue 58L96T7	I65 to 31 median
(Hwy 31(N) hillside by Brookwood)		
47) Acura Tsx	grey A551896	Shoulder of 31
48) Nissan Rogue	white 1C12m93	Shoulder of 31
49) Honda Pilot	grey 99M4M	Shoulder of 31
50) Ford Taurus	grey BD12021	Shoulder of 31
51) Ford Expedition	Red 3GRL	Shoulder of 31
52) Chrysler Sebring	silver 1A97N29	Shoulder of 31

Date -

Customer Name	Color	Invoice #	Payment Type
53) GMC Envoy	Black	50L50R1	Shoulder of 31
54) Toyota Corolla	Blue	5022AA1	Temple on 31
55) Hyundai Sonata	grey	58J11T1	front of firestation 2
56) Infiniti M35	grey	1AA8365	front of firestation 2
57) Toyota Camry	black	1C88m05	Shoulder of Shades Crest
58) Ford F250	black	3293AA7	Shades Crest
59) Lexus GS430	grey	1B11C50	Shades Crest
60) Ford Expedition	black	AW33989	Pizitz & Hayes
61) Toyota Tundra	white	1C21K66	Vest. Farrest Dr.
62) Honda Accord	silver	1B09P27	Marks outdoors
63) Lexus	red	1C14N94	Jacobs & Canal St.
64) Honda Accord	grey	1A18530	On Greenbrier
65) Kia Rio	silver	Florida # AFN940	front of Chevron
66) Lincoln MKZ	maroon	Mississippi # LA0403	behind baymont
67) Toyota Camry (1-30-14)	white	1C47567	Shades Crest
68) Chrysler Sebring	grey	A9K463	front of Post office
69) Nissan Pathfinder	grey	Ay20742	Vestridge & 31
70) Honda Odyssey	black	2H169M	Vestridge & 31
71) Toyota 4 Runner	white	5T03A44	Shades Crest & P. Ridge
72) Buick LaSalle	brown	1B96m23	280 & Rocky ridge Entrance to Rumphouse Valley
73) Chevy Equinox	white	AT09607	pass Rumphouse Cahaba River Rd & Acton
74) Ford Ranger	blue	1A12A11	pass Rumphouse Cahaba River Rd & Acton
75) Toyota Tundra	black	58C86T2	Acton by Altadena
76) Acura TL	silver	58D95C5	Acton by Altadena
77) Ford Escape	Red	20284AR	Acton/Altadena
78) Toyota Sienna	grey	1A99T42	Acton by Altadena
79) Dodge Durango	blue	RCT4A6	Acton Rd

Date -

Customer Name	Invoice #	Payment Type
80) Toyota Tacoma	grey 58643N7	
81) Pontiac Grand Am	white 8A87G80	Shoulder Acton Rd
82) Ford Explorer	maroon 8A871	Shoulder Acton Rd
83) Toyota Camry	grey 1C24R82	Shoulder Acton Rd
84) Toyota 4 Runner	white 1N59J38	Shoulder Acton Rd
85) Hyundai	grey APRT4RE	Shoulder Acton Rd
86) Ford Explorer	grey 04M7W	Shoulder Acton Rd
87) Nissan Altima	silver 1C67J55	Ridge & Ingersoll lot
88) Cadillac	Tan 1D9B7	(Sb) 31 of ramp
89) Chevy Malibu	brown 1B54U79	Subway lot
90) P.T. Cruiser	Red 1B27G14	Tyler & Hackberry
91) Mercedes 500	Black A423830	off Hill Montreat
92) Toyota Corolla	Blue 1A15P48	Firestation #2
93) Bmw 328i	Grey CAP415	Creekview Apt.
94) Chevy Malibu	white 1C07Z14	Tyler & Twin Branch
95) Ford Explorer	white 1A98M10R	Montalista & Mont.
96) Honda Pilot	maroon 1B93J08	Montalista Mont.
97) Kia Spectra	white 1C03D15	Montalista Mont.
98) Jaguar XF	blue 1A85W99	Gayway
99) Nissan Armada	white ANA650	Gayway
100)		

Date -

Customer Name	Invoice #	Payment Type
(back Vehicles brought to Vestavia Tire)		
101) Chevy Corvette	Silver (1-31) ILOOK	(N) I65
102) Yukon XL	white (1-31) 58LG2PA	I65 off ramp
103) Volvo wagon	white (1-31) 1C94F74	(N) I65
104) Ford Thunderbird	Red (1-31)	Columbiana
105) Honda Accord	gold wisconsin # 704-5WH (picked up 2-3)	Red lobster
106) Toyota Corolla	Black samford # 2607B (1-31)	Columbiana
107) Volkswagon Touareg	(picked up 1-31) CRK795	gayway
108) Chevy Corvette	red (picked up 1-31) 1B81J02	Vestaview & Marcliff
109) Honda Odyssey	maroon (picked up 1-31) 1C34L1D	I65 @ Alford
110) Ford Expedition	Tan/white (picked up 2-3) 58J27P4	Rocky Ridge & Coventry Dr
112) Chevy Blazer	red (picked up 1-31) 58K7255	gayway
113) Mazda 3	black (1-2-5) georgia # BTF1275	Tyler & Vanburen
114) Honda Odyssey	blue (picked up 2-3) WVF-461	1700 Vestaview
115) Toyota Sequoia	grey (picked up 1-31) 1A15D4	Notchez & griv 1600
116) RangeRover	black (picked up 1-31) D4811059	gayway
117) Ford Escape	Silver picked up (2-11-14) 1A46V97	Shadydale & garland

RESOLUTION NUMBER 4561

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AND DELIVER AN AGREEMENT WITH WALTER SCHOEL ENGINEERING CO., INC. FOR DEVELOPMENT AND SUBMITTAL OF AN APPLICATION FOR THE CLEAN WATER STATE REVOLVING FUND (CWSRF) LOAN PROGRAM FOR THE LITTLE SHADES CREEK/MEADOWLAWN PROJECT

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

1. The City Manager is hereby authorized to execute and deliver an agreement with Walter Schoel Engineering Co., Inc. for development and submittal of an application from 2014 Clean Water Revolving Fund (CWSRF) Loan Program for the proposed Little Shades Creek/Meadowlawn Project located in Cahaba Heights at a cost not to exceed \$8,600; and
2. A copy of said agreement is marked as “Exhibit A” attached to and incorporated into this Resolution Number 4561 as though written fully therein; and
3. This Resolution Number 4561 is effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 10th day of March, 2014.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk



March 4, 2014

City of Vestavia Hills
513 Montgomery Highway
Vestavia Hills, Alabama 35216

Attention: Mr. Jeff Downes, City Manager

Reference: Little Shades Creek/Meadowlawn Project
Clean Water State Revolving Fund
Project Loan Application

Dear Mr. Downes:

Enclosed is a proposal to develop and submit the application for funding under the Clean Water State Revolving Fund (CWSRF) Loan Program for the proposed Little Shades Creek/Meadowlawn Project located in Cahaba Heights within the City of Vestavia Hills.

We appreciate the opportunity of working with you. Please call if you have any questions.

WALTER SCHOEL ENGINEERING CO., INC.

A handwritten signature in blue ink, appearing to read "William R. Thomas".

William R. Thomas, PE
Ala. Reg. No. 27489

Attachment

Established in 1888

WALTER SCHOEL ENGINEERING COMPANY, INC.
1001 22nd Street South • Birmingham, Alabama 35205
P 205-323-6166 • F 205-328-2252 • schoel.com

AGREEMENT FOR CONSULTING SERVICES

BETWEEN

THE CITY OF VESTAVIA HILLS

AND

WALTER SCHOEL ENGINEERING COMPANY, INC.

FOR

LITTLE SHADES CREEK/MEADOWLAWN PROJECT

VESTAVIA HILLS, ALABAMA

March 4, 2014

This **AGREEMENT**, entered into by and between **The City of Vestavia Hills**, hereinafter referred to as the **Client**, and **Walter Schoel Engineering Company, Inc.**, hereinafter referred to as the **Consultant**, is for Consulting Services associated with the Clean Water State Revolving Fund (CWSRF) Little Shades Creek/Meadowlawn project.

SCOPE OF WORK

The Little Shades Creek/Meadowlawn project has been determined in the pre-application process as eligible to receive CWSRF funding in fiscal year 2014. The determination is subject to review of the City's current financial information, submitted full application, and successful completion of the State Environmental Review Process. Below is the detailed scope of work to develop and coordinate the application submittal for CWSRF funding.

1. DUE DILIGENCE AND PRELIMINARY ENGINEERING

The Consultant will perform due diligence directed at the project area. This task may include property encumbrances, utility research, and other related items to identify potential issues that will need to be addressed in the design or construction phases. The Consultant will also develop preliminary engineering of the proposed project. This would include a site plan and grading plan depicting the proposed project components. This work would be performed to support the construction cost estimates and in order to have reasonably detailed design information to present at the public meeting and to the various agencies that will be consulted.

Proposed Fee \$8,600

2. APPLICATION FOR CWSRF FUNDING

The purpose of this scope is to assist the City in applying for CWSRF funding. The City would oversee and manage the application preparation and process. The Consultant will assist the City with the application process and develop Engineering and Environmental information required for the application submittal. This includes the development of the Environmental Information Document (EID) and coordinating with state and federal agencies to receive project concurrence. In addition, the Consultant will attend project meetings as requested by the Client. A detailed list of tasks covered in this scope item is as follows:

- Attendance at Program Overview Meeting at ADEM
- Prepare project cost breakdown
- Consulting Engineer Information and Certification
- Develop Construction Schedule
- Coordinate with the Client as needed to complete application

- Develop Environmental Information Document (EID)
 - Project Information and Need
 - Conduct an Alternatives Analysis
 - Coordinate with State and Federal Agencies to receive project concurrence
 - Assist with Public Meeting
 - Analyze Environmental Consequences
- Develop Project Exhibits and Supporting Documents

Proposed Fee \$23,600

NOT INCLUDED IN SCOPE OF WORK

1. Final Design and Construction Documents
2. Field Surveying
3. Permitting of project components with FEMA, US Army Corps of Engineers, or other State or Federal agencies

PAYMENT TERMS

The Consultant will bill the Client monthly based on work completed during the previous month. Work completed will be based upon a percentage of completion for Lump Sum Fees, and will be based on time at the below schedule of unit rates for Hourly Estimates. Payments are due thirty (30) days following receipt of invoice. The Client's obligation to pay for services is in no way dependent upon the Client's ability to obtain financing, obtain approval from any governmental or regulatory agencies, real estate closing, receipt of payment from other parties or upon successful completion of the project' provided that Consultant will not commence performance of the Work or provide any services until Client advises Consultant in writing that approval of this agreement has been obtained from the City's governing body or other appropriate City official. Should Consultant incur attorney's fees for collection of uncontested payments due it for its Work, the amount owed to Consultant shall include any said reasonable fees. In addition, Consultant reserves the right to suspend services under this Agreement until such time as payment is made in full for any uncontested amount due for services rendered has been received.

SCHEDULE OF UNIT RATES

Senior Principal		\$ 225.00 per hour
Principal		\$ 170.00 per hour
Chief Land Surveyor		\$ 150.00 per hour
Senior Project Manager		\$ 140.00 per hour
Project Manager 2		\$ 125.00 per hour
Project Manager 1		\$ 110.00 per hour
Senior Professional		\$ 120.00 per hour
Project Professional		\$ 105.00 per hour
Staff Professional		\$ 90.00 per hour
Senior Designer / Survey Draftsman / Specialist		\$ 90.00 per hour
Designer / Survey Draftsman / Specialist 2		\$ 80.00 per hour
Designer / Survey Draftsman / Specialist 1		\$ 70.00 per hour
Field Survey Party		\$ 150.00 per hour
Laser Scanning Field Crew		\$ 400.00 per hour
Laser Scanning Specialist		\$ 125.00 per hour
Intern/Support		\$ 55.00 per hour
Courier		\$ 25.00 per delivery
Transportation		\$ 0.50 per mile
Materials	(Stakes and Hubs)	\$ 0.35 each
	(Flagging)	\$ 2.50 per roll
	(Iron Pins and Caps)	\$ 5.00 each
	(Spray Paint)	\$ 5.00 per can

Printing and other reimbursable expenses will be charged at cost, and are not included in the fee basis described above. Sub-consultant invoices will be billed to the client at a rate of 110% of the sub-consultant invoice. Overtime rates may apply for work required during non-standard work hours.

GENERAL TERMS AND CONDITIONS

- 1) Services performed under this Agreement will be conducted in a manner consistent with that level of care and skill exercised by members of the profession currently practicing under similar conditions. Plans, specifications, and submittals will be prepared in accordance with the written standards of the governing authorities having jurisdiction. Any extraordinary requirements for approvals will be considered additional services. No other warranty, expressed or implied, is made. Nothing in this agreement is intended to create, nor shall it be construed to create, a fiduciary duty owed by either party to the other party.
- 2) The figures given above and in the body of this Agreement are based on the Scope of Work as described herein. If the above outlined Scope of Services is changed, or if there are other services that may be requested by the Client, these additional services will also be performed at the above unit rates, or a revised fee will be negotiated to the satisfaction of both the Client and Consultant at that time. The Consultant reserves the right to adjust these unit rates for inflation costs on a one-year interval from the date of this proposal.
- 3) All claims, disputes, and other matters in controversy between Consultant and Client arising out of or in any way related to this agreement (other than as a result of Client's failure to pay amounts due hereunder) will be submitted to mediation before, and as a condition precedent to, other remedies provided by law. Mediation

shall be held in the county where the project is located, and if the parties cannot agree on a mediator then one shall be appointed by the American Arbitration Association (AAA). Parties agree to split cost of mediation 50-50.

- 4) Services not expressly set forth in writing as basic or additional services and listed in the proposal to this Agreement are excluded from the scope of the Consultant's services, and the Consultant assumes no duty to the Client to perform such services.
- 5) Client, at its expense, will provide the Consultant with all required site information, existing plans, reports, studies, project schedules and similar information that is contained in Client's files. The Consultant may rely on the information provided by the Client without verification. The Client shall participate with the Consultant by providing all information and criteria in a timely manner, review documents and make decisions on project alternatives to the extent necessary to allow the Consultant to perform the scope of work within established schedules.
- 6) Consultant shall secure and maintain insurance as required by law or statutory requirements which will protect him from claims under the workers compensation acts and from claims for bodily injury, death, or property damage that may arise from the performance of his services under and pursuant to this Agreement. Certificates of such coverage will be provided to Client upon request.
- 7) All reports, plans, documents, or other materials resulting from the Consultant's efforts shall remain the property of the Consultant and are intended solely for the purpose of this Agreement. Any reuse by Client for purposes outside of this Agreement or any failure to follow Consultant's recommendations without Consultant's written permission shall be at the user's sole risk.
- 8) This Agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure to perform in accordance with the terms of the agreement by the other party through no fault of the terminating party. If this Agreement is terminated, it is agreed that Consultant shall be paid for total charges for labor performed to the termination notice date, plus reimbursable charges.
- 9) Neither party to this Agreement will be liable to the other party for delays in performing the services, nor for the direct or indirect cost resulting from such delays, that may result from labor strikes, riots, war, acts of governmental authorities, extraordinary weather conditions or other natural catastrophes, or any other cause beyond the reasonable control of either party.
- 10) The invalidity of any portion of this Agreement will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect.
- 11) The Consultant shall not be responsible for construction site safety or construction procedures, nor will the Consultant be responsible for the quality of the work performed by the contractor or other consultants.
- 12) Consultant may, at Client's request and for Client's convenience, provide documents in electronic format. Data, words, graphical representations, and drawings that are stored on electronic media or which are transmitted electronically, may be subject to uncontrollable alteration. The printed, signed and sealed hard copy is the actual professional instrument of service. In the event of a discrepancy between the electronic document and the hardcopy document, the hardcopy document will prevail.

PROPOSAL ACCEPTANCE

SUBMITTED:

Consultant: Walter Schoel Engineering Company, Inc.



Signature: _____

Name: William R. Thomas

Title: Senior Environmental Project Manager

Date: March 4, 2014

ACCEPTED:

Client: The City of Vestavia Hills

Signature: _____

Name: _____

Title: _____

Date: _____

Please print or type the following information for the individual, firm or corporation responsible for payment.

Company: _____

Client or Client's authorized representative: _____

Street Address: _____

City, State, Zip: _____

Phone Number: _____ **Fax Number:** _____

Email Address: _____

Client's Project Number: _____ **Client's Purchase Order Number:** _____

PATRICK H. BOONE
ATTORNEY AND COUNSELOR AT LAW
NEW SOUTH FEDERAL SAVINGS BUILDING, SUITE 705
215 RICHARD ARRINGTON, JR. BOULEVARD NORTH
BIRMINGHAM, ALABAMA 35203-3720

TELEPHONE (205) 324-2018

FACSIMILE (205) 324-2295

March 5, 2014

By Electronic Mail

City Manager Jeffrey D. Downes
Vestavia Hills Municipal Center
513 Montgomery Highway
Vestavia Hills, Alabama 35216

In Re: Agreement By and Between the City of Vestavia Hills, Alabama
and Walter Schoel Engineering Company, Inc. for
Little Shades Creek/Meadowlawn Project Located in Cahaba Heights

Dear Mr. Downes:

On March 4, 2014, you furnished me with a copy of the revised draft of the above agreement with a request that I review the same and provide you with my written legal opinion.

I have reviewed the agreement as amended. It is my legal opinion that the document meets the requirements of Alabama law. Therefore, from a legal standpoint, I approve the execution and delivery of the agreement.

Please call me if you have any questions regarding any of the matters stated in this legal opinion.

Sincerely,



Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp

cc: Mayor Alberto C. Zaragoza, Jr. (by e-mail)
City Clerk Rebecca Leavings (by e-mail)

RESOLUTION NUMBER 4562

A RESOLUTION AUTHORIZING THE CITY MANAGER TO FUND BRAND EXTENSION INITIATIVES WITHIN THE CITY OF VESTAVIA HILLS, ALABAMA

WHEREAS, the City Manager, Mayor and Council recognize a need for “branding” for the City of Vestavia Hills in an effort to unite the City and the Vestavia Hills Chamber of Commerce in a creative and strategic brand extension to paint a picture of what exists within the community and what is to come; and

WHEREAS, the City joined with the Chamber to create a Committee to begin and oversee the branding activities of the City and the Committee has drafted a tentative outline of said brand extension initiatives, a copy of which is marked as “Exhibit A,” attached and incorporated into this Resolution Number 4562 as though written fully therein; and

WHEREAS, the Mayor and Council agree that branding serves a public purpose and agree that funding should be available for said outlined brand extension initiatives.

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

1. The City Manager is hereby authorized to expend an amount not to exceed \$215,600 for brand extension initiatives as described in the attached outline; and
2. Funding for said initiatives shall derive from the City’s Capital Reserve Fund 20; and
3. Said initiatives and agreements shall be authorized by act of the governing body outlining the specific branding initiatives and shall be requested at a subsequent City Council meeting; and
4. This Resolution Number 4562 shall become effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 24th day of March, 2014.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk



VESTAVIA HILLS

BRAND EXTENSION INITIATIVE

2.27.14

I. PROJECT OVERVIEW

Vestavia Hills would like to further define their promise as a community. They desire a brand extension that unites the City and the Chamber and creates an emotional bond across all brand touch points. A creative and strategic brand extension will paint an authentic picture of what already exists within the community, and state a sincere promise of what is to come. Tatum Design will create the following deliverables to help accomplish these goals:

II. CITY OF VESTAVIA HILLS DELIVERABLES

<p>A. CITY WEBSITE DESIGN AND PROGRAMMING Tatum Design will create a full website that will include a thorough audit and review of existing content, revised web architecture, new design and writing. We will work with our preferred web programmer to implement coding and programming. The website will be developed with a content management system to allow for internal updates.</p>	<p>\$22,500</p>
<p>B. GATEWAY DESIGN We will work with the City to audit the welcome signage design solutions that were previously presented in the original brand presentation. Based on new conversations and needs, we will modify these designs to specification, and/or create other design variations. This cost is for design only. The cost to implement the signage will be estimated once the design is finalized and approved.</p>	<p>\$4,800</p>
<p>C. DISTRICT SIGNAGE DESIGN We will provide designs for business district light pole signage including several seasonal options. This cost does not include the cost to print and produce signage.</p>	<p>\$4,800</p>
<p>D. BRAND VIDEO We will produce a 2 to 3 minute video showcasing the lifestyle, beauty and community experience of Vestavia Hills. This price includes all the costs associated with producing the final video, including concept, script, art direction, a four day shoot with a director, producer, casting, models, wardrobe stylist, hair and makeup stylist, film crew, voiceover talent, music license, audio engineering and video editing.</p>	<p>\$70,500</p>
<p>E. BRAND VISION BOOK We will concept, design and write a vision book that will function as an economic development piece. This stand-alone book will beautifully illustrate the Vestavia Hills experience: What is here and what is to come. It will showcase the lifestyle, opportunities for business owners and special events. This is a creative fee only. A range for printing costs is provided in item "E."</p>	<p>\$12,600</p>
<p>F. BRAND VISION BOOK PRINTING For budgeting purposes we have estimated a printing cost range for a quantity of approximately 2,000. This production range estimate is based on projects we have produced in the past.</p>	<p>\$18,000 - \$22,000</p>
<p>G. TAGLINE We will perform a creative audit of the Chamber's current tagline and how it applies or can be revised to work across platforms of both the Chamber and the City.</p>	<p>\$1,200</p>
<p>H. BRAND SOLUTIONS AND BRAND STANDARDS GUIDE Tatum Design will provide a Brand Standards Guide for internal use. This tool will be in PDF form and will provide logo, font and color usage guidelines. This Brand Standards Guide will establish solutions to ensure brand consistency between the Chamber and the City.</p>	<p>\$2,400</p>

CITY OF VESTAVIA HILLS DELIVERABLES (cont'd)

<p>I. UPDATABLE ADS AND PUBLICATION DESIGN TEMPLATES We will extend the brand design to provide customizable templates for publications and ads. This cost is for design only and does not include the costs associated with printing publications or purchasing media.</p>	<p>\$3,000</p>
<p>J. MAPS Tatum Design will design and illustrate six custom area maps in a hand-drawn style that is consistent with the new brand. This is a creative fee only and does not include the costs associated with printing the maps.</p>	<p>\$6,300</p>
<p>K. STILL PHOTOGRAPHY We will produce and art direct a four-day photo shoot to create a library of branded images that capture the essence of the Vestavia Hills lifestyle and showcase the unique topography and landscape of the area. This new image collection will be used throughout all of the project deliverables. The cost includes concepts, location scouting, planning, photographer, lighting crew, casting, models, make-up artist, wardrobe stylist and retouching of final images. (Approx. 25-35 images)</p>	<p>\$40,500</p>
<p>L. STOCK PHOTOGRAPHY We will search and purchase a library of images to supplement the still photography captured in the photo shoot. This stock image collection will also be used throughout all of the project deliverables. (Approx. 25-35 images)</p>	<p>\$15,000-\$25,000</p>
<p>TOTAL FOR CITY OF VESTAVIA HILLS DELIVERABLES</p>	
	<p>\$201,600-\$215,600</p>

III. CHAMBER OF COMMERCE DELIVERABLES UNDER EXISTING FUNDING

<p>A. CHAMBER WEBSITE DESIGN Tatum Design will present a full website design for the Chamber that complements the City's website design. We anticipate this will be a smaller website than the City's website and will include a thorough audit and review of existing content, revised web architecture, new design, and writing. The costs associated with web programming and coding is not included.</p>	<p>\$12,300</p>
<p>B. EVENT IDEAS Tatum Design will brainstorm ideas for signature Vestavia Hills events. These event ideas will be designed to strategically bring businesses together as well as create engaging activities for residents of all ages. This is a creative fee for presenting ideas. Implementations costs associated with the events are not included.</p>	<p>\$3,750</p>
<p>C. SHOP, DINE, PLAY CONCEPTS We will present creative campaign concepts that will engage residents of the community and encourage them to shop, dine and play where they live. This is a creative fee only. Any implementation costs associated with production and placing media are not included. If the campaign solutions we present are approved, we will need to collect costs to launch the campaign. Theses costs could include, but aren't limited to the following: TV production, TV media placement, outdoor board production and placement, and print ad media placement.</p>	<p>\$6,000</p>
<p>TOTAL FOR CHAMBER OF COMMERCE DELIVERABLES</p>	
	<p>\$22,050</p>

IV. ITEMS INCLUDED IN THIS ESTIMATE

- All art direction, design, photo retouching and copywriting are included for the deliverable items listed above.
- Photography and usage, and all production costs for a completed video are included.
- Production costs for completed websites for the Chamber and the City.
- We have estimated the creative fees based on our current knowledge of the outlined scope of work and our experience in creating similar solutions and programs. If the hours necessary to create the program outlined in this proposal amount to more than we anticipated, there will be no additional charge to Vestavia Hills.

V. ITEMS NOT INCLUDED IN THIS ESTIMATE

- Any production, printing, web programming or media costs for items: II-B, C, H, I, J, and III-A, B, C
- Trademark registration of presented work/ideas (if needed).

VI. BILLING PROCEDURES

It is the firm's standard practice to invoice one-half at the start of the work for each item listed in this proposal and the remaining one-half upon completion. Terms are due upon receipt. The firm bills for incidental expenses such as shipping and unexpected travel required in serving the account. Tatum Design bills such expenses without markup (at net).



TATUM DESIGN

RESOLUTION NUMBER 4563

A RESOLUTION AUTHORIZING THE CITY MANAGER TO PURCHASE SIGNAGE FOR FIELDS LOCATED AT SICARD HOLLOW ATHLETIC COMPLEX

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

1. The City Manager is hereby authorized to purchase signage for fields located at the Sicard Hollow Athletic Complex in an amount not to exceed \$14,400; and
2. Said funding for signage shall be derived from a donation to the City from the Vestavia Hills Park and Recreation Foundation held in the Capital Projects Fund 20; and
3. This Resolution Number 4563 shall be effective upon adoption and approval.

ADOPTED and APPROVED this the 24th day of March, 2014.

Alberto C. Zaragzoa, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

City of Vestavia Hills Public Services
513 Montgomery Highway
Vestavia Hills, AL 35216
205.978.0150

Interoffice Memo

March 5, 2014

TO: Jeff Downes
City Manager

FROM: Brian C. Davis *bed*
Public Services Director

RE: Field Signage at SHAC

The Parks and Recreation Foundation has collected funding in exchange for naming rights at 3 of the 4 fields at Sicard Hollow. We have received pricing for signage to identify these 3 fields. The cost per field is estimated at \$4,800 for a total cost of \$14,400. The funding will come out of the Park and Recreation Foundation donation, however it is a non-budgeted item, therefore it needs City Council approval.

Please let me know if you have any questions.

RESOLUTION NUMBER 4564

A RESOLUTION AUTHORIZING THE CITY MANAGER TO PURCHASE A MONUMENT ENTRY SIGN FOR SICARD HOLLOW ATHLETIC COMPLEX

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

1. The City Manager is hereby authorized to purchase a monument sign for Sicard Hollow Athletic Complex in an amount not to exceed \$14,000; and
2. Said funding for signage shall be derived from a donation to the City from the Vestavia Hills Park and Recreation Foundation held in the Capital Projects Fund 20; and
3. This Resolution Number 4564 shall be effective upon adoption and approval.

ADOPTED and APPROVED this the 24th day of March, 2014.

Alberto C. Zaragzoa, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

City of Vestavia Hills Public Services
513 Montgomery Highway
Vestavia Hills, AL 35216
205.978.0150

Interoffice Memo

March 5, 2014

TO: Jeff Downes
City Manager

FROM: Brian C. Davis *bed*
Public Services Director

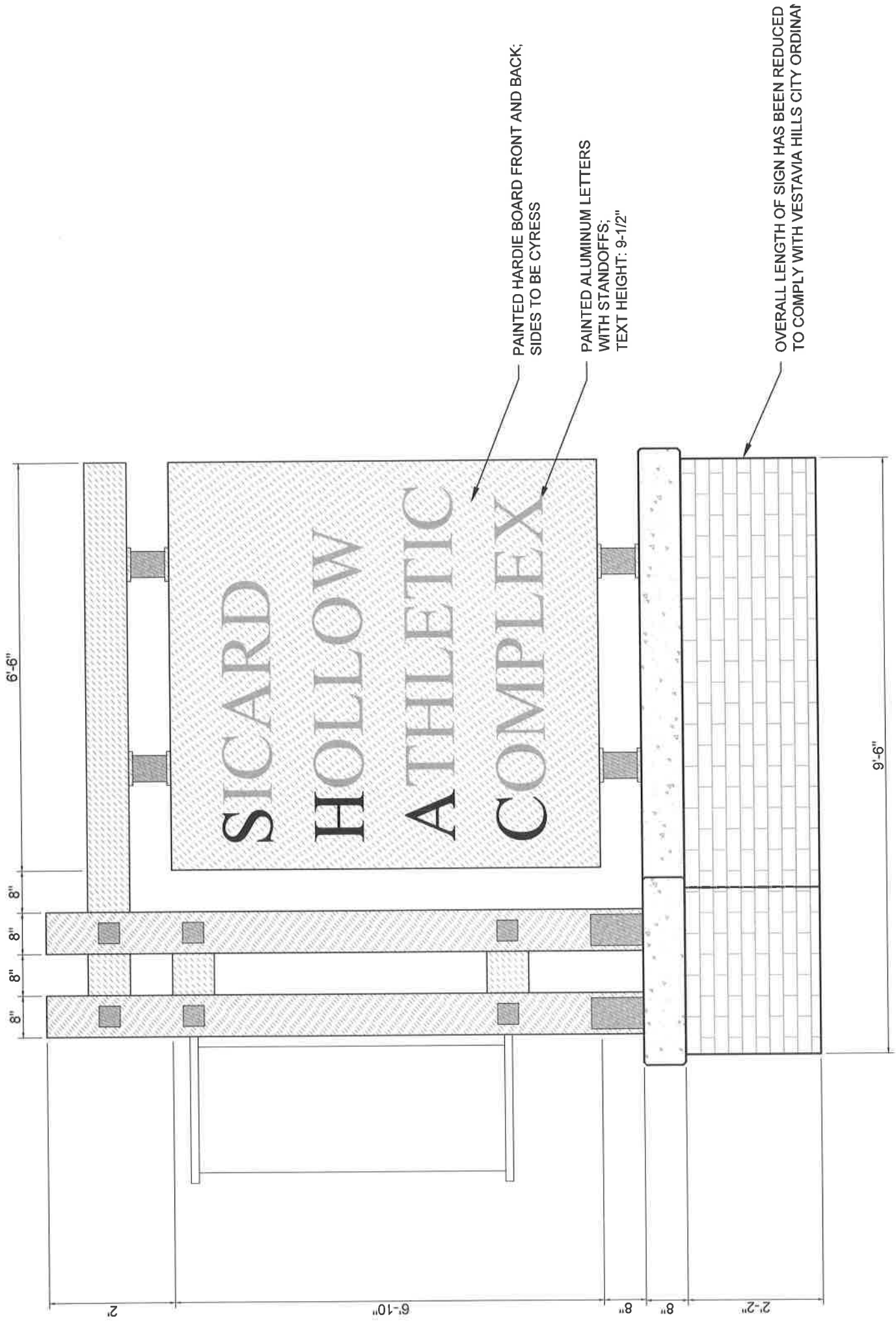
RE: Monument Entry Sign at SHAC

We have received an estimate to construct the monument entrance sign at the Sicard Hollow Athletic Fields. The funding will come out of the Park and Recreation Foundation donation, however it is a non-budgeted item, therefore it needs City Council approval.

The estimated cost for supplies, equipment and labor should not exceed \$14,000. The attached design has been sent to Mike Roy of inspections, and it meets the current sign ordinance.

Please let me know if you have any questions.

ATTACHMENT: 1



SIGNAGE MONUMENT ELEVATION