

**Vestavia Hills
City Council Agenda
March 23, 2015
5:00 PM**

1. Call to Order
2. Roll Call
3. Invocation – David Harwell, Vestavia Hills Resident
4. Pledge Of Allegiance
5. Announcements and Guest Recognition
 - a. Board of Education Announcement – Deadline for Application April 13, 2015
6. City Manager’s Report
7. Councilors’ Reports
8. Financial Reports – Melvin Turner, III
9. Approval of Minutes – January 15, 2015 (Work Session); February 19, 2015 (Work Session) and March 9, 2014 (Regular Meeting)

Old Business

10. Resolution Number 4687 - A Resolution Authorizing The City Manager To Execute And Deliver An Agreement With Retail Specialists For Brokerage Services For The Marketing and/or Sale Of Municipal Property
11. Ordinance Number 2558 – An Ordinance Granting A Non-Exclusive Right-Of-Way Use Agreement To Southern Light, LLC, For The Purpose Of Constructing And Maintaining A Fiber-Optic Transmission Line Within Certain Public Rights-Of-Way Within The City Of Vestavia Hills, Alabama
12. Ordinance Number 2373-A – Amending Ordinance Number 2373 to grant an extension of conditional use approval for 1476 Montgomery Highway; Anthony and Margaret Serra, Owners; Alton Parker, Representing.

New Business

13. Resolution Number 4688 – A Resolution Accepting A Bid For Right-Of-Way Mowing Of Montgomery Highway And Columbiana Road
14. Resolution Number 4689 – A Resolution Accepting A Bid For Vegetation Control In Various Rights-Of-Way Of The City

New Business (Requesting Unanimous Consent)

15. Resolution Number 4691 – A Resolution Authorizing The City Manager To Enter Into An Agreement With Brailsford & Dunlavey For Development Of A Recreation & Athletics Master Plan
16. Resolution Number 4695 – A Resolution Authorizing The City Manager To Enter Into A Settlement Agreement Regarding The Appeal Of The City Council’s Order To Demolish 2253 Great Rock Road
17. Resolution Number 4696 – A Resolution Authorizing The City Manager To Execute And Deliver All Documents Necessary In Order To Secure The Demolition Of A Structure

First Reading (No Action Taken At This Meeting)

18. Resolution Number 4690 – Vacation – Storm Sewer Easement – 513 Montgomery Highway, City of Vestavia Hills, Owner
19. Resolution Number 4692 – Annexation – 90-Day – 3400 Kettering Lane; Lot 16, Ridgedell Park; Natan and Lindsey Shar, Owner(s)
20. Ordinance Number 2559 – Annexation – Overnight – 3400 Kettering Lane; Lot 16, Ridgedell Park; Natan and Lindsey Shar, Owner(s)
21. Resolution Number 4693 – Annexation – 90-Day – 3405 Sagewood Trail; Lot 23-A; Resurvey of Lots 21, 22 and 23, Sagewood; Donald and April Winningham, Owner(s)
22. Ordinance Number 2560 – Annexation – Overnight – 3405 Sagewood Trail; Lot 23-A; Resurvey of Lots 21, 22 and 23, Sagewood; Donald and April Winningham, Owner(s)
23. Resolution Number 4694 – A Resolution Authorizing The Mayor And City Manager To Execute And Deliver An Agreement With Nall Partnership LTD Regarding The Annexation Of The Altadena Valley Country Club
24. Citizens Comments
25. Motion For Adjournment

CITY OF VESTAVIA HILLS
CITY COUNCIL
WORK SESSION
MINUTES
JANUARY 15, 2015

The City Council of Vestavia Hills met in a work session on this date at 9:00 AM following posting/publishing pursuant to Alabama law in the Board Room, Guntersville State Park, Guntersville Alabama. The Mayor called the work session to order and the City Clerk checked the roll with the following:

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

OTHER OFFICIALS PRESENT: Jeff Downes, City Manager
Rebecca Leavings, City Clerk

The Mayor, City Council and City Manager entered into discussions of various City issues, including, but not limited to:

- New City Hall;
- Various new construction projects around the City;
- Possible new developments arising which might or might/not require City participation;
- Strategies for growth in development in the City; and
- Growth and development trends in the marketplace; and rooftops needed in order to support new economic development

The members met at length with Sheila Phillips, Vestavia Hills Superintendent of the Board of Education, Nancy Corona, Board Member and Kym Prewitt, President of the Board. Discussions included many of the above-described topics, as well as strategies from the Board of Education for the growth within the School System, etc.

At 5:00 PM, the meeting recessed to resume in the morning at 8:00 AM. At 8:00 AM, the meeting resumed and the discussions began at length.

There being no further business, the meeting adjourned at 12:00 PM.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CITY OF VESTAVIA HILLS
CITY COUNCIL
WORK SESSION
MINUTES
FEBRUARY 19, 2015

The City Council of Vestavia Hills met in a work session on this date at 5:00 PM following posting/publishing pursuant to Alabama law. The Mayor called the work session to order and the City Clerk called the roll with the following:

MEMBERS PRESENT:

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

OTHER OFFICIALS PRESENT:

Jeff Downes, City Manager
Wendy Appling, Deputy City Clerk
Dan Rary, Police Chief
Terry Ray, Asst. Fire Chief
Marvin Green, Asst. Fire Chief
Melvin Turner, Finance Director

The Mayor called the work session to order.

The Mayor introduced John Guthrie, lobbyist for the Jefferson County Mayors Association, who explained that he would lobby items for the City of Vestavia Hills as a part of the agreement with the Mayors Association.

Mr. Guthrie stated that he will work on the following bills for Vestavia Hills:

- Entertainment Area
- Warrant Recall
- Discontinue Use of the Personnel Board for Department Heads
- School Tax

Mr. Ammons updated the Council on the Parks and Recreation Board and the Parks and Recreation Foundation.

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

- Traffic Control
- Paving Projects

- Cahaba River Road - 3 Lane
- White Way Lights
- Dolly Ridge Project
- Meadowlawn Project
- Open Gov
- Great Rock Road
- Library Parking

There being no further business, the meeting adjourned at 7:22 PM.

Alberto C. Zaragoza, Jr.
Mayor

Attested by:

Wendy Appling
Deputy City Clerk/GIS Specialist

CITY OF VESTAVIA HILLS

CITY COUNCIL

MINUTES

MARCH 9, 2015

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 H. Boone, City Attorney
Rebecca Leavings, City Clerk
Conrad Garrison, City Planner
Melvin Turner, Finance Director
George Sawaya, Deputy Treasurer
Danny Rary, Police Chief
Jim St. John, Fire Chief
Marvin Green, Asst. Fire Chief
Terry Ray, Asst. Fire Chief
Christopher Brady, City Engineer
Lori Beth Kearley, Asst. City Engineer

Invocation was given by Buddy Anderson, Vestavia Hills High School Football Coach, followed by the Pledge of Allegiance led by J.T. Davis.

ANNOUNCEMENTS, GUEST RECOGNITION, CANDIDATES

- Mr. Pierce welcomed Karen Odle and Roger Stewart, Vestavia Hills Chamber of Commerce to the meeting.
- Mr. Henley stated that the Vestavia Hills City Council will begin accepting applications for an upcoming vacancy on the Vestavia Hills Board of Education. Deadline for submission of application is 5 PM, Monday, April 13, 2015, central time. Interviews will follow and then the Council will appoint a new member. This is a 5-year appointment. Applications may be obtained on the City's website, www.vhal.org or in the Office of the City Clerk.

CITY MANAGER REPORT

- Mr. Downes stated that inclement weather has managed to delay all the construction and/or improvement projects within the City but will resume construction/improvement when the weather cooperates.
- Paving was also delayed by the cold and inclement weather and will resume shortly.
- Mr. Downes commended Mr. Davis and his Public Services Department for working hard with a contractor in order to get the fields in shape to host a huge tournament last weekend. He stated that, although not perfect, the tournament was able to be played and the fields looked good.
- Phase I of the Wald Park studies has concluded and the next step in Phase II will include programming needs. He stated that they might have to retain a consultant for this phase to act as a lead toward the completion of this phase.
- Priority was given for gateway signage for the City and Mr. Downes reported that the Chamber has offered to assist the City in offsetting some of the expense associated with it. The City has begun to write specifications for the welcome signage.
- Birmingham is working with the MPO for a federal grant on the improvement and realignment of Sicard Hollow Road. Since a portion of the roadway is in Vestavia Hills, the City will need to participate. Mr. Downes stated that he will keep the Council apprised of the progress of the project.
- Mediation for the Great Rock Road litigation occurred recently. Mr. Downes indicated that he a settlement between the parties will be reached soon.
- A franchise agreement with Southern Light LLC will offer the City the ability to soon be networked with dark fiber. This agreement will be presented to the Council for action at the next meeting.

COUNCILOR REPORTS

- Mr. Sharp stated that zoning issues are becoming more complex and in order to deal with them, the Commission is beginning to meet in work sessions to discuss upcoming projects and to learn more about them prior to the public hearings.
- Mr. Ammons stated that David Myers, Vestavia Hills Park and Recreation Board, has been discussing beginning a “Senior Board” to help deal with Senior programming and facility needs. He indicated that he would provide details as they become available.

APPROVAL OF MINUTES

The minutes of February 23, 2015 (Regular Meeting), were presented for approval.

MOTION Motion to dispense with the reading of the minutes of February 23, 2015 (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

ORDINANCE NUMBER 2556

Ordinance Number 2556 – Rezoning – 4300 Dolly Ridge Road; Rezone From Vestavia Hills R-4 (Residential) To VH B-1.2 (Neighborhood Mixed Use District); Troy W. And Barbara L. Peters, Owners; Bryan Pressnell, Representing

MOTION Motion to approve Ordinance Number 2556 was by Mr. Pierce and second was by Mr. Henley.

Mr. Downes gave a brief background on the development of this property which complies with the recently adopted Cahaba Heights Village Plan, an amendment to the Cahaba Heights Community Plan. He stated that this is for a small professional building at the corner of Dolly Ridge Road and Manor Brook and would eventually have a multi-purpose drive that enters off Dolly Ridge and runs through some neighboring properties that might develop later. This conforms to the Dolly Ridge traffic management requirements set forth by the Engineering Department. The Commission recommended some conditions which were set forth in the Ordinance. He read the conditions which include a maximum height of 2-stories and bringing sewer to the property via a development agreement. Two options were presented and approved.

Bryan Pressnell was present in regard to the request.

Discussion ensued about the curb cuts, approval by the Commission, parking, cross access, etc.

Mr. Downes explained the joint access proposal and stated that it meets the access management plan.

The Mayor opened the floor for a public hearing.

The following residents voiced concerns over the request:

- Jack Norris, 2700 Pruett Place;
- Rose Putman, 3001 Manor Brook Drive;
- Robert Gray, 3008 Manor Book Drive

Mr. Downes answered the various questions and concerns relating to the requested B.1.2 zoning and the development as it relates to traffic and school children.

Discussion ensued about the requirement of 8' sidewalks, safety measures and changes at the school with concerns of traffic and capacity.

There being no one else to address the Council concerning this request, the Mayor closed the floor and asked 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.

ORDINANCE NUMBER 2557

Ordinance Number 2557 – Rezoning – 4317 and 4321 Dolly Ridge Road; Rezone from Vestavia Hills R-4 (Residential) to VH B-1.2 (Neighborhood Mixed Use District); JFKE, LLC and B&J LLC, Owners

MOTION Motion to approve Ordinance Number 2557 was by Mr. Henley and second was by Mr. Sharp.

Mr. Downes gave a brief background on the development of this property which complies with the recently adopted Cahaba Heights Village Plan, an amendment to the Cahaba Heights Community Plan. He stated that the project began last month with the rezoning of the Bilano property. It shows two difference scenarios for development because of the variables still associated with the development of the Bilano property. He stated that there are conditions recommended by the Commission that are detailed within the proposed Ordinance. He read the specific conditions.

Thornton Hyding, Sorrell Chew and John Whitson were present in regard to the request.

Discussion ensued about the Commission giving final approval for the layout of the entire development.

The Mayor opened the floor for a public hearing. There being no one to address the Council concerning this request, he closed the floor and asked 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 4682

Resolution Number 4682 – A Resolution Authorizing The City Manager To Enter Into An Agreement To Lease/Purchase A Communications System

MOTION Motion to approve Resolution Number 4682 was by Mr. Ammons and second was by Mr. Henley.

Mr. Downes stated that this is an agreement for a lease/purchase of a communications system that would allow better coverage for the Public Safety Department where there is now radio silence. It is a 5-year plan which has been reviewed by the City Attorney and will be funded through 9-1-1 special funds.

Mayor Zaragoza asked about Mr. Boone’s January 28th letter citing his review and asking about the warrant issue.

Mr. Boone explained that the lease purchase would reduce the City’s ability to get certain debt. He is required to disclose that; however, that amount changes annually and shouldn’t really affect the City’s future borrowing ability.

The Mayor opened the floor for a public hearing. There being no one to address the Council concerning this request, he closed the floor and asked for the question.

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

RESOLUTION NUMBER 4685

Resolution Number 4685 – A Resolution For The Purchase Of A Speed Awareness Monitor Trailer For The Purpose Of Monitoring Traffic And Maintaining Road Safety

MOTION Motion to approve Resolution Number 4685 was by Mr. Ammons and second was by Mr. Pierce.

Mr. Downes stated that this Resolution authorizes the purchase of a trailer that alerts drivers about their speed. The Police Department had an older version of this trailer at one point and has determined it needs to be replaced.

Mr. Henley asked if the newer version will provide traffic statistics.

Chief Rary stated that provides information concerning traffic counts, speed of approaching vehicles, etc.

The Mayor opened the floor for a public hearing. There being no one to address the Council concerning this request, he closed the floor and asked for the question.

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 23, 2015 at 5 PM.

- Resolution Number 4687 - A Resolution Authorizing The City Manager To Execute And Deliver An Agreement With Retail Specialists For Brokerage Services For The Marketing And/Or Sale Of Municipal Property
- Ordinance Number 2558 – An Ordinance Granting A Non-Exclusive Right-Of-Way Use Agreement To Southern Light, LLC, For The Purpose Of Constructing And Maintaining A Fiber-Optic Transmission Line Within Certain Public Rights-Of-Way Within The City Of Vestavia Hills, Alabama
- Ordinance Number 2373-A – Amending Ordinance Number 2373 To Grant An Extension Of Conditional Use Approval For 1476 Montgomery Highway; Anthony And Margaret Serra, Owners; Alton Parker, Representing.

CITIZENS COMMENTS

There were no citizen comments.

MOTION Motion to adjourn was by Mr. Pierce and second was by Mr. Ammons. Meeting adjourned at 6:00 PM.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

RESOLUTION NUMBER 4687

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AND DELIVER AN AGREEMENT WITH RETAIL SPECIALISTS FOR BROKERAGE SERVICES FOR THE PROPERTY LOCATED AT 1280 MONTGOMERY HIGHWAY

BE IT RESOLVED BY THE 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 Retail Specialists for brokerage services for the marketing and/or potential sale of real property located at 1280 Montgomery Highway; and
2. A copy of said agreement is marked as “Exhibit A” and is attached to and incorporated into this Resolution Number 4687 as though written fully therein; and
3. This Resolution Number 4687 shall become effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 23rd day of March, 2015.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

Memorandum

To: Mayor and City Council

From: Jeff Downes 
City Manager

Date: March 5, 2015

Re: Real Estate Listing Agreement for the Public Works Facility

In follow up from our conversation at the last work session, I moved forward with exploring brokerage arrangements for the marketing of the City's Public Works Facility located on Montgomery Highway for sale purposes. As discussed, it is the City's intent to leverage real estate opportunities throughout the City to ensure the highest and best use of all available undeveloped or underutilized land. This particular property has an opportunity to be redeveloped as a retail site, and it is my intent to partner with retail focused brokerage firms to maximize this opportunity while remaining consistent to our evolving plan for this area of Highway 31.

I have sought responses from three retail focused firms to list the property- Southpace, Retail Specialists, and Corporate Realty. Based upon the responses from these firms, I am recommending use of Retail Specialists based upon the marketing plan and fee proposed by the firm. While all three would be viable partners, Retail Specialists offered the best deal. Please let me know if you would like to review the specifics. I will present this for a first read on the next Council agenda. Please let me know if you have any issues or concerns. Thanks for your support.

CC: Becky Leavings



EXCLUSIVE LISTING AGREEMENT

The Owner hereby engages RETAIL SPECIALISTS, LLC, an Alabama limited liability company (the "Agent") as Owner's exclusive agent, and Owner herein grants to Agent the sole and exclusive right to market for sale or lease the herein described Property for the terms set forth below. Likewise, the Owner agrees to refer all prospects for, or persons inquiring about, the sale or lease of said Property to Agent during the term hereof.

OWNER: City of Vestavia Hills, Alabama
513 Montgomery Highway
Vestavia Hills, AL 35216
Attention: Jeff Downes, City Manager

AGENT: Retail Specialists, LLC
120 18th Street South, Suite 201
Birmingham, Alabama 35233
Phone: (205) 313-3676 Fax: (205) 313-3677

PROPERTY:

LISTING PERIOD: Retail Specialists, LLC (RSI) will aggressively and creatively market the property for an initial listing period of one year. Upon the expiration of the initial one year term, this Agreement shall automatically renew on a month to month basis until terminated by either party. The agreement can be terminated by either party with thirty (30) days written notice. Upon terminations of this Agreement, Agent shall supply Owner with a list ("Prospect List") of tenants with whom negotiations regarding new leases or sales have been introduced by Agent. For leases, Owner shall pay Agent pursuant to the Leasing Agreement section below for any tenant on the Prospect List who executes a lease within twelve (12) months of termination of this Agreement. For sales, Owner shall pay Agent pursuant to the Sales Agreement section below on any sale to anyone on the Prospect List with whom a sale closes within twelve (12) months of termination. In addition, upon termination of the Agreement, Agent shall also continue to negotiate and represent Owner on those active deals which shall be supplied by Agent to Owner on a list of tenants or sales prospects ("Active List") with whom active negotiations have commenced. Agent shall continue to act as agent/broker of record on these deals through completion, and be paid the fees set forth in the sections on Sale Agreement and Leasing Agreement below.

SIGNS: Agent is authorized to place its signs on the Property during the term of the Listing Period.

SALE AGREEMENT: Owner hereby agrees to pay Agent the following fees for Agent's services in the event of the sale of the property:

In the event of the sale of the site, we agree to compensate RSI with a sales fee equal to 6% of the purchase price. Any sales fees that are earned by RSI will be paid at closing.

~~LEASING AGREEMENT: Owner shall pay Agent commissions equal to four percent (4%) of total rent or three percent (3%) if co-op with another Broker. Landlord should expect to pay procuring~~

Deleted
[Signature]

~~Brokers an additional fee to be negotiated prior to lease execution, provided the leases are executed during the Term of this Agreement ("New Leases"). Said fees shall be paid half at lease execution and half at rent commencement. When a procuring broker representing the Tenant is involved, in no event shall Agent be paid less than 3% of the lease value. Agent shall be entitled to all rights under Alabama Code Section 35-11-451, as amended and updated.~~

AGENCY AGREEMENT:

The Agent is the Exclusive Agent of the Owner and will represent the Owner in any transaction involving the Property unless otherwise approved in writing by the Owner. However, it is hereby stipulated that if a potential person or entity with whom the Agent has a current agency relationship, the Agent may become a limited Consensual Dual Agent without further notifying the Owner. The Owner also acknowledges that it has read and understands the types of representation available under Alabama State Law.

DUTIES OF AGENT:

(a) Agent shall use reasonable efforts to obtain offers to Lease the Property from prospective tenants for submission to Owner for Owner's approval and acceptance of the terms and conditions thereof.

(b) Upon obtaining offers from a prospective tenant and upon acceptance of the terms and conditions of said offer by Owner, Agent shall submit to such prospective tenant a Lease Agreement in the form prepared by Owner and containing the terms of said offer approved by Owner. Agent shall negotiate certain business terms in the Lease, provided, however, that Agent shall not, for any reason, have the power or authority to execute any Lease Agreements on behalf of Owner, or otherwise bind Owner or contract on Owner's behalf.

(c) Agent shall use diligent efforts to promote and market the Property through all means it deems appropriate and shall coordinate with Owner the preparation of all marketing material, including without limitation ads, brochures and signs. ~~All such promotion and advertising shall be subject to the prior approval of Owner, and Owner shall reimburse Agent for all promotion or marketing costs, upon receipt of an invoice from Agent.~~

Delete
JX

(d) Agent shall actively seek the cooperation and participation of other brokers, both on a local and national basis, in promoting the leasing of the Property.

(e) Agent shall use diligent efforts to do all things reasonable to accomplish the leasing of available Tenant Space in the Property.

DUTIES AND REPRESENTATIONS OF OWNER:

(a) Owner shall provide Agent with all required Property information in a form reasonably adequate for Agent's intended use thereof in the leasing of the Property. To Owners best knowledge and actual belief that the information provided is accurate and complete.

(b) Owner shall cause to be prepared in consultation with Agent, necessary and appropriate Property signage, marketing brochures and advertisement each of which may note Agent's exclusive agency. Owner acknowledges that the sign is the property of the Agent.

(c) Owner shall prepare the form of the Lease Agreement to be used for the Property to be prepared.

(d) Owner reserves the right to deal directly with prospective Tenants to procure executed Lease Agreements; provided, however, the exercise by Owner of such right shall not relieve Owner of the obligation to pay Agent the compensation hereinafter provided for herein.

(e) Owner shall fully respond to all requests from Agent within seven (7) days of Owner's receipt of such request.

PROFESSIONAL ADVISE:

Owner will obtain legal, tax, financial or other professional advice with respect to a transaction relating to the Property, as well as the condition of the Property. Agent cannot provide any such advice to Owner and Owner will not expect or rely upon any such advice from Agent. In determining the financial soundness of any prospect, Owner will rely solely upon Owner's own investigation and evaluation notwithstanding Agent's assistance in gathering any financial information.

ENFORCEMENT:

With the exception of where it is a violation of federal or state law, or is otherwise approved in writing in this or collateral agreements, the Parties agree to accept arbitration by a mutually agreed upon arbitrator as the final determination of any interpretation necessary between the Parties.

The undersigned represent under the penalty of fraud that the individually and/or corporately have the authority to enter into this Listing Agreement and to execute any document(s) relating to the completion of the marketing efforts of the Agent without any further approval or other required signatures.

AGREED: RETAIL SPECIALISTS, LLC, AGENT

By: _____

Its: _____

Date: _____, 2015

AGREED: CITY OF VESTAVIA HILLS, ALABAMA, OWNER

By: _____

Its: _____

Date: _____, 2015

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

February 17, 2015

By Electronic Mail

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

In Re: Exclusive Listing Agreement With Retail Specialists, LLC for
Sale of Public Works Property on Highway 31 South

Dear Mr. Downes:

This letter confirms and supplements our meeting in your office this morning regarding the sale of the public works property on Highway 31 South. During our meeting, you hand delivered to me a copy of a proposed Exclusive Listing Agreement between the City of Vestavia Hills, Alabama (“Owner”) and Retail Specialists, LLC (“Agent”) with a request that I review the same and provide you with my written legal opinion. The purpose of this letter is to comply with your request.

I. MY RECOMMENDATIONS

A. I recommend that any and all language regarding the lease of the City property be deleted in its entirety from the Exclusive Listing Agreement. It is my understanding that the City is interested in selling the property, but not leasing the property.

B. I recommend that the language requiring the City to reimburse the Agent for all promotional or marketing cost set forth in DUTIES OF AGENT section (c) be deleted.

C. I do not think it is necessary to have the lien language (Title 35-11-451, *Code of Alabama, 1975*) in the Exclusive Listing Agreement.

February 17, 2015

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II. OTHER INFORMATION

The City previously listed this property with Taylor Glaze with Chase Commercial Realty, Inc. for a period of one (1) year beginning April 1, 2013 and ending March 31, 2014. There was no language relative to leasing the property. The sales commission was five percent (5%). The Listing Agreement provided that the Agent would pay the cost of advertising and promotion of the sale of the property.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick H. Boone". The signature is written in a cursive style with a long horizontal flourish at the end.

Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp

ORDINANCE NUMBER 2558

AN ORDINANCE GRANTING A NON-EXCLUSIVE RIGHT-OF-WAY USE AGREEMENT TO SOUTHERN LIGHT, LLC, FOR THE PURPOSE OF CONSTRUCTING AND MAINTAINING A FIBER-OPTIC TRANSMISSION LINE WITHIN CERTAIN PUBLIC RIGHTS-OF-WAY WITHIN THE CITY OF VESTAVIA HILLS, ALABAMA

WHEREAS, SOUTHERN LIGHT, LLC (hereinafter referred to as the “the Company”) desires to construct a fiber-optic transmission line within certain public rights-of-way within the City of Vestavia Hills, Alabama; and

WHEREAS, the Company agrees and recognizes that it is required to obtain consent in the form of a right-of-way use agreement from the City of Vestavia Hills in order to construct the proposed fiber-optic transmission line within the corporate limits of the City of Vestavia Hills; and

WHEREAS, the City Council wishes to accommodate the Company’s request and grant a right-of-way use agreement for the construction of the proposed fiber-optic transmission line in accordance with the terms and conditions contained herein.

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

The City Council of the City of Vestavia Hills does hereby grant to SOUTHERN LIGHT, LLC a non-exclusive right-of-way use agreement granting the limited authority to construct a fiber-optic transmission line in the City of Vestavia Hills in and along certain rights-of-way outlined in Exhibit A below, subject to the terms and conditions set forth in the following agreement:

AGREEMENT

This Agreement is entered into on this the 23rd day of March, 2015, by and between the City of Vestavia Hills, Alabama (hereinafter referred to as the “City”), and SOUTHERN LIGHT, LLC, (hereinafter referred to as the “The Company”).

W I T N E S S E T H :

The City and The Company do hereby mutually covenant and agree as follows:

SECTION 1. Defined Terms. For purposes of this Agreement, the following terms, words and phrases shall have the meanings set forth below. When not inconsistent with the context, words used in the singular number shall include the plural number, and words in the plural number shall include the singular.

1.1 “City” means the City of Vestavia Hills, Alabama.

1.2 “Governing Body” or “City Council” means the City Council of the City of Vestavia Hills, Alabama.

1.3 “Gross Receipts” means Gross Receipts on recurring Telecommunications Services that originate or terminate within the corporate limits of the City. Gross Receipts shall not include revenues or receipts arising from or relating to Telecommunication Services that both originate and terminate outside the corporate limits of the City.

1.4 “Local Telecommunications Service Revenues” are defined as all revenues received by the Provider from its customer for providing the transport of voice, data and/or video signals within the municipal limits of the City.

1.5 “Person” means any natural or corporate person, business association or other business entity including, but not limited to, a partnership, sole proprietorship, political subdivision, public or private agency of any kind, utility, successor or assign of any of the foregoing, or any other legal entity.

1.6 “Rights-of-way” means the surface and space above and below any public street, boulevard, road, highway, freeway, lane, alley, sidewalk, parkway, driveway, public ways, or other public rights-of-way, including, public utility easements, dedicated utility strips or rights-of-way dedicated for compatible uses held by the City or location within the City which shall entitle the City and the Company to use the same for the purpose of installing, operating, repairing and maintaining the System.

1.7 “System” shall mean a system of pipes, transmission lines, meters, equipment and all other facilities associated with the operation of a fiber-optic transmission line by the Company in accordance with the terms and conditions contained in this Agreement.

1.8 “Telecommunications” means the transmission, between or among points specified by the user, or information of the user’s choosing (e.g., data, video, and voice), without change in the form or content of the information as sent and received.

1.9 “Telecommunication Service(s)” means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public.

2.0 “Telecommunication System” means the cables, wire, lines, towers, wave guides, optic fiber, antennae, and any associated converters, equipment or facilities designated and constructed for the purpose of producing, receiving, amplifying or distributing Telecommunications to or from locations within the City.

2.1 “Use Fee” means the fee paid by a Provider to the City for locating and maintaining facilities in the rights-of-way.

SECTION 2. Grant of Authority. The City hereby grants to the Company the non-exclusive and limited authority to construct, install and maintain a fiber-optic transmission line in

and along the rights-of-way in the City of Vestavia Hills as described and depicted in Exhibit A which is attached hereto and incorporated by reference (hereinafter referred to as the “System”). The Company shall not expand or extend the System installed or constructed within the City pursuant to this Agreement without approval from the City Council, in its sole discretion.

SECTION 3. Compensation. Five percent (5%) of its quarterly Gross Receipts on recurring facilities-based Local Telecommunications Services revenues for services originating or terminating within the City’s corporate limits.

SECTION 4. Duration and Term. The right-of-way use agreement granted hereunder shall be for an initial term of twenty (20) years (the “Initial Term”) commencing on the effective date of this Ordinance and Agreement, unless otherwise lawfully renewed, revoked or terminated as herein provided. Upon the expiration of the Initial Term, the Company or the City shall have the option to renew this Agreement for one additional term of twenty (20) years, subject to the terms and conditions contained herein, by giving written notice, sixty (60) days before the expiration of the Initial Term, to the other party of that party’s intent to renew this Agreement for the additional term.

SECTION 5. Grant of Non-Exclusive Authority. The right to use and occupy the rights-of-way for the purposes herein set forth shall not be exclusive, and the City reserves the right to grant the use of said rights-of-way to any person at any time and for any lawful purpose. This Agreement shall not be construed to create any rights beyond the terms, conditions and periods set forth in this Agreement, except as provided herein. The City does not warrant any of the rights granted by this Agreement.

SECTION 6. Reservation of Regulatory and Police Powers. The City, by the granting of this right-of-way use agreement and approving this Agreement, does not surrender or to any extent lose, waive, impair or lessen the lawful powers and rights now, or which may be hereafter, vested in the City under the Constitution and the statutes of the State of Alabama to regulate the use of its rights-of-way by the Company or any person or to charge reasonable compensation for such use, and the Company, by its acceptance of this right-of-way use agreement and Agreement, agrees that all lawful powers and rights, regulatory power, police power or otherwise, that may be from time to time vested in or reserved to the City, shall be in full force and effect and subject to the exercise thereof by the City at any time. The Company is deemed to acknowledge that its rights are subject to the regulatory and police powers of the City to adopt and enforce ordinances necessary for the safety and welfare of the public and agrees to comply with all applicable laws and ordinances enacted by the City pursuant to such powers.

Any conflict between the provisions of this Agreement and any other present or future lawful exercise of the City’s police powers shall be resolved in favor of the latter.

SECTION 7. Standards of Service.

7.1. Conditions of Street Occupancy. All portions of the System and all associated equipment installed or erected by the Company pursuant to this Agreement shall be located so as to cause minimum interference with the proper use of the rights-of-way and with the rights and

reasonable convenience of property owners who own property that adjoins any of such rights-of-way.

7.2 Restoration of Rights-of-way. If during the course of the Company's construction, operation or maintenance of the System there occurs a disturbance of any rights-of-way by the Company, it shall, at its expense, replace and restore such rights-of-way to a condition comparable to the condition of the rights-of-way existing immediately prior to such disturbance to the satisfaction of the City. The work to be done under this Agreement, and the restoration of rights-of-way as required herein, must be completed within the dates specified in any permits authorizing the work. The Company shall perform the work according to the standards and with the materials specified or approved by the City Engineer.

7.3 Relocation at Request of the City. Upon its receipt of reasonable notice, not to be less than forty-five (45) days, except where emergency conditions require shorter notice, the Company shall, at its own expense, protect, support, temporarily disconnect, relocate in the rights-of-way, or remove from the rights-of-way, any property of the Company when lawfully required by the City by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, electrical or telecommunications lines, when such installation or construction is being done directly by or for the City. Should the Company refuse or fail to remove its equipment or plant as provided for herein within forty-five (45) days after written notification, the City shall have the right to do such work or cause it to be done, and the reasonable cost thereof shall be chargeable to the Company.

7.4 Trimming of Trees and Shrubbery. The Company shall reasonably compensate the City for any damages, in such amounts as determined by the City, caused by trimming, cutting or removing trees or shrubbery, or shall, at its own expense, replace all trees or shrubs damaged as a result of any construction, installation, repair or maintenance of the System undertaken by the Company to the satisfaction of the City.

7.5. Safety and Permit Requirements. Construction, installation, repair and maintenance of the System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial compliance with applicable federal, state, and local laws, rules and regulations, including all permit requirements and ordinances adopted by the City which are now in effect or are hereafter adopted. The System or parts thereof shall not unreasonably endanger or interfere with the safety of persons or property in the area.

7.6. Minimum Standards. All of the construction by the Company shall conform, at a minimum, to the minimum standards of the Company. In the event there is a conflict between the standards adopted by the Company and any applicable federal, state or local standards, including ordinances adopted by the City, the stricter standard shall apply.

7.7. Obstructions of Rights-of-Way. Except in the case of an emergency, or with the approval of the City Engineer, no rights-of-way obstruction or excavation may be performed when seasonally prohibited or when conditions are unreasonable for such work.

The Company shall not so obstruct the rights-of-way so as to interfere with the natural, free and clear passage of water through the gutters, drains, ditches or other waterways.

7.8. Safety Requirements.

A. The Company shall at all times employ the highest degree of care as is commensurate with the practical operation of its business and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.

B. The Company shall install and maintain the System in accordance with the requirements of all applicable regulations of the City, which may be amended from time to time, and in such manner that its operations will not interfere with any installations of the City or of a public utility serving the City.

C. All structures and all lines, equipment and connections in, over, under and upon the rights-of-way, wherever situated or located, shall at all times be kept and maintained in a safe and suitable condition and in good order and repair.

D. The Company shall maintain a force of employees at all times sufficient to provide safe, adequate and prompt service for the System.

7.9. Least Disruptive Technology. The Company is encouraged to perform construction and maintenance of the System in a manner resulting in the least amount of damage and disruption to the rights-of-ways. However, underground installation shall be a last resort and only upon consent of the City. The Company will be required to use trenchless technology for any portion of construction or maintenance projects which lie beneath the paved or improved portion of any roadway to which this Agreement applies, unless otherwise approved by the City Council. The City Engineer may require trenchless technology in other locations, where circumstances prevent or make open-cut methods impractical. The Company may use either the open-cut method or trenchless technology for construction outside the paved or improved portion of any roadway to which this Agreement applies.

SECTION 8. Enforcement and Termination of Agreement.

8.1. Notice of Violation. In the event the Company has not complied with the terms of this Agreement, the City shall notify the Company in writing of the nature of the alleged noncompliance.

8.2. Right to Cure or Respond. The Company shall have 30 days from receipt of the notice described in Section 8.1: (a) to respond to the City by contesting the assertion of noncompliance, (b) to cure such default, or (c) in the event that, by the nature of default, such default cannot, for reasons beyond the control of the Company, be cured within the 30-day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed.

8.3. Public Hearing. In the event the Company fails to respond to the notice described in Section 8.1 or contests the assertion of noncompliance pursuant to the procedures set forth in Section 8.2, or in the event the alleged default is not remedied within 30 days or by the date projected pursuant to 8.2(c) above, the City shall schedule a public hearing to investigate the default. Such public hearing shall be held at the next regularly scheduled meeting of the City which is scheduled at a time not less than five business days therefrom. The City shall notify the Company in writing of the time and place of such meeting and provide the Company with an opportunity to be heard.

8.4. Enforcement. In the event the City, after such meeting, determines that the Company is in default of any provision of this Agreement, the City may pursue any or all of the following remedies:

- A. Seek specific performance of any provision which reasonably lends itself to such a remedy;
- B. Make a claim against any surety or performance bond which may be required to be posted;
- C. Restrain by injunction the default or reasonably anticipated default by the Company of any provision of this Agreement;
- D. Seek any other available remedy permitted by law or in equity;
- E. In the case of a material default of this Agreement, declare the Agreement to be revoked in accordance with the following:

(1) The City shall give written notice to the Company of its intent to revoke the Right-of-Way Use Agreement on the basis of noncompliance by the Company. The notice shall set forth the exact nature of the noncompliance. The Company shall have 30 days from such notice to object in writing and to state its reasons for such objection. In the event the City has not received a satisfactory response from the Company, it may then seek termination of this Agreement at a public meeting. The City shall cause to be served upon the Company, at least 10 days prior to such public meeting, a written notice specifying the time and place of such meeting and stating its intent to seek such termination.

(2) At the designated meeting, the City shall give the Company an opportunity to state its position on the matter, after which it shall determine whether or not this Agreement shall be terminated. The Company may appeal such determination to the Circuit Court of Jefferson County, which shall have the power to review the decision of the City and to modify or reverse such decision as justice may require. Such

appeal must be taken within 30 days of the issuance of the determination by the City.

(3) The City may, in its sole discretion, take any lawful action which it deems appropriate to enforce the City's rights under this Agreement in lieu of revocation of the Agreement.

8.5. Impossibility of Performance. The Company shall not be held in default or noncompliance with the provisions of this Agreement, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages or other events reasonably beyond its ability to control.

SECTION 9. Public Use Pathways. The Company hereby agrees to unrestricted use by the City for non-commercial public purposes only, at no cost to the City, of two (2) fiber strands along the backbone of its fiber optic system within the City, both underground and aerial (hereinafter called the "Public Use Pathway"). The Public Use Pathway, when determined to be installed in a manner which will permit unrestricted use by the City, shall be accepted by the City. The City shall be allowed use of the Public Use Pathway, at no cost to the City, for non-commercial, public purposes only, except that the City shall be responsible for the cost and expense of any damages or liabilities caused by the willful or wanton acts of the City, its employees, or any other person under the direction and/or control of the City resulting from the City's use of or access to the Public Use Pathway.

The Company shall connect up the following municipal facilities:

- a. The new Municipal Center, [1032 Montgomery Hwy]
- b. Library in the Forest, [1221 Montgomery Highway]
- c. Parks and Recreation, [1937 Merryvale Road, Wald Park]
- d. City Shop, [1280 Montgomery Highway] and
- e. The Civic Center [1937 Merryvale Road].

Provided this Agreement is executed by March 24, 2015, the Company shall use its best efforts to connect the aforementioned municipal facilities on or before September 30, 2015. As the Company's network builds out over time, the Company will provide the backbone fibers to connect up the City's remaining facilities that are in existence as of the date of this Agreement. At the time of installation, the Company will provide the necessary engineering, filters and lasers to help the City efficiently consolidate all of its traffic onto the contractually-provided fibers. This assumes that all traffic will come directly back to the Municipal Center. The City will provide an empty conduit or other pathway (clean pole line, etc.) to the point in each building where it wants the fiber to terminate. The Company will provide the patch panels for each facility, and provide the cable from end to end.

SECTION 10. Default. Each of the following shall constitute a material default by the Company:

SECTION 10. Default. Each of the following shall constitute a material default by the Company:

- (1) Failure to make any payments to the City required to be made as set forth in this Agreement;
- (2) Failure to maintain a liability insurance policy that is not cured within thirty (30) days following written notice to the Company;
- (3) Failure to provide or furnish any information required under this Agreement to the City that is not cured within thirty (30) days following written notice to the Company;
- (4) Any breach or violation of any ordinance, rule or regulation or any applicable safety or construction requirements or regulations that present a threat to health or safety that has not been cured within thirty (30) days written notice;
- (5) The occurrence of any event relating to the financial status of the Company which may reasonably lead to the foreclosure or other judicial or non-judicial sale of all or any material part of the System or the assets of the Company;
- (6) The condemnation by a public authority, other than the City, or sale or dedication under threat or in lieu of condemnation, of all or substantially all of the facilities; or
- (7) If (a) the Company shall make an assignment for the benefit of creditors, shall become and be adjudicated insolvent, shall petition or apply to any tribunal for, or consent to, the appointment of, or taking possession by, a receiver, custodian, liquidator or trustee or similar official pursuant to state or local laws, ordinances or regulations of any substantial part of its property or assets, including all or any part of the System; (b) a writ of attachment, execution, distraint, levy, possession or any similar process shall be issued by any tribunal against all or any material part of the Company's property or assets; (c) any creditor of the Company petitions or applies to any tribunal for the appointment of, or taking possession by, a trustee, receiver, custodian, liquidator or similar official for the Company or for any material parts of the property or assets of the Company under the law of any jurisdiction, whether now or hereafter in effect, and a final order, judgment or decree is entered appointing any such trustee, receiver, custodian, liquidator or similar official, or approving the petition in any such

proceeding; or (d) any final order, judgment or decree is entered in any proceedings against the Company decreeing the voluntary or involuntary dissolution of the Company.

SECTION 11. Prior to any excavation within the rights-of-way, the Company shall obtain a permit from the City pursuant to this Agreement, and the work shall be performed in accordance with all applicable ordinances and codes and any subsequent ordinances or regulations that may be adopted by the City. Repair and replacement of the rights-of-ways due to the Company's installation, removal, relocation, maintenance and repair of its System or facilities shall be accomplished to the satisfaction of the City.

SECTION 12. Insurance. The Company shall maintain in full force and effect, at its own cost and expense, a comprehensive general liability insurance policy in the amount of \$1,000,000.00 for bodily injury and property damage per person and \$3,000,000.00 as to each occurrence, satisfactory to the City. In addition, the Company shall obtain worker's compensation coverage as required by the laws of the State of Alabama. The City shall be named as an additional insured on the policy, and the Company shall provide the City with a certificate of insurance designating the City as an additional insured on each policy and extension or renewal thereof. An endorsement shall be included with the policy that states that the policy shall not be cancelled without giving thirty (30) days written notice of such cancellation to the City.

SECTION 13. Indemnity and Hold Harmless. The Company agrees to indemnify, defend, and hold harmless the City, its elected officers, employees, agents, and representatives, against all claims, costs, losses, expenses, demands, actions, or causes of action, including reasonable attorney's fees and other costs and expenses of litigation, which may be asserted against or incurred by the City or for which the City may be liable, which arise from the negligence or willful misconduct, of the Company, its employees, agents, or subcontractors arising out of the construction, operation, maintenance, upgrade, repair or removal of Facilities except for those claims, costs, losses, expenses, demands, actions, or causes of action which arise solely from the negligence, willful misconduct, or other fault of the City. The City does not and shall not waive any rights against the Company which it may have by reason of this indemnification, or because of the acceptance by, or the Company's deposit with the City of any of the insurance policies described in this Agreement. The indemnification by the Company shall apply to all damages, penalties and claims of any kind, regardless of whether any insurance policy shall have been determined to be applicable to any such damages or claims for damages.

SECTION 14. Disclaimer of Warranties. The City makes no representation or warranty regarding its rights to authorize the installation or operation of the System on any particular right-of-way, and the burden and responsibility for making such determination in advance of the installation shall be upon the Company. This Agreement shall not be construed to deprive the City of any rights or privileges which it now has, or may hereafter have, to regulate the use and control of its streets.

SECTION 15. Warranties and Representations. The Company hereby agrees, represents and warrants that it is legally authorized to enter into this Agreement in accordance with all applicable laws, rules and regulations. Furthermore, the Company further agrees,

represents and warrants that this Agreement is legal, valid and binding, and that it is required to obtain authorization and consent from the City prior to the construction, installation, operation or maintenance of the System.

SECTION 16. Other Obligations. Obtaining a right-of-way use agreement pursuant to this Agreement does not relieve the Company of its duty to obtain all other necessary permits, licenses, authority and the payment of fees required by any other City, county, state or federal rules, laws or regulations, and the Company is responsible for all work done in the rights-of-way pursuant to this Agreement, regardless of who performs the work.

SECTION 17. Payment of Costs. The Company shall be responsible for all costs associated with the installation, repair and maintenance of the System and all associated equipment including, but not limited to (1) the costs to repair the rights-of-way due to the installation, repair and maintenance of the System, and (2) the costs incurred in removing or relocating any portion of the System or facilities constructed when required by the City.

SECTION 18. Priority of Use. This Agreement does not establish any priority for the use of the rights-of-way by the Company or any present or future franchisees or permit holders. In the event of any dispute as to the priority of use of the rights-of-way, the first priority shall be to the public generally, the second priority to the City, the third priority to the State of Alabama and its political subdivisions in the performance of their various functions, and thereafter, as between franchisees and other permit holders, as determined by the City in the exercise of its powers, including the police powers and other powers reserved to and conferred on it by the State of Alabama.

SECTION 19. Notice. Every notice or response required by this Agreement to be served upon the City or the Company shall be in writing and shall be deemed to have been duly given to the required party three (3) business days after having been posted in a properly sealed and correctly addressed envelope when hand delivered or sent by certified or registered mail, postage prepaid as follows:

The notices or responses to the City shall be addressed as follows:

City of Vestavia Hills,
ATTENTION: Jeff Downes
City Manager, City of Vestavia Hills
513 Montgomery Highway
Vestavia Hills, AL 35216

With a copy to:

Patrick H. Boone, Esq.
City Attorney, Vestavia Hills
215 Richard Arrington Jr. Blvd.

Suite 705
Birmingham, AL 35203

The notices or responses to the Company shall be addressed as follows:

Southern Light, LLC
ATTENTION: Kelly A. McGriff, Esq.
General Counsel
107 St. Francis Street
Suite 1800
Mobile, AL 36602

SECTION 20. The City and The Company may designate such other address or addresses from time to time by giving written notice to the other party as set forth in this section.

SECTION 21. Application. The terms and conditions contained in this Agreement shall apply to all areas within the corporate limits of the City and those areas annexed by the City after the passage and approval of this Ordinance and Agreement.

SECTION 22. Acceptance. The Company's acceptance of this Agreement shall be in writing in a form approved by the City Attorney and shall be accompanied by delivery of all payments, insurance certificates, applications, acceptance fees and performance of other requirements relating to commencement of construction as set forth in this Agreement.

SECTION 23. Assignment. The Company's interest in this Agreement shall not be sold, transferred, assigned or otherwise encumbered or disposed of, either by forced or voluntary sale or otherwise, without the prior written consent of the City Council. The City reserves the right to be reimbursed by the Company for costs incurred by it in reviewing the request for transfer of ownership.

SECTION 24. Miscellaneous. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in singular number shall be held to include the plural and vice versa, unless context requires otherwise. The captions used in connection with the sections of this Agreement are for convenience only and shall not be deemed to construe or limit the meaning of the language contained in this Agreement, or be used in interpreting the meanings and provisions of this Agreement.

SECTION 25. Rules of Construction. The parties hereto acknowledge that each party and its counsel have had the opportunity to review and revise this Agreement, and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits thereto.

SECTION 26. Governing Law. This Agreement shall be deemed to have been made in the State of Alabama and the validity of the same, its construction, interpretation, enforcement and the rights of the parties hereunder, shall be determined under, governed by and construed in

accordance with the substantive laws of the State of Alabama, without giving effect to any choice of law provisions arising thereunder.

SECTION 27. Severability Clause. 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.

SECTION 28. Repealer Clause. Any Ordinance heretofore adopted by the City Council of the City of Vestavia Hills, Alabama, which is in conflict with this Ordinance is hereby repealed to the extent of such conflict.

SECTION 29. Effective Date. This Ordinance shall become effective only upon receipt of a written unconditional acceptance by the Company of the terms and conditions contained herein within thirty (30) days of the passage of this Ordinance.

ADOPTED AND APPROVED this 23rd day of March, 2015.

CITY OF VESTAVIA HILLS, ALABAMA

BY: _____

Its: _____

ATTEST:

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 # 2556 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 9th day of March 2015 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 _____, 2015.

Rebecca Leavings
City Clerk

STATE OF ALABAMA
COUNTY OF _____

I, _____, a Notary Public, in and for said County in said State, hereby certify that _____ and _____ whose names as Mayor and City Clerk of the City of Vestavia Hills, Alabama, a municipal corporation, are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of said municipal corporation.

Given under my hand and seal this _____ day of _____, 2015.

Notary Public,
_____ County, Alabama
My Commission Expires: _____

SOUTHERN LIGHT, LLC

BY: _____

Its: _____

STATE OF ALABAMA
COUNTY OF _____

I, _____, a Notary Public, in and for said County in said State, hereby certify that _____ whose name as _____ of SOUTHERN LIGHT, LLC, an Alabama limited liability company, 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 the instrument, he/she, as such officers and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and seal this _____ day of _____, 2015.

Notary Public,
_____ County, Alabama
My Commission Expires: _____

ORDINANCE NUMBER 2373-A

**AN ORDINANCE GRANTING CONDITIONAL USE APPROVAL
FOR AUTOMOTIVE SALES, AUTOMOTIVE SERVICES –
MAJOR AND MINOR, INCLUDING MECHANICAL AND
COLLISION REPAIR FOR 1476 MONTGOMERY HIGHWAY**

WHEREAS, on December 13, 2010, the City Council of the City of Vestavia Hills, Alabama, adopted and approved Ordinance Number 2331, also known as the City of Vestavia Hills Zoning Code; and

WHEREAS, Anthony F. and Margaret Serra are owners of the property located at 1476 Montgomery Highway zoned Vestavia Hills B-3 (business district); and

WHEREAS, Alton B. Parker Jr., Spain & Gillon, LLC, attorney for the Serras, presented an application for Conditional Use approval for the purpose of automotive sales, automotive services – major and minor, including, but not limited to, mechanical and collision repair for the property located at 1476 Montgomery Highway pursuant to Table 6 of the Vestavia Hills Zoning Code; and

WHEREAS, Mr. and Mrs. Serra, owners of the property located at 1476 Montgomery Highway, were desirous of opening a new or used automotive dealership with complete automotive servicing and repair on said property; and

WHEREAS, on November 14, 2011, the City Council of the City of Vestavia Hills adopted and approved Ordinance Number 2373 to grant said conditional use for the property located at 1476 Montgomery Highway as requested; and

WHEREAS, on or about April 7, 2014, the dealership suffered severe flooding of Patton Creek which caused significant damage to the premises; and

WHEREAS, Section 13.3.3 of the Vestavia Hills Zoning Code provides that “When such use is abandoned or discontinued for a period of one (1) year, it shall not be reestablished unless authorized by the Council;” and

WHEREAS, Alton Parker, Spain and Gillon, LLC, attorney for the owners, submitted a letter dated March 3, 2015 a copy of which is marked as “Exhibit A” attached to and incorporated into this Ordinance Number 2373-A as though written fully therein, requesting an 18-month extension to said conditional use beginning on April 15, 2015 and expiring at midnight on October 16, 2016.

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

1. An extension of said Conditional Use approval is hereby granted for automotive sales, automotive services – major and minor, including, but not limited to, mechanical and collision repair for property located at 1476 Montgomery Highway for an 18-month period beginning April 15, 2015 and ending at midnight, October 16, 2016; and
2. This Ordinance Number 2373-A shall become effective immediately upon adoption, approval and publishing/posting pursuant to Alabama law; and

DONE, ORDERED, ADOPTED and APPROVED this the 23rd day of March, 2015.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

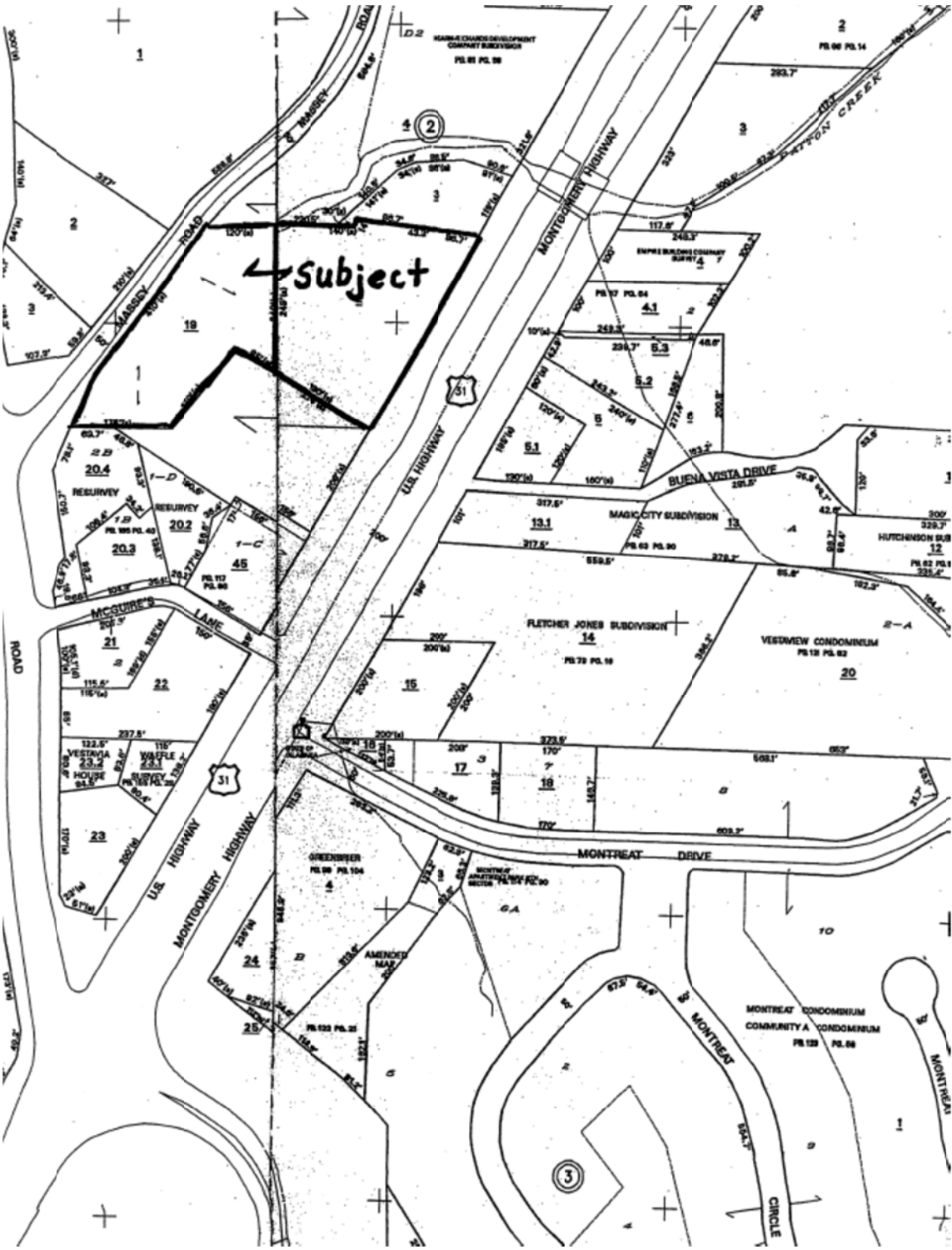
Rebecca Leavings
City Clerk

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 # 2373-A 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 23rd day of March, 2015 as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Library in the Forest, Vestavia Hills New Merkle House and Vestavia Hills Recreational Center this the _____ day of _____, 2015.

Rebecca Leavings
City Clerk



**SPAIN & GILLON, LLC
THE ZINSZER BUILDING
2117 SECOND AVENUE NORTH
BIRMINGHAM, ALABAMA 35203**

Telephone: (205) 328-4100

Facsimile: (205) 324-8866

Direct Dial (205) 581-6212

ALTON B. PARKER, JR.

E-MAIL: ABP@SPAIN-GILLON.COM

March 3, 2015

Rebecca Leavings, City Clerk, MMC
City of Vestavia Hills
513 Montgomery Highway
Vestavia Hills AL 35216

Re: Extension of Conditional Use Approval for Automotive Sales, Automotive Services - Major and Minor, including Mechanical and Collision Repair for 1476 Montgomery Highway - Ordinance No. 2373

Dear Ms. Leavings:

This is to confirm our prior conversations regarding a requested extension of the conditional use approval previously granted by the Vestavia City Council to Anthony F. and Margaret Serra, owners of the property located at 1476 Montgomery Highway. Ordinance No. 2373 approving the conditional use for that location was granted on November 14, 2011. An agreement to conditional zoning was executed by the owners and submitted to the City as of the 12th day of December, 2011. Pursuant to the granting of the conditional use by the City, the Serra organization opened an automotive sales dealership at that location.

On or about April 7, 2014 the dealership suffered severe flooding of Patton Creek which caused significant damage to most of the vehicles parked at the dealership and to the dealership premises. As a result of the flood, the dealership became unusable for future automobile sales. The last day of automobile sales for the few undamaged vehicles at the dealership was April 15, 2014.

Section 13.3.3 of the City of Vestavia's Zoning Ordinance provides that "When such use is abandoned or discontinued for a period of (1) year, it shall not be reestablished unless authorized by the Council."

The purpose of this letter is to request an extension of the conditional use approval for a period of 18 months beginning on April 15, 2015. The Serra organization and the owners are in the process of designing improvements and modifications to the dealership building and site which will, to the maximum extent possible, prevent such flood damage in the future. They have

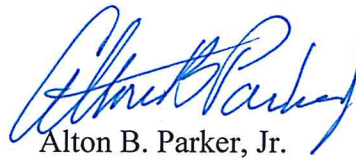
commissioned an architect to design modifications to the premises and a civil engineer to provide the “no rise study” required by Article 3 of the Vestavia Flood Damage Prevention Ordinance. Serra will comply with the City’s requirements once that study has been completed. It is anticipated that it will take a minimum of one year to finish that engineering and architectural work and to begin work on the renovations and modifications to the facility. Serra will comply with all of the regulations to begin construction and that construction should be completed within the eighteen month extension as requested.

The owners understand that this request to extend the conditional use will be put to the City Council in the form of a Resolution for approval. Thank you for your cooperation in this matter. If there is anything else that I or the owners need to do in order to pursue this request for extension, please let me know.

Sincerely,

SPAIN & GILLON, L.L.C.

By:

A handwritten signature in blue ink, appearing to read "Alton B. Parker, Jr.", is written over the printed name.

Alton B. Parker, Jr.

ABP, JR./mfe

cc: Anthony F. Serra and Mary Margaret Serra
Serra Automotive Group

RESOLUTION NUMBER 4688

A RESOLUTION ACCEPTING A BID FOR MOWING IN THE RIGHT-OF-WAY OF MONTGOMERY HIGHWAY AND COLUMBIANA ROAD IN THE CITY OF VESTAVIA HILLS

WHEREAS, on March 17, 2015 at 10:00 a.m. the City of Vestavia Hills publicly read aloud bids submitted for ROW mowing of Montgomery Highway and Columbiana Road; and

WHEREAS, a detail of said bids is marked as “Exhibit A” and attached and incorporated in this Resolution Number 4688 as though written fully therein; and

WHEREAS, the Public Services Director has reviewed the bids and recommended acceptance of the bid submitted by Turf Management as detailed in “Exhibit A”; and

WHEREAS, a 30-month agreement was included within the bid setting for the terms and conditions of said mowing, a copy of which is marked as “Exhibit B” attached to and incorporated into this Resolution Number 4688 as if written fully therein; and

WHEREAS, the Mayor and City Council feel it is in the best public interest to accept the recommendation of the Public Services Director and accept said bid as detailed above.

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

1. The bid submitted by Turf Management as detailed in “Exhibit A” attached and recommended by the Public Services Director is hereby accepted; and
2. Said expenditure will be funded from 07 special gas tax funds as indicated in attached “Exhibit A;” and
3. The City Manager and Mayor are hereby authorized to execute and deliver an agreement with Turf Management pursuant to said bid and detailed in “Exhibit B;” and
4. This Resolution Number 4688 shall become effective immediately upon adoption and approval.

DONE, ORDERED, ADOPTED and APPROVED this the 23rd day of March, 2015.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

To Council
For Approval
Resolution No. 4688
3-18-15

**Vestavia Hills Public Services
1973 Merryvale Road
Vestavia Hills, Al 35216**

INTEROFFICE MEMO

Date: March 5, 2015

TO: Jeff Downes
City Manager

From: Brian Davis
Public Services Director

RE: Highway 31 and Columbiana Road ROW Mowing

The City of Vestavia Hills invited bids for Highway 31 and Columbiana Road Right of Way mowing. The bids were opened on March 17, 2015. We received 8 bids (see below).

Company	Bid	Monthly
Turf Management	\$ 81,600.00	\$ 2,720.00
Green Team	\$ 95,472.00	\$ 3,182.40
Gibson Landscape	\$ 106,442.00	\$ 3,548.07
Landscape Workshop	\$ 67,224 annually	\$ 5,602.00
Envirotech	\$ 180,000.00	\$ 6,000.00
Natural Effects	\$ 237,220.00	\$ 7,907.33
Owens Landscape	\$ 262,000.00	\$ 8,733.33
American Lawn	\$ 478,800.00	\$ 15,960.00

I would like to recommend Turf Management's bid at a cost of \$2,720 per month for the life of the agreement (30 months). The City has worked with Turf Management in the past with work on our athletic fields.

This is a budgeted item through our 7 cents gas tax as right of way maintenance.

I have included an agreement that Mr. Boone has reviewed in the past for other turf maintenance.

CC: **Rebecca Leavings**
 Christopher Brady
 Jeff Hughes

Contract for R.O.W Mowing along US 31 and Columbiana Road

1. Scope of Services

Turf Management is to provide all supervision, labor, equipment and services required to perform all R.O.W. Mowing along designated areas on U.S. Highway 31, and Columbiana Road for Vestavia Hills Public Service as specified herein from APRIL 1, 2015, to September 30, 2017, for the contract price not to exceed \$2,720/month.

2. Safety Standards

- a) All equipment to be used and all work to be performed must be in full compliance with the most current safety requirements for performing this type of work.
- b) Turf Management shall be solely responsible for pedestrian and vehicular safety and control on the worksite and shall provide the necessary warning devices, barricades and ground personnel needed to give safety, protection and warning to persons and vehicular traffic within the area.

3. Discontinuance of Work

Turf Management upon receipt of either written or oral notice to discontinue such practice shall immediately discontinue any practice obviously hazardous as determined by the City of Vestavia Hills.

4. Observance of Laws, Ordinances and Regulators

Turf Management at all times during the term of this contract shall observe and abide by all Federal, State and Local laws which in any way effect the conduct of the work and shall comply with all decrees and orders of courts of competent jurisdiction. Turf Management shall comply fully and completely with any and all applicable state and federal statutes, rules and regulations as they relate to hiring, wages and any other applicable conditions of employment.

5. Protection of Underground Utilities

Turf Management shall be responsible for contacting the appropriate utility for location of any underground services, which are in the work area and could be damaged by operations of Turf Management.

6. Addition or Deletion of Areas

The City of Vestavia Hills reserves the right to change, add or delete areas for vegetation control. This is conditional upon the total amount of funds available. The City of Vestavia Hills shall give notice to Turf Management of the areas to be serviced and the total amount of the annual service contract. Unless otherwise authorized by the City of Vestavia Hills, failure of Turf Management to comply with the approved service schedule shall be sufficient cause to give notice that Turf Management is in default of the contract.

7. Work Schedule

Turf Management will schedule the work during typical work hours for related services, unless authorized by the City of Vestavia Hills. Serviced areas shall be completed on Tuesday-Thursday, weekly, unless changed by City of Vestavia Hills.

8. Licenses and Permits

Turf Management shall, at his expense, procure all necessary licenses and permits specified in bid documents needed to contract. (See attached Bidder Requirements)

9. Subcontracts

Turf Management will not be allowed to subcontract work under this contract unless written approval is granted by the City of Vestavia Hills. Turf Management, as approved, shall bind the subcontractor. All directions given to the subcontractor in the field shall bind Turf Management as if the notice has been given directly to Turf Management.

10. Execution of the Contract

The contract, when executed, shall be deemed to include the entire agreement between the parties. Turf Management shall not base any claim for modification of the contract upon any prior presentation or promise made by representatives of the City of Vestavia Hills.

11. Supervision

This contract will be under the direct supervision of the City of Vestavia Hills. Any alterations or modifications of the work performed under this contract shall be made only by written agreement between Turf Management and City of Vestavia Hills and shall be made prior to commencement of the altered or modified work. No claims for any extra work or materials shall be allowed unless covered by written agreement.

12. Work Crew Supervision

Turf Management shall provide qualified supervision of each crew at all times while working under this contract. Each supervisor shall be authorized by Turf Management to accept and act upon all directives issued by the City of Vestavia Hills. (Within the Contract's scope of work) Failure of the supervisor to act on said directives shall be sufficient cause to give notice that Turf Management is in default of the contract unless such directives would create potential injury or safety hazard.

13. Payments

Payments will be made on a monthly basis in accordance with the City's billing and payment policy.

14. Contract Termination

The City of Vestavia Hills shall have the right at any time to cancel this contract for reasons other than breach by Turf Management and require Turf Management to cease work thereon. In such cases Turf Management will be paid for all work actually performed the date of termination, but will not be paid for any work not performed or for any anticipated profits on work not actually performed by the termination date.

15. Insurance

Turf Management agrees to obtain and maintain in force during the terms of this agreement insurance of the type, with the coverage and in the amounts specified below:

- a) For personal injuries, including death, in an amount of not less than:
 - i) \$500,000 for any one person occurrence
 - ii) \$1,000,000 for any one occurrence

- b) For damage to property not belonging to Turf Management or his subcontractors in an amount not less than:
 - i) \$500,000 for any one accident
 - ii) \$1,000,000 aggregate amount

- c) For personal injuries including death and/or for damages to property not belonging to Turf Management or his subcontractors caused by automotive equipment or used by Turf Management or his subcontractors in an amount not less than:
 - i) \$500,000 personal injury per person per occurrence
 - ii) \$1,000,000 personal injury per occurrence
 - iii) \$500,000 property damage per accident

- d) Workmen's Compensation, State and Federal Statutory requirements plus:
 - i) \$500,000 employer's liability per person
Such insurance shall be placed with an insurer acceptable to the City of Vestavia Hills and the policies shall provide notice by the insurer to the City of Vestavia Hills of cancellation, non-renewal or material change in any such policy and shall contain an endorsement naming the City of Vestavia Hills as an additional insured there under.

16. Crew Information

- a) Crews will be dressed neat. Shirts shall be worn at all times
- b) Courtesy to persons utilizing City facilities is required at all times
- c) Breaks will be taken individually
- d) No "horseplay" will be tolerated on the job.
- e) All refuse from lunches and breaks will be disposed of immediately.
- f) No items of trash will be run over with mowers or weed eaters.

17. Equipment

- a) Equipment will be mechanically sound. Inoperable equipment in the field will not be charged to the City of Vestavia Hills. The City of Vestavia Hills reserves the option to demand replacement of any equipment, which in its opinion has a poor operational record.
- b) Equipment will not be stored on City property.
- c) All equipment, which is to be used on the work, shall be of sufficient size and in such mechanical condition as to meet requirements of the work and to produce a satisfactory quality of work.
- d) Equipment used on any portion of the project shall be such that no injury to plant materials, curbs, drives, walks, roadways, buildings or adjacent property will result from its use.

18. Required Work

- a) See attached Bidder Requirements
- b) If work is unsatisfactory Turf Management will be notified by the Public Service Director or his designee and will be given a specific deadline to make corrections.

If this is not done to the satisfaction of the Public Service Director or his designee, there will be a 25% penalty for that month's payment.

- c) Any damages caused to City facilities shall be repaired or replaced immediately by the Turf Management.

Signed for Turf Management

Date

Signed for the City of Vestavia Hills

Mayor

Date

City Manager

Date

RESOLUTION NUMBER 4689

**A RESOLUTION ACCEPTING A BID FOR VEGETATION CONTROL IN
VARIOUS RIGHTS-OF-WAY OF THE CITY OF VESTAVIA HILLS**

WHEREAS, on March 17, 2015 at 10:00 a.m. the City of Vestavia Hills publicly read aloud bids submitted for vegetation control in rights-of-way of the City of Vestavia Hills; and

WHEREAS, a detail of said bids is marked as “Exhibit A” and attached and incorporated in this Resolution Number 4689 as though written fully therein; and

WHEREAS, the Public Services Director has reviewed the bids and recommended acceptance of the bid submitted by Kellis Vegetation detailed in “Exhibit A”; and

WHEREAS, a 30-month agreement was included within the bid setting for the terms and conditions of said vegetation control, a copy of which is marked as “Exhibit B” attached to and incorporated into this Resolution Number 4689 as if written fully therein; and

WHEREAS, the Mayor and City Council feel it is in the best public interest to accept the recommendation of the Public Services Director and accept said bid as detailed above.

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

1. The bid submitted by Kellis Vegetation as detailed in “Exhibit A” attached and recommended by the Public Services Director is hereby accepted; and
2. Said expenditure will be funded from 07 special gas tax funds as indicated in attached “Exhibit A;” and
3. The City Manager and Mayor are hereby authorized to execute and deliver an agreement with Kellis Vegetation pursuant to said bid and detailed in “Exhibit B;” and
4. This Resolution Number 4689 shall become effective immediately upon adoption and approval.

DONE, ORDERED, ADOPTED and APPROVED this the 23rd day of March, 2015.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

To-Council
For Approval
3-18-15
Resolution No. 4889

**Vestavia Hills Public Services
1973 Merryvale Road
Vestavia Hills, Al 35216**

INTEROFFICE MEMO

Date: March 5, 2015
TO: Jeff Downes
City Manager
From: Brian Davis
Public Services Director
RE: ROW Vegetation Control

The City of Vestavia Hills invited bids for Highway 31 and Columbiana Road. The bids were opened on March 17, 2015. We received 4 bids, with 3 of them being "no bid".

Kellis Vegetation submitted a bid of \$23,200 annually. We have used Kellis for our needs in the past, and this amount falls in line with what we have done in the past. I recommend that we accept Kellis Vegetation bid with an agreement from April 1, 2015 through September 30, 2017.

This is a budgeted item through our 7 cents gas tax as right of way maintenance.

I have included an agreement that Mr. Boone has reviewed in the past for other turf maintenance.

CC: Rebecca Leavings
Christopher Brady
Jeff Hughes

Contract for R.O.W Vegetation Control

1. Scope of Services

Kellis Vegetation Management is to provide all supervision, labor, equipment and services required to perform all R.O.W. VEGETATION CONTROL for Vestavia Hills Public Service as specified herein from APRIL 1, 2015, to September 30, 2017, for the contract price not to exceed 23,200.00 annually.

2. Safety Standards

- a) All equipment to be used and all work to be performed must be in full compliance with the most current safety requirements for performing this type of work.
- b) Kellis Vegetation Management shall be solely responsible for pedestrian and vehicular safety and control on the worksite and shall provide the necessary warning devices, barricades and ground personnel needed to give safety, protection and warning to persons and vehicular traffic within the area.

3. Discontinuance of Work

Kellis Vegetation Management upon receipt of either written or oral notice to discontinue such practice shall immediately discontinue any practice obviously hazardous as determined by the City of Vestavia Hills.

4. Observance of Laws, Ordinances and Regulators

Kellis Vegetation Management at all times during the term of this contract shall observe and abide by all Federal, State and Local laws which in any way effect the conduct of the work and shall comply with all decrees and orders of courts of competent jurisdiction. Kellis Vegetation Management shall comply fully and completely with any and all applicable state and federal statutes, rules and regulations as they relate to hiring, wages and any other applicable conditions of employment.

5. Protection of Underground Utilities

Kellis Vegetation Management shall be responsible for contacting the appropriate utility for location of any underground services, which are in the work area and could be damaged by operations of Kellis Vegetation Management .

6. Addition or Deletion of Areas

The City of Vestavia Hills reserves the right to change, add or delete areas for vegetation control. This is conditional upon the total amount of funds available. The City of Vestavia Hills shall give notice to Kellis Vegetation Management of the areas to be serviced and the total amount of the annual service contract. Unless otherwise authorized by the City of Vestavia Hills, failure of Kellis Vegetation Management to comply with the approved service schedule shall be sufficient cause to give notice that Kellis Vegetation Management is in default of the contract.

7. Work Schedule

Kellis Vegetation Management will schedule the work during typical work hours for related services, unless authorized by the City of Vestavia Hills. Serviced areas shall be completed on Tuesday-Thursday, weekly, unless changed by City of Vestavia Hills.

8. Licenses and Permits

Kellis Vegetation Management shall, at his expense, procure all necessary licenses and permits specified in bid documents needed to contract. (See attached Bidder Requirements)

9. Subcontracts

Kellis Vegetation Management will not be allowed to subcontract work under this contract unless written approval is granted by the City of Vestavia Hills. Kellis Vegetation Management, as approved, shall bind the subcontractor. All directions given to the subcontractor in the field shall bind Kellis Vegetation Management as if the notice has been given directly to Kellis Vegetation Management.

10. Execution of the Contract

The contract, when executed, shall be deemed to include the entire agreement between the parties. Kellis Vegetation Management shall not base any claim for modification of the contract upon any prior presentation or promise made by representatives of the City of Vestavia Hills.

11. Supervision

This contract will be under the direct supervision of the City of Vestavia Hills. Any alterations or modifications of the work performed under this contract shall be made only by written agreement between Kellis Vegetation Management and City of Vestavia Hills and shall be made prior to commencement of the altered or modified work. No claims for any extra work or materials shall be allowed unless covered by written agreement.

12. Work Crew Supervision

Kellis Vegetation Management shall provide qualified supervision of each crew at all times while working under this contract. Each supervisor shall be authorized by Kellis Vegetation Management to accept and act upon all directives issued by the City of Vestavia Hills. (Within the Contract's scope of work) Failure of the supervisor to act on said directives shall be sufficient cause to give notice that Kellis Vegetation Management is in default of the contract unless such directives would create potential injury or safety hazard.

13. Payments

Payments will be made on a monthly basis in accordance with the City's billing and payment policy.

14. Contract Termination

The City of Vestavia Hills shall have the right at any time to cancel this contract for reasons other than breach by Kellis Vegetation Management and require Kellis Vegetation Management to cease work thereon. In such cases Kellis Vegetation Management will be paid for all work actually performed the date of termination, but will not be paid for any work not performed or for any anticipated profits on work not actually performed by the termination date.

15. Insurance

Kellis Vegetation Management agrees to obtain and maintain in force during the terms of this agreement insurance of the type, with the coverage and in the amounts specified below:

- a) For personal injuries, including death, in an amount of not less than:
 - i) \$500,000 for any one person occurrence
 - ii) \$1,000,000 for any one occurrence

- b) For damage to property not belonging to Kellis Vegetation Management or his subcontractors in an amount not less than:
 - i) \$500,000 for any one accident
 - ii) \$1,000,000 aggregate amount

- c) For personal injuries including death and/or for damages to property not belonging to Kellis Vegetation Management or his subcontractors caused by automotive equipment or used by Kellis Vegetation Management or his subcontractors in an amount not less than:
 - i) \$500,000 personal injury per person per occurrence
 - ii) \$1,000,000 personal injury per occurrence
 - iii) \$500,000 property damage per accident

- d) Workmen's Compensation, State and Federal Statutory requirements plus:
 - i) \$500,000 employer's liability per person
Such insurance shall be placed with an insurer acceptable to the City of Vestavia Hills and the policies shall provide notice by the insurer to the City of Vestavia Hills of cancellation, non-renewal or material change in any such policy and shall contain an endorsement naming the City of Vestavia Hills as an additional insured there under.

16. Crew Information

- a) Crews will be dressed neat. Shirts shall be worn at all times
- b) Courtesy to persons utilizing City facilities is required at all times
- c) Breaks will be taken individually
- d) No "horseplay" will be tolerated on the job.
- e) All refuse from lunches and breaks will be disposed of immediately.

17. Equipment

- a) Equipment will be mechanically sound. Inoperable equipment in the field will not be charged to the City of Vestavia Hills. The City of Vestavia Hills reserves the option to demand replacement of any equipment, which in its opinion has a poor operational record.
- b) Equipment will not be stored on City property.
- c) All equipment, which is to be used on the work, shall be of sufficient size and in such mechanical condition as to meet requirements of the work and to produce a satisfactory quality of work.
- d) Equipment used on any portion of the project shall be such that no injury to plant materials, curbs, drives, walks, roadways, buildings or adjacent property will result from its use.

18. Required Work

- a) See attached Bidder Requirements
- b) If work is unsatisfactory Kellis Vegetation Management will be notified by the Public Service Director or his designee and will be given a specific deadline to make corrections. If this is not done to the satisfaction of the Public Service Director or his designee, there will be a 25% penalty for that month's payment.

- c) Any damages caused to City facilities shall be repaired or replaced immediately by the Kellis Vegetation Management.

Signed for Kellis Vegetation Management

Date

Signed for the City of Vestavia Hills

Mayor

Date

City Manager

Date

RESOLUTION NUMBER 4691

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AND DELIVER AN AGREEMENT WITH BRAILSFORD & DUNLAVEY FOR DEVELOPMENT OF A RECREATION & ATHLETICS MASTER PLAN

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 Brailsford & Dunlavey for development of a “Recreation & Athletics Master Plan” (“the Plan”) a copy of which is marked as “Exhibit A” attached to and incorporated into this Resolution Number 4691 as though written fully therein; and
2. This Resolution Number 4691 shall become effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 23rd day of March, 2015.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

March 19, 2015

Mr. Jeff Downes
City Manager
City of Vestavia Hills, AL
Vestavia Hills, AL 35216

Dear Mr. Downes:

Brailsford & Dunlavey (“B&D”) is thankful for the opportunity to submit this proposal to support the City of Vestavia Hills (the “City”) and its Parks and Recreation Department (the “Department”) through the development of a Recreation & Athletics Master Plan (the “Plan”). B&D’s proposed scope of services is detailed in the following pages and includes information regarding fee, expenses and schedule.

Over the past 20 years, B&D has developed a uniquely comprehensive approach to planning and implementation for recreation and athletics facilities, with over 100 previous planning assignments completed nationwide. All of these projects have included the tasks outlined in the following work plan: strategic visioning, market analysis, demand assessment and financial analysis. B&D is committed to constantly improving the sophistication of our analyses, the depth of our experience, and the overall quality of our service. We believe our methodologies, approach, and extensive experience differentiate us from our competitors, allowing us to provide uniquely innovative solutions.

B&D will apply best practices in the planning of recreation and athletic facilities for the benefit of Vestavia Hills and the end users it intends to serve. Our firm regularly presents at national and regional conferences and contributes to widely distributed publications focused on this specific facility type, ensuring that B&D is facile with the current trends and requirements of today’s recreation and athletic facilities. Furthermore, B&D’s proximity to Vestavia Hills from our Atlanta office will allow us to provide unparalleled service and responsiveness throughout the process as the City embarks on this important endeavor.

Our approach to the Recreation & Athletics Master Plan will involve several steps as detailed in this work plan, and our final product will provide Vestavia Hills with a uniquely tailored plan that addresses its recreation needs in a manner that maximizes the investment of the City and enhances the quality of life for Vestavia Hills residents. The proposed work plan that follows is based on our current understanding of the City’s vision for the planning process. However, our goal is to deliver a customized scope of services that supports the City’s strategic objectives and quality-of-life needs.

To this end, please find below an overview of the work plan components that B&D is proposing to perform as a part of this planning process, followed by a breakdown of fees associated with each individual activity.

PROPOSED PHASE I WORK PLAN

- *Project Initiation:* B&D will coordinate with the Department to collect and categorize data regarding current recreation and athletic offerings in order to understand existing conditions. Additionally, B&D will tour existing recreation facilities and review any previously completed assessments to understand the physical condition and relationships between respective assets. During this initial site visit, B&D will also conduct a series of targeted focus groups with select stakeholders to better understand the current context regarding recreation within the community.
- *Strategic Asset Value (Visioning):* B&D's proprietary Strategic Asset Value ("SAV") session will be held during the kickoff visit to the community with key project stakeholders and administrators to identify the strategic objectives of the Plan. The session is intended to outline the City's culture, mission, and vision as they relate to this planning effort and future development within the community. By placing community mission at the forefront of any decision, B&D offers a process that will create an implementable plan that enhances recreation offerings while focusing on the City's broader vision.
- *Competitive Context Assessment:* B&D will define the City's current market position regarding its recreation offerings and characterize revenue opportunities through a Competitive Context Assessment. Direct core competition in the Birmingham area will be analyzed in order to both characterize the current competitive environment, as well as to identify potential revenue-generating host opportunities for the City. Based on this market context, B&D will analyze existing recreation facilities and amenities, as well as broader community resources, for their capacity to capitalize on market opportunity.
- *Survey Implementation:* B&D will work with the Department to develop and implement an Internet-based survey to better understand current patterns and future preferences of residents related to services and amenities potentially provided in an improved recreation system. This process will provide the team with a better understanding of the target market's needs and amenity preferences. B&D will analyze the survey data in conjunction with its demand analysis to help inform facility recommendations and project concept moving forward.
- *Recreation and Athletics Needs Assessment:* B&D will define the community's current recreation and athletics space needs by analyzing current demographics and projections for future growth and by developing demand models for both speculative and scheduled facility utilization.
- *Master Plan Concept Development:* B&D will synthesize the findings of the Plan to develop a master plan concept that reconciles the existing recreation and athletics program with current recreation and athletic facility demand.



- *Decision Support and Documentation:* B&D will develop and deliver a final presentation to the City's key stakeholders that summarizes the Master Plan's findings and recommendations. Stemming from this presentation, B&D will memorialize the Master Plan through the development of a final briefing document, which will summarize the results of the planning effort. Both deliverables will be carefully reviewed by B&D's Senior Quality Control Officer.

POTENTIAL ADDITIONAL SERVICES

- *System-Wide Financial Analysis:* B&D will perform a system-wide financial analysis that will provide a flexible tool to model how various facility improvements, demographic changes and phasing strategies will impact the Department's current and future financial position with the intention of developing an actionable implementation strategy. The model will overlay existing conditions with potential strategic improvements to achieve a real-time understanding of how the Master Plan's recommendations will impact the Department's financial health.

PROPOSED PHASE II WORK PLAN- DETAILED SITE PROGRAMMING

- *Outline Programming Assistance:* B&D will develop comprehensive program recommendations for a particular recreation/athletic facility, in conjunction with the City's vision for its recreation offerings as detailed in the Plan. Additionally, B&D will provide a detailed program document to guide the design process and ensure that any improvements or construction projects at the site maximize the value of the City's investment by creating a space plan that carries forward master plan recommendations.
- *Business Planning Assistance:* B&D will develop a financial model incorporating the detailed program recommended in order to understand a particular site's projected financial performance. Additionally, B&D will conduct an Economic Impact Analysis to quantify the anticipated economic impacts for the broader community, including the creation of jobs and economic activity, stemming from potential recreation capital improvements. B&D will provide the Department with a business plan model including overall operating budgets, staffing recommendations, and optimal hours of operation.
- *Retail Analysis:* A site's market position for providing a retail component will be assessed based on the findings of a detailed retail analysis. The analysis will include primary and secondary research of retail types and associated absorption rates, along with an assessment of retail rates. Supply and demand projections will be applied to the site and will incorporate findings on existing and future retail offerings in the market.

FEE PROPOSAL

The fee total for the Phase I work plan outlined above is a fixed fee of \$41,640 and reimbursable expenses are a lump sum, not to exceed \$3,500. Additional information regarding Phase I anticipated costs, along with potential work plan items for Phase II, are included within Exhibit A.

SCHEDULE

B&D is prepared to begin work related to the scope of services immediately and has included a preliminary schedule to accomplish the associated Phase I work plan items, as shown below in Exhibit B.

If the foregoing conforms to your understanding of our agreement, please convey your acceptance in writing and/or sign the enclosed copy of this letter where indicated and return a copy to us. Upon authorization, this proposal will be included as Exhibit A in B&D's standard agreement.

Thank you for the opportunity to submit this proposal, and we look forward to supporting the community through this effort.

CITY OF VESTAVIA HILLS

By: _____

Title: _____

Date: _____



EXHIBIT A: PROPOSED WORK PLAN, FEES, and REIMBURSABLE EXPENSES

Task Categories	Total
Phase I: Proposed Basic Services	
A. Project Initiation (Site Visit #1)	\$5,940
1 Document & Data Review	
2 Strategic Visioning	
3 Targeted Stakeholder Focus Groups (2-4 Total)	
4 Tour of Recreation Assets	
B. Site Capacity Analysis (Performed by Others)	NIC
1 Suitability Review of Available Assets	
2 Capacity Testing of Available Assets	
3 Accessibility/Parking Analysis	
4 Preliminary Site Cost Analysis	
C. Competitive Context Assessment (Site Visit #2)	\$6,000
1 Define Existing Market Position	
2 Local and Regional Competitive Market Assessment	
3 Program and Amenity Gap Analysis by Event Type	
D. Survey Implementation and Analysis	\$9,720
1 Development of Survey Strategy	
2 Development of Draft Survey	
3 Field Test Survey	
4 Statistical Analysis	
E. Recreation and Athletics Needs Assessment	\$6,600
1 Community Demographic Analysis	
2 Speculative Demand Model Development	
3 Scheduled Demand Model Development	
4 Finalize Recreation / Athletics Community Space Needs	
F. Master Plan Concept Development	\$2,860
1 Program-Capacity Reconciliation	
G. Decision Support & Documentation (Site Visit #3)	\$10,520
1 Project Management / Team Coordination	
2 Quality Control	
3 Draft and Deliver Final Presentation	
4 Draft and Deliver Briefing Document	
SUB-TOTAL: PROFESSIONAL FEES	\$41,640



EXHIBIT A (CON'T): PROPOSED WORK PLAN, FEES, and REIMBURSABLE EXPENSES

Phase I: Estimated Reimbursable Expenses	
1 Hotel	\$0
2 Transportation	\$500
3 Meals	\$240
4 Survey Web Hosting	\$2,500
5 Survey Incentive Prizes (not included)	NIC
6 Other Direct Costs & Incidentals	\$260
SUB-TOTAL: REIMBURSABLE EXPENSES (NOT-TO-EXCEED)	\$3,500
TOTAL FEES AND EXPENSES	\$45,140

Potential Additional Services	Total
H. System-Wide Financial Analysis	\$8,040
1 Financial Model Development	
2 Revenue/Expense Projections	
3 Implementation Scenario Testing	
4 Preliminary Economic Impact Analysis	

PHASE II POTENTIAL SERVICES

Task Categories	Total
Phase II: Potential Basic Services (per site)	
A. Outline Programming Assistance	\$15,080
1 Lead / Moderate Programming Charrettes with Stakeholders (2 Sessions)	
2 Establish Detail Program Requirements	
3 Develop Functional Relationship Diagram	
4 Draft and Deliver Program Document	
B. Business Planning Assistance	\$10,840
1 Revenue and Expense Projections for Recommended Program	
2 Refined Capital Cost Projections	
3 Financial Sensitivity Analysis	
4 Economic Impact Analysis for Recommended Program	
5 Development and Deliver Business Plan Model	
C. Site-specific Retail Analysis	\$8,600
1 Primary and Secondary Research of Retail Facilities	
2 Occupancy / Absorption Rate Analysis	
3 Rate / Pricing Analysis	
4 Analysis of Potential Future Retail Offerings	
5 Outline Recommendations for Retail Offering(s)	



EXHIBIT B - PHASE I PRELIMINARY PROPOSED SCHEDULE

TASK CATEGORY	APRIL				MAY				JUNE				JULY			
	6	13	20	27	4	11	18	25	1	8	15	22	2	9	16	23
PROJECT INITIATION	⊙															
SURVEY IMPLEMENTATION/ANALYSIS																
RECREATION NEEDS ASSESSMENT																
SITE CAPACITY ANALYSIS																
COMPETITIVE CONTEXT ASSESSMENT						⊙										
FINANCIAL ANALYSIS																
MASTER PLAN CONCEPT DEVELOPMENT																
DECISION SUPPORT AND DOCUMENTATION																

⊙ Site Visit / Presentation

RESOLUTION NUMBER 4695

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A SETTLEMENT AGREEMENT REGARDING THE APPEAL OF THE CITY COUNCIL'S ORDER TO DEMOLISH 2253 GREAT ROCK ROAD, VESTAVIA HILLS, ALABAMA, 35216.

WHEREAS, on September 22, 2014, in Resolution No. 4639, the City Council of Vestavia Hills, Alabama ("City Council") determined that the property located at 2253 Great Rock Road, Vestavia Hills, Alabama, 35216 ("Subject Property") was unsafe to the extent that it is a public nuisance and ordered its demolition; and

WHEREAS, Brenda Jayne Fields ("Fields") is the owner of the Subject Property and U.S. Bank and Regions Bank are also interested parties participating in the appeal as appellants (Fields, U.S. Bank, and Regions Bank are altogether "Appellants"); and

WHEREAS, the City of Vestavia Hills, Alabama ("the City") desires to enter into a Settlement Agreement with the Appellants; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Vestavia Hills, Alabama, while in regular session on Monday, March 23, 2015, as follows:

1. The City Manager is hereby authorized to take all actions necessary and to execute all documents necessary to enter into a Settlement Agreement with the Appellants; and

2. The City Manager is hereby authorized to purchase the Subject Property for a price of Ten Dollars and No Cents (\$10.00) and to pay all closing costs associated with the sale of the Property from Fields to the City; and

3. Following acceptance of the Subject Property, the City Manager is hereby authorized to do all things necessary to list and advertise the Subject Property for sale, including the retention of a real estate agent; and

4. Any offer to purchase the Subject Property and to declare that the Subject Property is no longer needed for public purposes must receive the further approval of the City Council before a sale from the City to a third party is completed; and

5. Upon the sale of the Subject Property by the City to a third party, the City agrees to pay U.S. Bank Twelve Thousand, Five Hundred Dollars and No Cents (\$12,500.00) and to pay Regions Bank Five Thousand Dollars and No Cents (\$5,000.00); and

6. The City Manager and the City's attorneys are hereby authorized to do all things necessary to secure the dismissal with prejudice of *Brenda Jayne Fields, et al. v. City of Vestavia Hills, Alabama*, CV-2014-519 (Cir. Ct. Jeff. Co., Ala., B'ham Div.); and

7. Subject to applicable laws and the City Council's ordinary regulation of City finances, following the City's purchase of the Subject Property from Fields, the City Manager is hereby authorized to do all things necessary to abate any and all nuisances existing on the Subject Property; and

8. This Resolution Number 4695 shall become effective immediately upon adoption.

ADOPTED and APPROVED this the 23rd day of March, 2015.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY

Rebecca Leavings
City Clerk

CERTIFICATION OF CITY CLERK

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, Rebecca Leavings, City Clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true and correct copy of a Resolution duly and legally adopted by the City Council of the City of Vestavia Hills, Alabama, on the 23rd day of March, 2015 while in regular session, and the same appears of record in the minute book of said date of said City.

Witness my hand and seal of office this _____ day of March, 2015.

Rebecca Leavings, City Clerk

RESOLUTION NUMBER 4696

A RESOLUTION AUTHORIZING THE CITY MANAGER TO TAKE ALL ACTIONS NECESSARY TO DEMOLISH THE STRUCTURE ON THE PROPERTY LOCATED AT 2253 GREAT ROCK ROAD

WHEREAS, on September 22, 2014, the City Council of the City of Vestavia Hills adopted and approved Resolution Number 4639 to declare the structures on the property located at 2253 Great Rock Road and to order the demolition of said structures; and

WHEREAS, the action was appealed and authorized to be settled with the adoption and approval of Resolution Number 4695 by the Vestavia Hills City Council; and

WHEREAS, the Building Safety Official has been authorized to receive proposals for demolition as well as the removal and mitigation of known asbestos materials within the structure and detail said proposals in a memorandum to the City Manager when completed at an estimated expense not to exceed \$14,900; and

WHEREAS, the Mayor and City Council find it is in the best public interest to authorize the City Manager to take all actions necessary to secure said demolition.

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

1. The City Manager is hereby authorized to take all actions and execute all documents necessary to demolish and remove the structure on the property located at 2253 Great Rock Road at a total cost not to exceed \$14,900.00; and
2. This Resolution Number 4696 shall become effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 23rd day of March, 2013.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

RESOLUTION NUMBER 4690

**A RESOLUTION APPROVING AND ASSENTING
TO DECLARATION OF VACATION**

WITNESSETH THESE RECITALS

WHEREAS, A Declaration signed by the owners of all the lands abutting the following described storm drainage easement situated in the City of Vestavia Hills, Jefferson County, Alabama, vacating said storm drainage easement, has been duly presented to the City Council of the City of Vestavia Hills, Alabama, for assent and approval of said governing body; and

WHEREAS, a copy of said Declaration with map attached is marked as “Exhibit A”, attached hereto and incorporated into this Resolution by reference as though set out fully herein; and

WHEREAS, the storm drainage easement above referred to is commonly referred to as “storm drainage easement” and is more particularly described as follows:

An easement to be vacated over and across a parcel of land situated in the Southwest one-quarter of Section 19, Township 18 South, Range 2 West Jefferson County, Alabama, said parcel being part of Lots 10, 11, and 12, Fourth Addition to Beacon Hills as recorded in Plat Book 38, Page 3 in the Office of the judge of Probate Jefferson County, Alabama, along with an acreage parcel, said easement being more particularly described as follows:

Begin at the Southwest corner of said Lot 12, said point being on the Southeastern-most right of way of U.S. Highway 31 (Montgomery Highway), said point being on the centerline of a 10 foot easement to be vacated, lying 5 feet on each side of, parallel to, and abutting the following described line; thence leaving said right of way run South 66 degrees 32 minutes 44 seconds East along the Southwest lines of said Lots 10, 11, and 12 for a distance of 257.95 feet to a point on an existing 10 foot easement, said point lying 5.00 feet Northwest of the Southern-most corner of said Lot 10, said point being the termination of said easement vacation.

WHEREAS, it appears to the City Council of the City of Vestavia Hills, Alabama, that convenient and reasonable means of access is afforded to all utilities running through the tract of land embraced in said Survey Plat.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, that the vacation of the hereinabove described storm drainage easement is assented to and approved and the same is hereby vacated pursuant to the provision of Section 23-4-20 of the Code of Alabama, 1975.

RESOLVED, DONE AND ORDERED, on this the 13th day of April, 2015.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

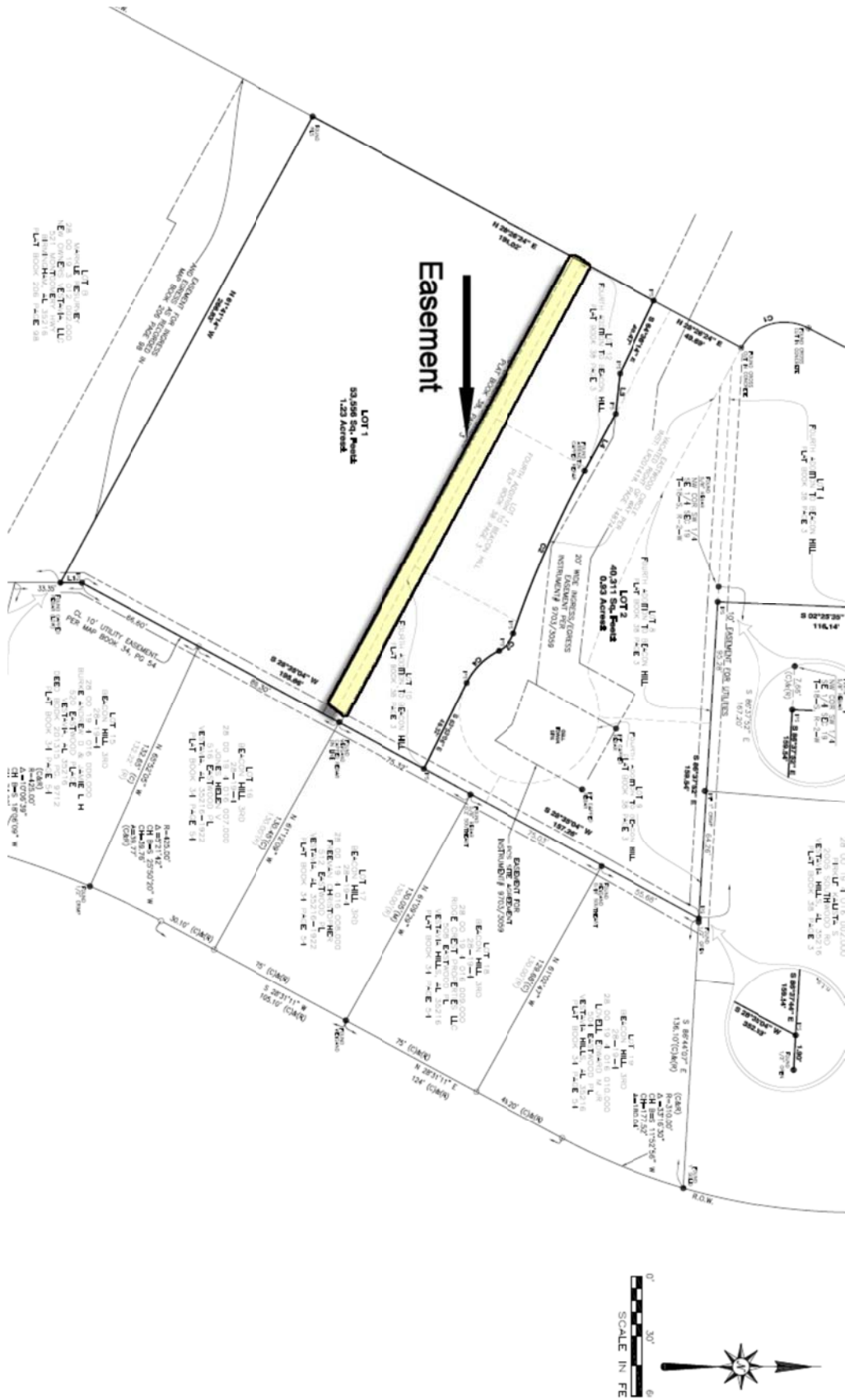
Rebecca Leavings
City Clerk

CERTIFICATION

I, the undersigned qualified acting Clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true copy of a Resolution lawfully passed and adopted by the City Council of the City named therein, at a regular meeting of such Council held on the 13th day of April, 2015, and that such Resolution is of record in the Minute Book of the City at page _____ thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on this the _____ day of _____, 2015.

Rebecca Leavings
City Clerk



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

March 18, 2015

To: Rebecca Leavings, City Clerk
CC: Brian Davis, Director of Public Services
From: Christopher Brady, City Engineer
RE: vacation of easement, 513 Montgomery Highway

I have reviewed the requested vacation of this easement.

As shown on preliminary plans, the existing storm drain pipe is anticipated to be relocated as part of future development on this property. As this relocation occurs the existing easement will no longer be needed.

I recommend vacation of this easement contingent on the re-location of the storm drainage pipe during the proposed redevelopment and establishing a new easement as shown on the preliminary plans.

Please let me know if questions,

Sincerely,
-Christopher



**STATE OF ALABAMA
JEFFERSON COUNTY**

DECLARATION OF VACATION

We, the undersigned, constituting all of the owners of all property abutting easement as same appears on the Plat of Beacon Hills 4th which Plat is recorded in Plat Book 38, at Page 3, in the Probate Office of Jefferson County, Alabama, do hereby declare that each of said Plats embraced within the boundaries of said easement as the same appears of record on the Plat to be vacated, and said easement is hereby declared vacated. The undersigned do hereby respectfully represent and warrant as follows:

1. This Declaration of Vacation of easement is prepared, executed, delivered and recorded to and in accordance with the provisions of Section 23-4-20 and Section 35-2-54, Code of Alabama, 1975.

2. It is in the best public interest that easement be closed and vacated.

3. Such vacation will not deprive other property owners of a convenient and reasonable means of ingress and egress to their property.

4. Easement is situated in the City of Vestavia Hills, Jefferson County, Alabama, and appears at 513 Montgomery Hwy

_____ . A copy of the map reflecting the location of easement is attached hereto and incorporated into this Declaration of Vacation as a part hereof.

5. The street address and legal descriptions of all property abutting easement and the names and addresses of the owner of said abutting properties are as follows:

A. Street Address: 513 Montgomery Hwy

Legal Description: _____

Owners' Name(s): City Of Vestavia Hills, Jeff Downes, City Mgr

B. Street Address: _____

Legal Description: _____

Owners' Name(s): _____

C. Street Address: _____

Legal Description: _____

Owners' Name(s): _____

D. Street Address: _____

Legal Description: _____

Owners' Name(s): _____

E. Street Address: _____

Legal Description: _____

Owners' Name(s): _____

F. Street Address: _____

Legal Description: _____

Owners' Name(s): _____

6. All of the undersigned do hereby declare Easement to be vacated and respectfully request the assent of the City Council of the City of Vestavia Hills, Alabama, to said vacation of Easement and its approval of the same.

IN WITNESS THEREOF, the undersigned have hereunto set our hands and seals on this the 19th day of March, 2015.

SIGNATURES OF ABUTTING PROPERTY OWNERS:

(notary on following pages)

[Signature], City Manager
City Of Vestavia Hills

STATE OF ALABAMA

GENERAL ACKNOWLEDGMENT

JEFFERSON COUNTY

I, the undersigned authority, a Notary Public, in and for said County, in said State, hereby certify that JEFFREY DOWNES and _____, whose names are signed to the foregoing Declaration of Vacation, and who are known to me, acknowledged before me on this day that being informed of the contents of the instrument, they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this the 19TH day of MARCH, 20 15.

Melissa N. Hays

Notary Public

My commission expires 10/14/2017

STATE OF ALABAMA

GENERAL ACKNOWLEDGMENT

JEFFERSON COUNTY

I, the undersigned authority, a Notary Public, in and for said County, in said State, hereby certify that _____ and _____, whose names are signed to the foregoing Declaration of Vacation, and who are known to me, acknowledged before me on this day that being informed of the contents of the instrument, they executed the same voluntarily on the day the same bears date.

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

Notary Public

RESOLUTION NUMBER 4692

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

WHEREAS, there has been a petition filed with the City Clerk of the City of Vestavia Hills, Alabama, and herein presented to the City Council of the City of Vestavia Hills, Alabama, dated December 23, 2014, wherein all owners of certain property contiguous to the City Limits of the City of Vestavia Hills, Alabama, ask that their property be annexed to the City of Vestavia Hills, Alabama; and

WHEREAS, said Petition has been presented to the City Council of the City of Vestavia Hills, Alabama, on the 13th day of April, 2015; and

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

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

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

1. That the said Petition shall be published one (1) time in *The Birmingham News*, a newspaper of general circulation in Vestavia Hills, Jefferson County, Alabama, on the 15th day of April, 2015.

2. That on the 27th day of July, 2015, in the Vestavia Hills Municipal Center, a public hearing will be held to determine the truths of the matter set forth in said petition and to consider any protests or objections filed in writing with the City Clerk prior to such hearing, to determine whether it is in the public interest or not that said property be annexed to the City of Vestavia Hills, Alabama, and to consider adoption of an Ordinance annexing the territory described in said petition to this Municipality.

3. That this Resolution shall become known and referred to as Resolution Number 4692 by the City Council of the City of Vestavia Hills, Alabama, and as

annexation of the following described property by the City Council of the City of Vestavia Hills, Alabama:

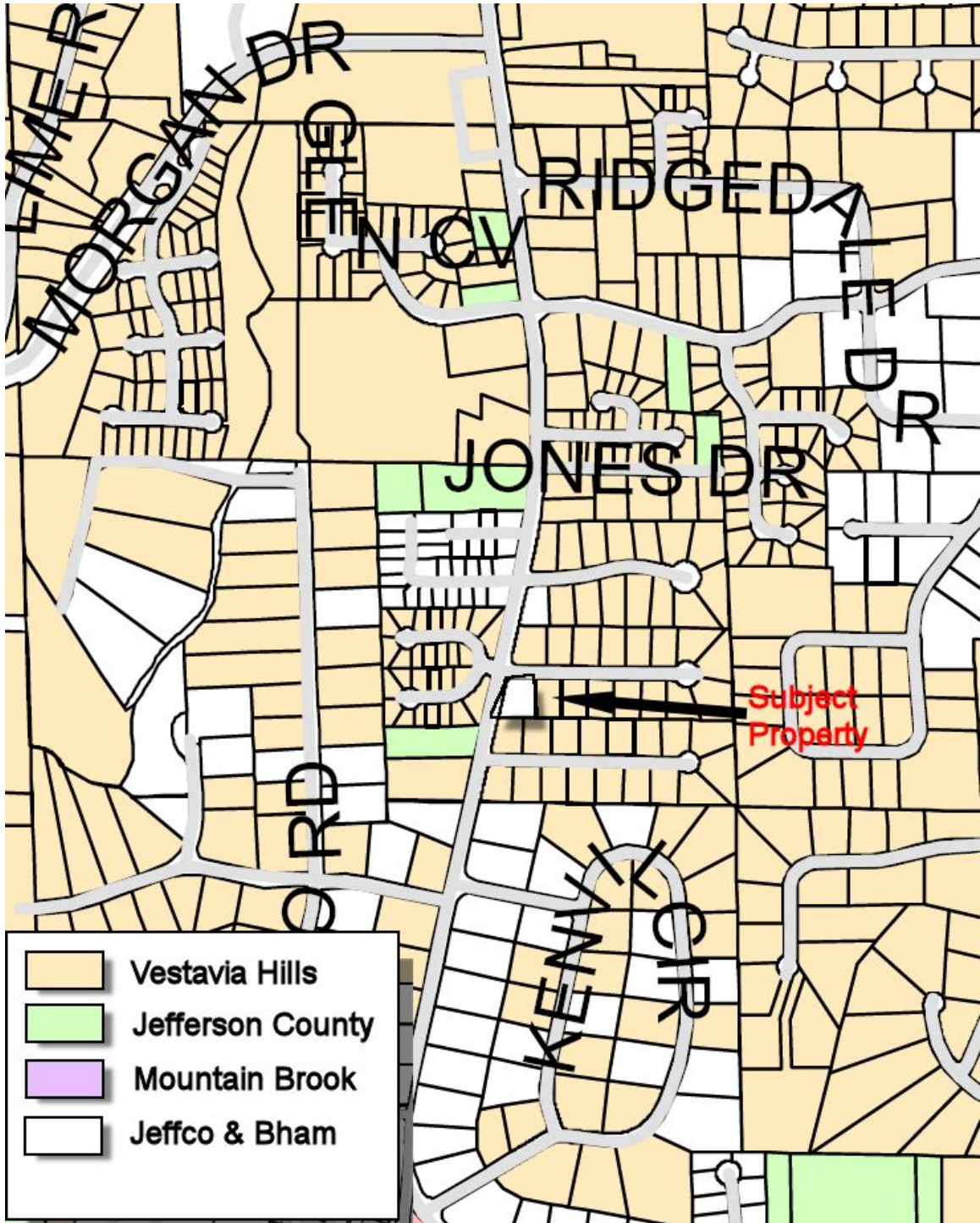
3400 Kettering Lane
Lot 16 Ridgedell Park
Natan and Lindsey Shar, Owner(s)

APPROVED and ADOPTED this the 13th day of April, 2015.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk



Annexation Committee Petition Review

Property: 3400 Kettering Lane

Owners: Natan and Lindsey Shar

Date: February 12, 2015

1. The property in question is contiguous to the city limits.
 Yes No Comments: _____

2. The land use of the petitioned property is compatible with land use in the area.
 Yes No Comments: _____

3. The property being petitioned is noted in the September 2006 Annexation Policy Task Force Report as an area of interest to the city for annexation.
 Yes No Comments _____

4. Streets and drainage structures are in substantial compliance with city regulations and building codes, and in good condition at the time of the annexation.
 Yes No Comments _____

5. Individual household has a Jefferson or Shelby County Tax Assessor minimum market value of _____. Meets city criteria: Yes No
 Comment: _____
6. This street has fewer than 100% of the individual properties within the limits of the city
 Yes No
 Number of total homes ~~16~~ 15 Number in city ~~15~~ 15
7. Fire dues pursuant to Act #604 of the State of Alabama, and any other assessments on the property shall be the responsibility of the property owner, and their payment proven to the city.
 Agreed to by petitioner: Yes No Comment _____



Property: 3400 Kettering Lane

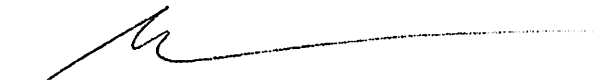
8. A non-refundable administrative fee of \$100 has been paid to the city. Furthermore, voluntary contributions, including an application fee, of \$ _____ will be paid to offset costs associated with the annexation. Yes _____ No _____ Comment _____

9. Property is free and clear of hazardous waste, debris and materials. Yes No _____ Comment _____

10. Are there any concerns from city departments? Yes _____ No Comments: _____

11. Information on children. Number in family 3 ~~1~~; Plan to enroll in VH schools Yes No _____ Comments: _____

Other Comments: _____



George Pierce
Chairman

PARCEL #: 28 00 32 3 005 037.000
OWNER: SHAR NATAN A & LINDSEY S W
ADDRESS: 3400 KETTERING LN VESTAVIA AL 35243-2806
LOCATION: 3400 KETTERING LN BHAM AL 35243

[111-C0] Baths: 2.0 H/C Sqft: 1,175
18-034.0 Bed Rooms: 3 Land Sch: L1
 Land: 72,800 Imp: 87,900 Total: 160,700
 Acres: 0.000 Sales Info: 01/01/2005
\$143,500

<< Prev Next >> [1 / 0 Records] Processing...

Tax Year : 2013

SUMMARY LAND BUILDINGS SALES PHOTOGRAPHS MAPS

SUMMARY

ASSESSMENT

PROPERTY CLASS: 3 OVER 65 CODE:
 EXEMPT CODE: 2-2 DISABILITY CODE:
 MUN CODE: 02 COUNTY HS YEAR: 0
 SCHOOL DIST: EXM OVERRIDE AMT: \$0.00
 OVR ASD VALUE: \$0.00 TOTAL MILLAGE: 50.1

VALUE

LAND VALUE 10% \$72,840
 LAND VALUE 20% \$0
 CURRENT USE VALUE [DEACTIVATED] \$0
CLASS 2
CLASS 3
 BLDG 001 111 \$87,900

CLASS USE:
 FOREST ACRES: 0 TAX SALE:
 PREV YEAR VALUE: \$160,700.00 BOE VALUE: 0

TOTAL MARKET VALUE [APPR. VALUE: \$160,700]: \$160,740
 Assesment Override:
 MARKET VALUE:
 CU VALUE:
 PENALTY:
 ASSESSED VALUE:

TAX INFO

	CLASS	MUNCODE	ASSD. VALUE	TAX	EXEMPTION	TAX EXEMPTION	TOTAL TAX
STATE	3	2	\$16,080	\$104.52	\$4,000	\$26.00	\$78.52
COUNTY	3	2	\$16,080	\$217.08	\$2,000	\$27.00	\$190.08
SCHOOL	3	2	\$16,080	\$131.86	\$0	\$0.00	\$131.86
DIST SCHOOL	3	2	\$16,080	\$0.00	\$0	\$0.00	\$0.00
CITY	3	2	\$16,080	\$0.00	\$0	\$0.00	\$0.00
FOREST	3	2	\$0	\$0.00	\$0	\$0.00	\$0.00
SPC SCHOOL1	3	2	\$16,080	\$82.01	\$0	\$0.00	\$82.01
SPC SCHOOL2	3	2	\$16,080	\$270.14	\$0	\$0.00	\$270.14

TOTAL FEE & INTEREST: (Detail) \$5.00

ASSD. VALUE: \$16,080.00

\$805.61

GRAND TOTAL: \$757.61

DEEDS

PAYMENT INFO

INSTRUMENT NUMBER	DATE	PAY DATE	TAX YEAR	PAID BY	AMOUNT
200503-418	01/28/2005	12/8/2014	2014	WELLS FARGO HOME MORTGAGE	\$757.61
956-163	05/29/1973	12/11/2013	2013	WELLS FARGO	\$757.61
		12/20/2012	2012	WELLS FARGO	\$757.12
		20111230	2011	***	\$765.13
		20101210	2010	***	\$807.71
		20091207	2009	***	\$807.71
		20081120	2008	***	\$820.24

EXHIBIT "C"

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

The following properties have requested to be annexed into the City. Please review this request and then forward your comments to the City Clerk as soon as is reasonably possible.

Location: 3400 Kettering Lane

Engineering:

2015 Annexation Review – Engineering/Public Services

Comments: Review comments, 1/29/15, CBrady

3400 Kettering Lane – no significant concerns noted; Kettering Lane is in fair condition and the City already provides maintenance services to this street; Rocky Ridge Road is anticipated to be re-inherited by Jefferson County for “through road” maintenance.

Police Department:

Date: 1-12-15 Initials: [Signature]

Comments: _____

Fire Department:

Date: 1/28/15 Initials: [Signature]

Comments: _____

STATE OF ALABAMA

Jefferson COUNTY

PETITION FOR ANNEXATION TO THE
CITY OF VESTAVIA HILLS, ALABAMA

Date of Petition: 12-23-2014

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

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

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

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

Natan Shar 205-919-6205 natanshare@gmail.com
Lindsey Shar 205-567-5095 lshar23@gmail.com

EXHIBIT "A"

LOT: 16

BLOCK: —

SURVEY: Ridgedell Park

RECORDED IN MAP BOOK 73, PAGE 96 IN THE
PROBATE OFFICE OF Jefferson COUNTY, ALABAMA.

COUNTY ZONING: R-1

COMPATIBLE CITY ZONING: R-2

LEGAL DESCRIPTION (METES AND BOUNDS):

Lot 16 Ridgedell Park

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

SIGNATURE(S)

DESCRIPTION OF PROPERTY

<u>Nathan Shar</u>	Lot <u>16</u> Block <u>-</u> Survey <u>Ridgedell Park</u>
<u>Lindsey Shar</u>	Lot <u>16</u> Block <u>-</u> Survey <u>Ridgedell Park</u>
_____	Lot _____ Block _____ Survey _____

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

STATE OF ALABAMA

Jefferson COUNTY

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

Lindsey Shar
Signature of Certifier

Subscribed and sworn before me this the 26th day of December, 2014.

Kay Fussom
Notary Public

My Commission Expires
November 18, 2016

My commission expires: _____

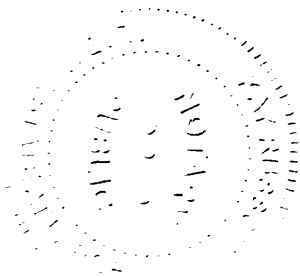


EXHIBIT "B"

VESTAVIA HILLS BOARD OF EDUCATION

1204 Montgomery Highway
 Vestavia Hills AL 35216

(To be completed by the City)

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

(To be completed by Homeowner)

Name(s) of Homeowner(s): NATAN AND LINDSEY SHAR

Address: 8400 KETTERING LANE

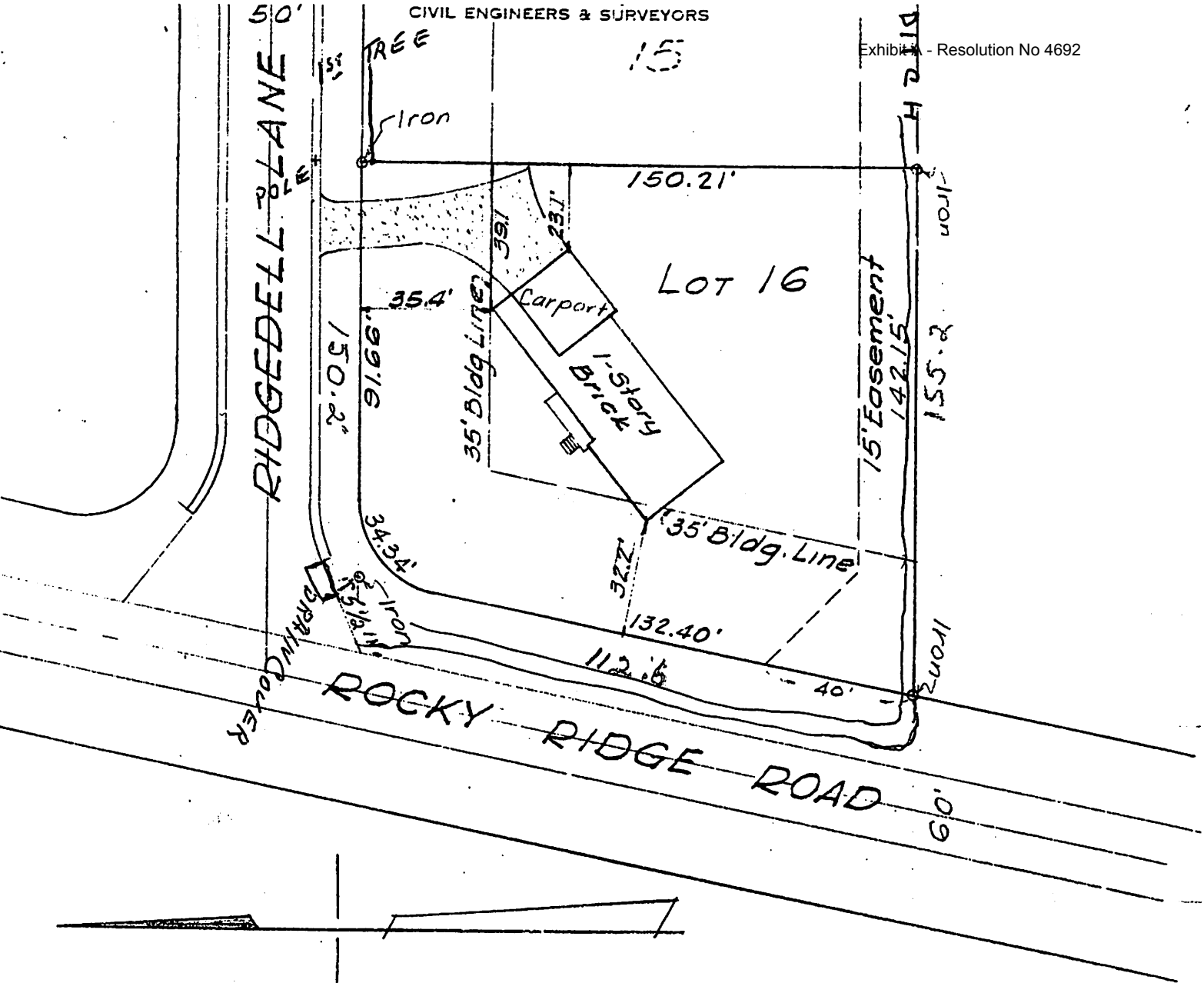
City: BIRMINGHAM State: AL Zip: 35243

Information on Children:

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

	Name(s)	Age	School Grade	Yes	No
1.	ERIN SHAR	4	Pre-K	✓	
2.					
3.					
4.					
5.					
6.					

Approximate date for enrolling students in Vestavia Hills City Schools if above response is "yes". AUGUST 2015 | 2015-2016 SY



Scale 1" = 40'

This is to certify that I have consulted the U. S. Department of the Interior Geological Survey Map No. 161-C and found that this property is not located in a special flood prone area.

STATE OF ALABAMA,
JEFFERSON COUNTY

I, Melvin R. Reynolds, a Registered Surveyor, do hereby certify that this is a true and correct plat or map of Lot 16, Block _____ of RIDGEDELL PARK, as recorded in Map

Book 73, Page 96 in the office of the Judge of Probate in Jefferson County, Alabama. The buildings on said premises are within the lines of same, and there are no visible encroachments of buildings, rights of way, easements or joint driveways over or across said land except as shown; there are no visible encroachments by electric or telephone wires (excluding wires which serve the premises only) or structures or supports therefor, including poles, anchors and guy wires, on or over said premises except as shown.

Purchaser: Billingsley
3400 Kittering Lane

According to my survey this the 27th day of June 1977

Melvin R. Reynolds
Reg. No. 2087

ORDINANCE NUMBER 2559

AN ORDINANCE TO ALTER, REARRANGE, AND EXTEND THE CORPORATE LIMITS OF THE CITY OF VESTAVIA HILLS, ALABAMA, SO AS TO EMBRACE AND INCLUDE WITHIN THE CORPORATE AREA OF SAID CITY ALL TERRITORY NOW WITHIN SUCH CORPORATE LIMITS AND ALSO CERTAIN OTHER TERRITORY CONTIGUOUS TO SAID CITY.

WHEREAS, a certain petition signed by Natan and Lindsey Shar dated December 23, 2014, that the property therein described be annexed to the City of Vestavia Hills, Alabama, together with a map of said territory showing its relationship to the corporate limits of the City, has been filed with the City Clerk of the City of Vestavia Hills; and

WHEREAS, this Council has determined and found that the matters set forth and alleged in said petition are true and correct, and that it is in the public interest that said territory be annexed to the City of Vestavia Hills;

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

SECTION 1. That said Council hereby assents to the annexation of said territory to the City of Vestavia Hills, Alabama, the corporate limits of the City to be extended and rearranged pursuant to the provisions of Title 11, Chapter 42, Article 2, Code of Alabama, 1975 (Sections 11-42-20 through 11-42-23, as amended) so as to embrace and include said territory, in addition to the territory already within its present corporate limits. The new boundary line does not lie at any point more than half the distance between the old city boundary and the corporate boundary of any other municipality. Said territory is described as follows:

3400 Kettering Lane
Lot 16 Ridgedell Park
Natan and Lindsey Shar

SECTION 2. That the City Clerk shall file a certified copy of this Ordinance containing an accurate description of said annexed territory with the Probate Judge of Jefferson County, Alabama, and also cause a copy of this Ordinance to be published in a newspaper of general circulation in the City of Vestavia Hills, Alabama.

APPROVED and ADOPTED this the 13th day of April, 2015.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

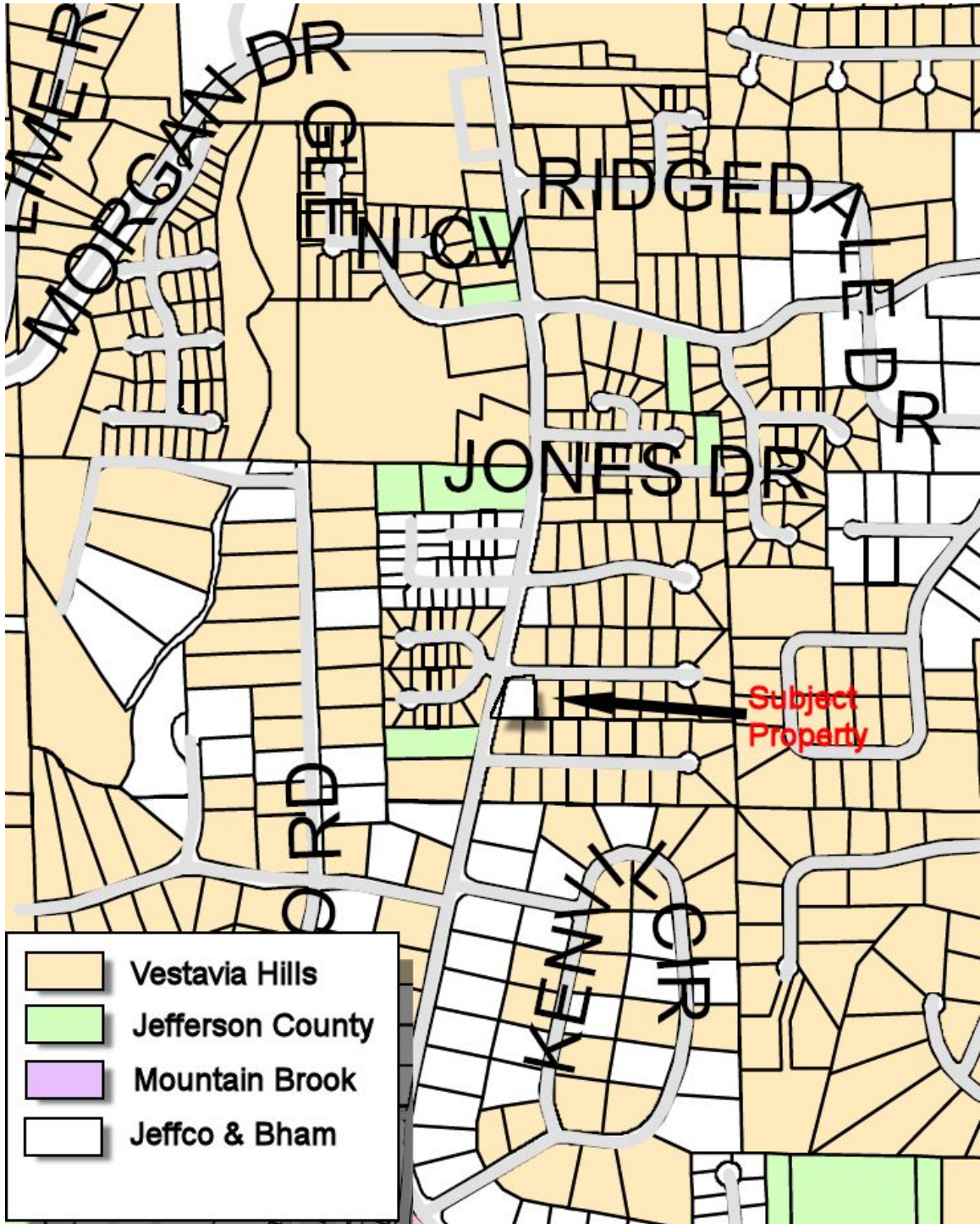
Rebecca Leavings
City Clerk

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 # 2559 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 13th day of April, 2015, as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills Library in the Forest, Vestavia Hills New Merkle House and Vestavia Hills Recreational Center this the _____ day of _____, 2015.

Rebecca Leavings
City Clerk



RESOLUTION NUMBER 4693

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

WHEREAS, there has been a petition filed with the City Clerk of the City of Vestavia Hills, Alabama, and herein presented to the City Council of the City of Vestavia Hills, Alabama, dated August 6, 2014, wherein all owners of certain property contiguous to the City Limits of the City of Vestavia Hills, Alabama, ask that their property be annexed to the City of Vestavia Hills, Alabama; and

WHEREAS, said Petition has been presented to the City Council of the City of Vestavia Hills, Alabama, on the 13th day of April, 2015; and

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

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

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

1. That the said Petition shall be published one (1) time in *The Birmingham News*, a newspaper of general circulation in Vestavia Hills, Jefferson County, Alabama, on the 15th day of April, 2015.

2. That on the 27th day of July, 2015, in the Vestavia Hills Municipal Center, a public hearing will be held to determine the truths of the matter set forth in said petition and to consider any protests or objections filed in writing with the City Clerk prior to such hearing, to determine whether it is in the public interest or not that said property be annexed to the City of Vestavia Hills, Alabama, and to consider adoption of an Ordinance annexing the territory described in said petition to this Municipality.

3. That this Resolution shall become known and referred to as Resolution Number 4693 by the City Council of the City of Vestavia Hills, Alabama, and as

annexation of the following described property by the City Council of the City of Vestavia Hills, Alabama:

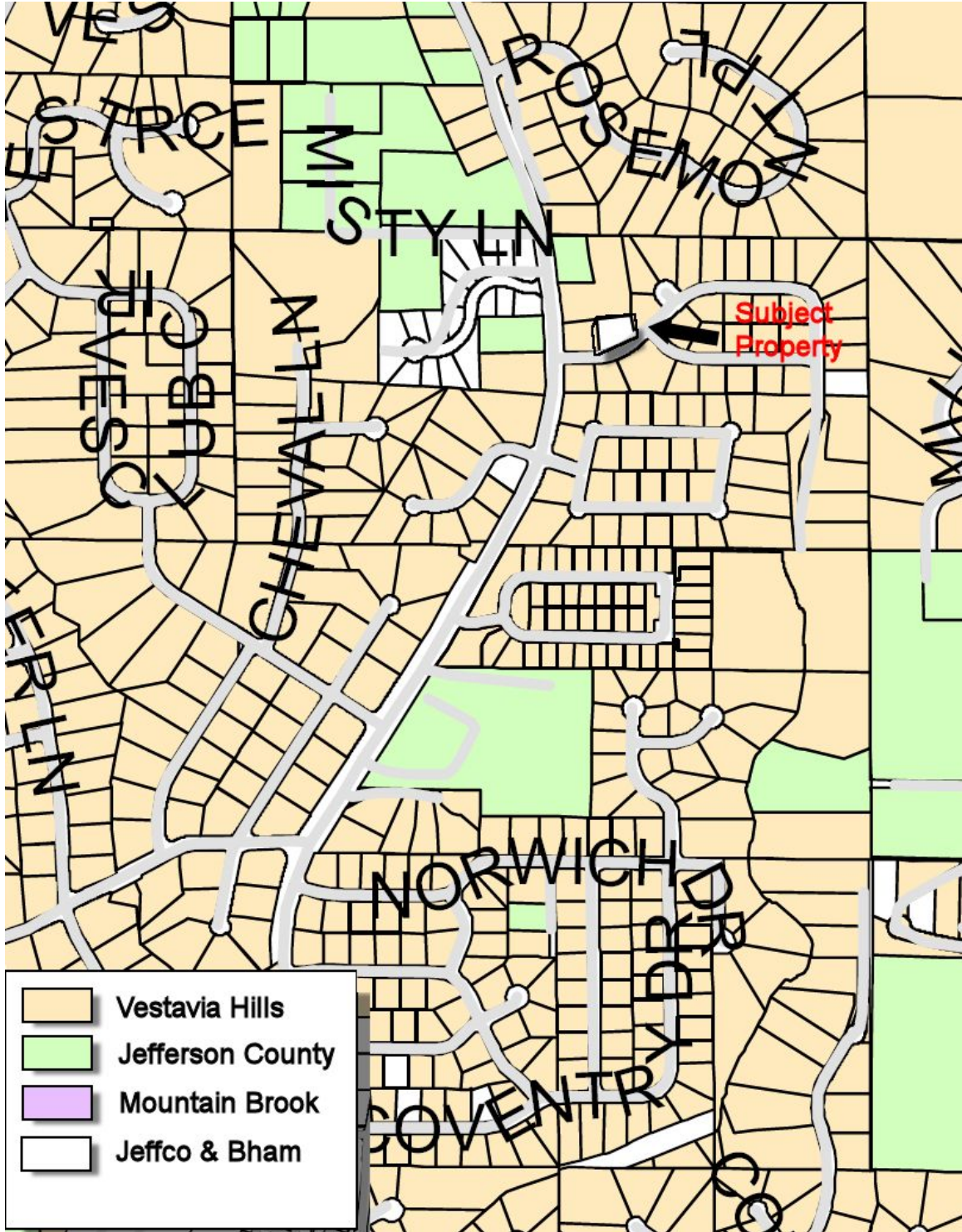
3405 Sagewood Lane
Lot 23-A, Resurvey of Lots 21, 22 & 23, Sagewood
April and Donald Winningham, Owner(s)

APPROVED and ADOPTED this the 13th day of April, 2015.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk



Annexation Committee Petition Review

Property: 3405 Sagewood Trail

Owners: April and Donald Winningham III

Date: February 12, 2015

1. The property in question is contiguous to the city limits.
Yes No Comments: _____

2. The land use of the petitioned property is compatible with land use in the area.
Yes No Comments: _____

3. The property being petitioned is noted in the September 2006 Annexation Policy Task Force Report as an area of interest to the city for annexation.
Yes No Comments _____

4. Streets and drainage structures are in substantial compliance with city regulations and building codes, and in good condition at the time of the annexation.
Yes No Comments _____

5. Individual household has a Jefferson or Shelby County Tax Assessor minimum market value of _____. Meets city criteria: Yes No
Comment: _____
6. This street has fewer than 100% of the individual properties within the limits of the city
Yes No
Number of total homes _____ Number in city _____
7. Fire dues pursuant to Act #604 of the State of Alabama, and any other assessments on the property shall be the responsibility of the property owner, and their payment proven to the city.
Agreed to by petitioner: Yes No Comment _____

Property: 3405 Sagewood Trail

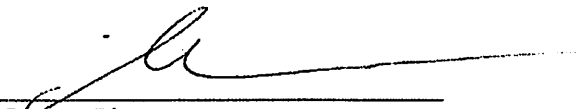
8. A non-refundable administrative fee of \$100 has been paid to the city. Furthermore, voluntary contributions, including an application fee, of \$_____ will be paid to offset costs associated with the annexation.
Yes _____ No _____ Comment _____

9. Property is free and clear of hazardous waste, debris and materials.
Yes No _____ Comment _____

10. Are there any concerns from city departments?
Yes _____ No Comments: _____

11. Information on children: Number in family 2; Plan to enroll in VH schools Yes No _____ Comments: _____

Other Comments: _____



George Pierce
Chairman

PARCEL #: 28 00 29 1 001 003.000 [111-C+] Baths: 2.0 H/C Sqft: 1,930
OWNER: MEEHAN J TIMOTHY & CHRISTINE S 18-011.0 Bed Rooms: 4 Land Sch: L1
ADDRESS: 3405 SAGEWOOD TRL VESTAVIA AL 35243-2047 Land: 147,000 Imp: 136,000 Total: 283,000
LOCATION: 3405 SAGEWOOD TRL VESTAVIA HILLS AL 35243 Acres: 0.000 Sales Info: 06/01/2004
 \$262,500

<< Prev Next >> [1 / 0 Records] Processing...

Tax Year : 2013

SUMMARY LAND BUILDINGS SALES PHOTOGRAPHS MAPS

SUMMARY

ASSESSMENT

PROPERTY CLASS: 3 OVER 65 CODE:
 EXEMPT CODE: 2-2 DISABILITY CODE:
 MUN CODE: 02 COUNTY HS YEAR: 0
 SCHOOL DIST: EXM OVERRIDE AMT: \$0.00
 OVR ASD VALUE: \$0.00 TOTAL MILLAGE: 50.1

VALUE

LAND VALUE 10% \$147,010
 LAND VALUE 20% \$0
 CURRENT USE VALUE [DEACTIVATED] \$0
CLASS 2
CLASS 3
 BLDG 001 111 \$136,000

CLASS USE:
 FOREST ACRES: 0 TAX SALE:
 PREV YEAR VALUE: \$283,000.00
 BDE VALUE: 0

TOTAL MARKET VALUE [APPR. VALUE: \$283,000]: \$283,010
 Assesment Override:
 MARKET VALUE:
 CU VALUE:
 PENALTY:
 ASSESSED VALUE:

donnie.winningham@gmail.com

TAX INFO

	CLASS	MUNCODE	ASSD. VALUE	TAX	EXEMPTION	TAX EXEMPTION	TOTAL TAX
STATE	3	2	\$28,300	\$183.95	\$4,000	\$26.00	\$157.95
COUNTY	3	2	\$28,300	\$382.05	\$2,000	\$27.00	\$355.05
SCHOOL	3	2	\$28,300	\$232.06	\$0	\$0.00	\$232.06
DIST SCHOOL	3	2	\$28,300	\$0.00	\$0	\$0.00	\$0.00
CITY	3	2	\$28,300	\$0.00	\$0	\$0.00	\$0.00
FOREST	3	2	\$0	\$0.00	\$0	\$0.00	\$0.00
SPC SCHOOL1	3	2	\$28,300	\$144.33	\$0	\$0.00	\$144.33
SPC SCHOOL2	3	2	\$28,300	\$475.44	\$0	\$0.00	\$475.44

TOTAL FEE & INTEREST: (Detail) \$5.00

ASSD. VALUE: \$28,300.00

\$1,417.83

GRAND TOTAL: \$1,369.83

March Council

DEEDS

INSTRUMENT NUMBER	DATE
201461-17975	5/15/2014
200408-2153	06/09/2004

PAYMENT INFO

PAY DATE	TAX YEAR	PAID BY	AMOUNT
12/2/2014	2014	CORELOGIC INC	\$1,369.83
1/11/2014	2013	TIM MEEHANCHRISTINE S MEEHAN	\$1,369.83
2/22/2013	2012	TIMOTHY MEEHAN	\$1,398.72
20111221	2011	***	\$1,426.45
20101201	2010	***	\$1,426.45
20091207	2009	***	\$1,426.45
20081120	2008	***	\$1,446.98

*Vol Cont -1,415.00
 Vol Cont - 697.59
 Total \$ 2,112.59*

EXHIBIT "C"

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

The following properties have requested to be annexed into the City. Please review this request and then forward your comments to the City Clerk as soon as is reasonably possible.

Location: 3405 Sagewood Trail

Engineering: Date: _____ Initials: _____

Comments: 2015 Annexation Review – Engineering/Public Services _____
Review comments, 1/29/15, CBrady _____

Public Services:

3405 Sagewood Lane – no concerns noted; the City already provides maintenance services to this street and is in good condition.

Police Department: Date: 1-12-15 Initials: [Signature]

Comments: _____

Fire Department: Date: 1/28/15 Initials: [Signature]

Comments: _____

STATE OF ALABAMA

JEFFERSON COUNTY

PETITION FOR ANNEXATION TO THE
CITY OF VESTAVIA HILLS, ALABAMA

Date of Petition: August 6, 2014

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

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

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

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

Donald F Winningham (205) 222-7635

Tags 308AB0 Toyota
3081AA9 Honda

EXHIBIT "A"

LOT: 23-A

BLOCK: --

SURVEY: RESURVEY OF LOTS 21, 22, & 23, SAGEWOOD

RECORDED IN MAP BOOK 97, PAGE 35 IN THE
PROBATE OFFICE OF JEFFERSON COUNTY, ALABAMA.

COUNTY ZONING: R-1

COMPATIBLE CITY ZONING: R-2

LEGAL DESCRIPTION (METES AND BOUNDS):

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

SIGNATURE(S)

DESCRIPTION OF PROPERTY

<u>Donald F. Winningham III</u>	Lot <u>23-A</u> Block <u>--</u> Survey <u>RESURVEY OF LOTS 21, 22, & 23, SAGEWOOD</u>
<u>[Signature]</u>	Lot <u>23-A</u> Block <u>--</u> Survey <u>RESURVEY OF LOTS 21, 22, & 23, SAGEWOOD</u>
_____	Lot _____ Block _____ Survey _____

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

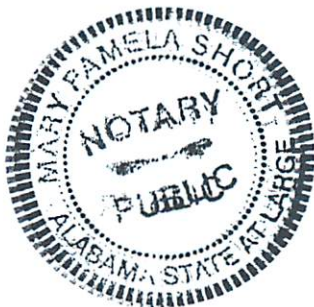
STATE OF ALABAMA

Jefferson COUNTY

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

[Signature]
Signature of Certifier

Subscribed and sworn before me this the 6th day of August, 2014.



[Signature]
Notary Public

My commission expires: 3-25-15

EXHIBIT "B"

VESTAVIA HILLS BOARD OF EDUCATION

**1204 Montgomery Highway
Vestavia Hills AL 35216**

(To be completed by the City)

Date of Annexation Petition _____ Action Taken: Grant _____
Deny _____

Resolution: Date: _____ Number: _____
Overnight Ordinance: Date: _____ Number: _____
90 Day Final Ordinance: Date: _____ Number: _____

(To be completed by Homeowner)

Name(s) of Homeowner(s): DONALD F. WINNINGHAM III and APRIL S. WINNINGHAM

Address: 3405 SAGEWOOD TRAIL

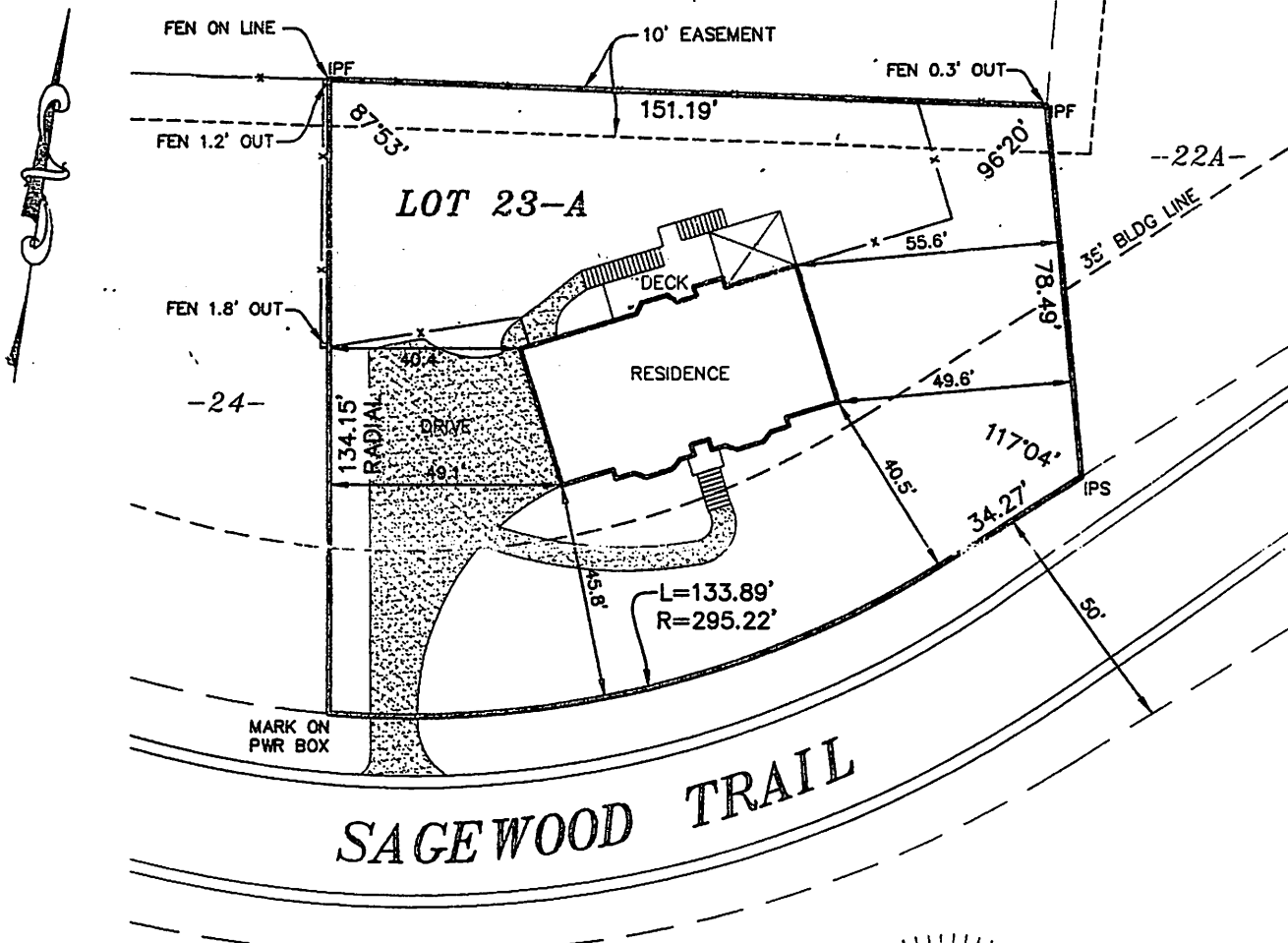
City: VESTAVIA HILLS State: ALABAMA Zip: 35243

Information on Children:

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

	Name(s)	Age	School Grade	Yes	No
1.	CORINNE ELIZABETH WINNINGHAM	4	PRE-K	X	
2.	CALEB JAMES WINNINGHAM	1	N/A	X	
3.					
4.					
5.					
6.					

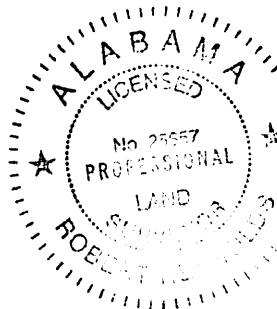
Approximate date for enrolling students in Vestavia Hills City Schools if above response is "yes". CORINNE - 8/15; CALEB - 8/18



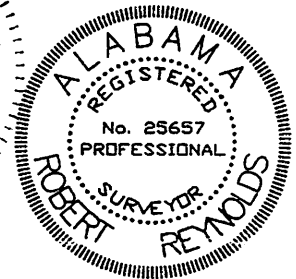
- LEGEND**
- ⊕ UTILITY POLE
 - GUY WIRE
 - RETAINING WALL
 - ▨ CONCRETE
 - x- FENCE
 - OE- OVERHEAD ELECTRICAL
 - IPF IRON PIN FOUND
 - IPS IRON PIN SET

STATE OF ALABAMA
JEFFERSON COUNTY

"CLOSING SURVEY"



SCALE: 1" = 40'



I, Robert Reynolds, a Registered Surveyor, do here by state that this is a true and correct plat or map of Lot 23-A, Block —, of RESURVEY OF LOTS 21, 22, & 23, SAGEWOOD, as recorded in Map Book 97, Page 35 in the Office of the Judge Of Probate in JEFFERSON County, Alabama. All parts of this survey and drawing have been completed in accordance with the current requirements of the Standards of Practice of Surveying in the State of Alabama to the best of my knowledge, information and belief. The improvements on said premises are as shown. There are no visible encroachments on over or across said lands except as shown. According to my survey this the 10TH day of MAY, 2014.

NOTE: This survey is not transferable to any additional institutions or subsequent owners.

Purchaser: WINNINGHAM
Address: 3405 SAGEWOOD TRAIL

Robert Reynolds

Reg. No. 25657

A-798/57

ORDINANCE NUMBER 2560

AN ORDINANCE TO ALTER, REARRANGE, AND EXTEND THE CORPORATE LIMITS OF THE CITY OF VESTAVIA HILLS, ALABAMA, SO AS TO EMBRACE AND INCLUDE WITHIN THE CORPORATE AREA OF SAID CITY ALL TERRITORY NOW WITHIN SUCH CORPORATE LIMITS AND ALSO CERTAIN OTHER TERRITORY CONTIGUOUS TO SAID CITY.

WHEREAS, a certain petition signed by April and Donald Winningham dated August 6, 2014, that the property therein described be annexed to the City of Vestavia Hills, Alabama, together with a map of said territory showing its relationship to the corporate limits of the City, has been filed with the City Clerk of the City of Vestavia Hills; and

WHEREAS, this Council has determined and found that the matters set forth and alleged in said petition are true and correct, and that it is in the public interest that said territory be annexed to the City of Vestavia Hills;

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

SECTION 1. That said Council hereby assents to the annexation of said territory to the City of Vestavia Hills, Alabama, the corporate limits of the City to be extended and rearranged pursuant to the provisions of Title 11, Chapter 42, Article 2, Code of Alabama, 1975 (Sections 11-42-20 through 11-42-23, as amended) so as to embrace and include said territory, in addition to the territory already within its present corporate limits. The new boundary line does not lie at any point more than half the distance between the old city boundary and the corporate boundary of any other municipality. Said territory is described as follows:

3405 Sagewood Lane
Lot 23-A, Resurvey of Lots 21, 22 & 23, Sagewood
April and Donald Winningham

SECTION 2. That the City Clerk shall file a certified copy of this Ordinance containing an accurate description of said annexed territory with the Probate Judge of Jefferson County, Alabama, and also cause a copy of this Ordinance to be published in a newspaper of general circulation in the City of Vestavia Hills, Alabama.

APPROVED and ADOPTED this the 13th day of April, 2015.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

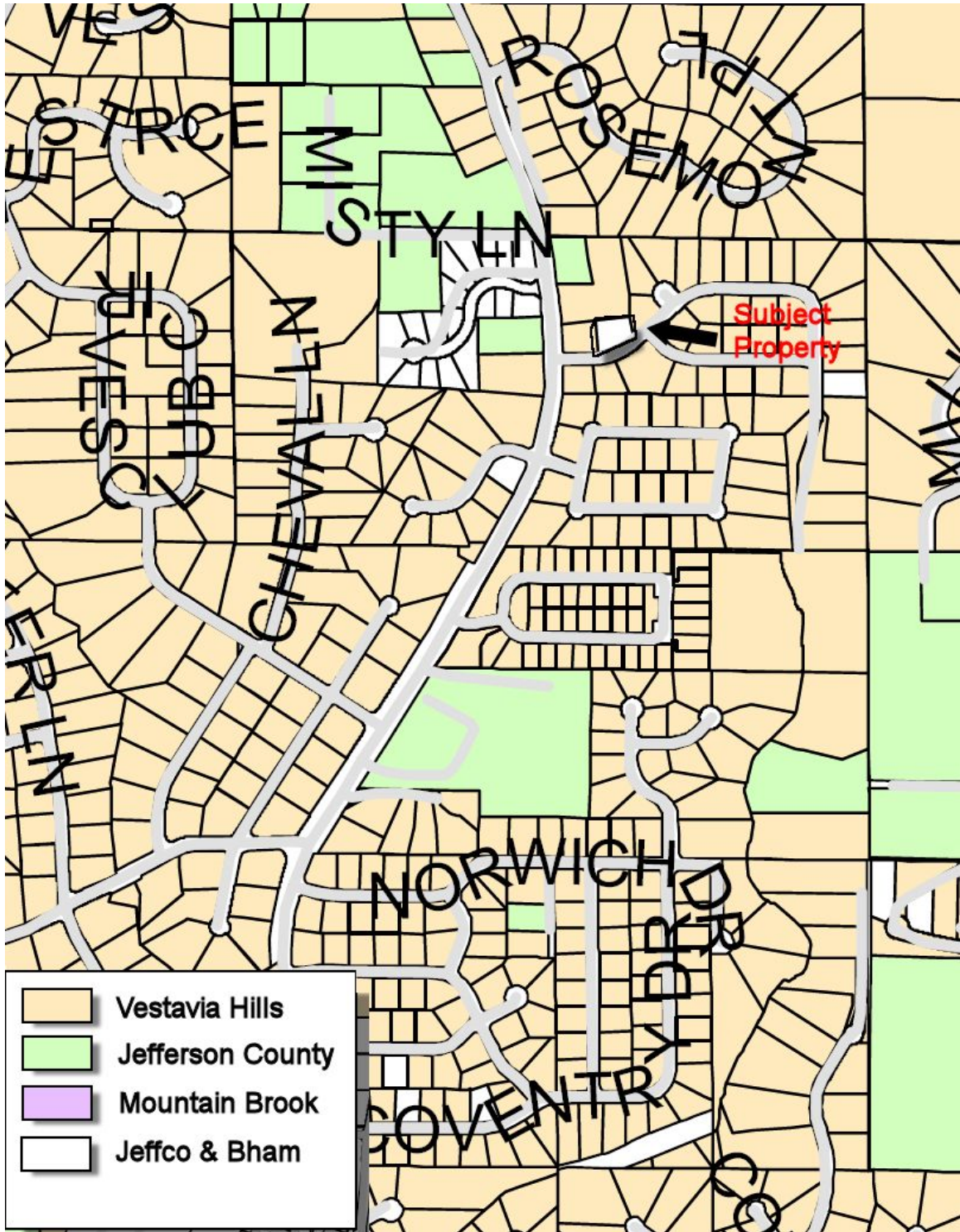
Rebecca Leavings
City Clerk

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 # 2560 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 13th day of April, 2015, as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills Library in the Forest, Vestavia Hills New Merkle House and Vestavia Hills Recreational Center this the _____ day of _____, 2015.

Rebecca Leavings
City Clerk



RESOLUTION NUMBER 4694

A RESOLUTION AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER AN AGREEMENT WITH NALL PARTNERSHIP LTD REGARDING THE ANNEXATION OF THE ALTADENA VALLEY COUNTRY CLUB

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

1. The Mayor and City Manager of the City are hereby authorized and directed to execute and deliver an Agreement by and between the City of Vestavia Hills Alabama, and Nall Partnership LTD regarding the annexation to the corporate boundaries of the City of Vestavia Hills, Alabama of the property commonly referred to as “Altadena Valley Country Club;” and
2. A copy of the agreement is attached hereto, marked as “Exhibit A” and incorporated into this Resolution Number 4694 by reference as though set out fully herein; and
3. This Resolution Number 4694 shall become effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 13th day of April, 2015.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT (this “Agreement”) is made and entered into as of the ___ day of March, 2015 by and between **CITY OF VESTAVIA HILLS, ALABAMA**, an Alabama municipal corporation (the “City”), and **NALL PARTNERSHIP, LTD.**, an Alabama limited partnership (“Nall”), and **WESLEY L. BURNHAM, JR.**, a _____ man (“Burnham”); and together with Nall, “Owner”).

RECITALS:

Owner is the owner of that certain real property consisting of approximately 122 acres, more or less (the “Development”), situated in Jefferson and Shelby Counties, Alabama which is more particularly shown on the Conceptual Development Plan (the “Conceptual Development Plan”) attached hereto as **Exhibit A** and incorporated herein by reference.

The Development is not situated within the corporate limits of any municipality but is contiguous to real property which is located within the corporate limits of the City.

Owner contemplates that the Development will be developed for detached single-family residential housing, general business uses and possible recreational uses.

Owner desires to cause all of the Development to be annexed into the City and, contemporaneously with such annexation, Owner has agreed to donate, transfer and convey to the City the City Property, as hereinafter defined, containing approximately 72 acres, more or less, for recreational uses and related purposes.

The City has determined that the annexation of the Development into the City and the conveyance of the City Property to the City will be beneficial to the City and will enhance and promote the general welfare of the citizens of the City.

Owner and the City desire to enter into this Agreement in order to memorialize their agreements and understandings regarding the annexation of the Development into the City and the conveyance of the City Property by Owner to the City, subject to and upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises, the mutual covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the City and Owner do hereby agree as follows:

1. **Definitions.** In addition to the other definitions set forth in this Agreement, as used through this Agreement, the following defined terms shall have the meaning set forth below, which meanings shall be applicable to both the singular and plural forms and tenses of such terms:

(a) City Property. The term “City Property” means that portion of the Development containing approximately 72 acres, more or less, as shown on the Conceptual Development Plan. The legal description of the City Property shall be set forth in the Survey approved by the City.

(b) Closing. The term “Closing” shall have the meaning given to such term in Paragraph 12(a) below.

(c) Closing Date. The term “Closing Date” means the date on which all of the Conditions have been satisfied; provided, however, that in no event shall the Closing Date be later than the Outside Closing Date.

(d) Conditions. The term “Conditions” is defined in Paragraph 10 below.

(e) Inspection Period. The term “Inspection Period” means the period of time beginning on the date of this Agreement and continuing until the latter of either (i) 45 days from the date of the Agreement or (ii) 14 days following the City’s receipt of the latter of the Survey or the Title Commitment.

(f) Outside Closing Date. The term “Outside Closing Date” means 4:00 p.m. Central Daylight Savings Time on October 1, 2015.

(g) Permitted Exceptions. The term “Permitted Exceptions” means those matters set forth in Schedule B-II of the Title Commitment approved by the City as hereinafter provided, exclusive of so-called “pre-printed” exceptions and specifically excluding any liens, judgments, mortgages, leases or other rights to use any portion of the City Property.

(h) Phase I Report. The term “Phase I Report” means a Phase I Environmental Site Assessment Report to be prepared for the City Property by an environmental engineering or consulting firm reasonably approved by the City.

(i) Survey. The term “Survey” means a boundary survey prepared by an Alabama licensed surveyor reasonably acceptable to the City, which shall (i) set forth separately the legal description of the City Property and the remainder of the Development, (ii) set forth separately the gross square footage and/or gross acreage of the City Property and the remainder of the Development, (iii) indicate separately the flood plain and floodway areas within the City Property and the remainder of the Development, (iv) set forth any visible easements or utility lines or encroachments affecting the City Property, (v) reflect and show any Permitted Exceptions affecting the City Property, (vi) be certified to the City, and (vii) be subject to approval by the City, as hereinafter provided, which approval shall not be unreasonably withheld or delayed.

(j) Title Commitment. The term “Title Commitment” means the commitment for the issuance of the Title Policy by the Title Company in favor of the City with respect to the City Property, which is subject to approval by the City as hereinafter provided.

(k) **Title Company.** The term “Title Company” means Magic City Title, Inc. as agent for Commonwealth Land Title Insurance Company.

(l) **Title Policy.** The term “Title Policy” means an owner’s title insurance policy to be issued by the Title Company in favor of the City substantially in the form of the Title Commitment approved (or deemed approved) by the City insuring fee simple title to the City Property in an amount equal to the appraised value of the City Property, as set forth on the tax records of the Tax Assessor for both Jefferson and Shelby Counties, Alabama for the 2014-2015 tax year; or, at the election of Owner, in an amount equal to the appraised value as determined by an independent appraisal by a real estate appraiser licensed in the State of Alabama, secured by Owner, at Owner’s expense.

2. **Annexation.** Owner and Current Owner have heretofore submitted to the City an application for the annexation of the Development into the municipal limits of the City subject to the terms and provisions of this Agreement. Subject to and conditioned upon the satisfaction of the Conditions, Owner respectfully requests that the Development be annexed into the City by act of the City Council in accordance with the terms and provisions of the *Code of Alabama*.

3. **Survey.** On or before forty-five (45) days from the date of this Agreement, Owner shall, at Owner’s sole cost and expense, obtain and provide the Survey to the City for review and approval, which approval shall not be unreasonably withheld or delayed; provided, however, that the Survey must (a) reflect that the City Property contains a minimum of 65 acres and (b) reflect that the configuration of the City Property is substantially the same configuration as set forth on the Conceptual Development Plan. If, for any reason, the City fails to disapprove the Survey by providing to Owner written notice of disapproval within fourteen (14) days following the City’s receipt of the Survey, then the Survey shall be deemed approved by the City. If the City disapproves the Survey, the City shall provide in writing the reasons for such disapproval and shall cooperate in good faith with Owner in an attempt to resolve any issues relating to such disapproval. Owner shall have no obligation to take any affirmative action to eliminate any objections of the City to the Survey; provided, however, that if such objections are not satisfied to the reasonable satisfaction of the City, then the City shall have the right, at the election of the City in its sole discretion, to either waive the objections and close, or to terminate this Agreement as provided in Paragraph 11 below. The City hereby approves David Stovall of Engineering Design Group to prepare the Survey.

4. **Phase I Report.** On or before thirty (30) days from the date of this Agreement, Owner shall, at Owner’s sole cost and expense, obtain and provide the Phase I Report to the City for review and approval, which approval shall not be unreasonably withheld or delayed. If, for any reason, the City fails to disapprove the Phase I Report by providing to Owner written notice of disapproval within fourteen (14) days following the City’s receipt of the Phase I Report, then the Phase I Report shall be deemed approved by the City. If the City disapproves the Phase I Report, the City shall provide in writing the reasons for such disapproval and shall cooperate in good faith with Owner in an attempt to resolve any issues relating to such disapproval. Owner shall have no obligation to take any affirmative action to eliminate any objections of the City to the Phase I Report; provided, however, that if such objections are not satisfied to the reasonable satisfaction of the City, then the City shall have the right to terminate this Agreement as provided

in Paragraph 11 below. The City approves Michael Cox of Cox Environmental to prepare the Phase I Report.

5. **Title Commitment.** On or before forty-five (45) days from the date of this Agreement, Owner shall, at Owner's sole cost and expense, obtain and provide the Title Commitment to the City for review and approval, which approval shall not be unreasonably withheld or delayed. The Title Commitment must utilize the legal description of the City Property set forth in the Survey approved (or deemed approved) by the City (provided, if the Survey has not been completed prior to the issuance of the Title Commitment, then the Title Commitment shall be endorsed to include the legal description of the City Property, as reflected on the Survey, promptly upon the completion of the Survey). The City shall have the right within fourteen (14) days after receipt of the latter of the Survey and the Title Commitment to review the Title Commitment and make any objections ("Title Objections") thereto, which Title Objections shall be made in writing by the City to Owner. Owner shall advise the City within five (5) days after receipt of the Title Objections whether it will undertake to cure any one or more of such Title Objections. If Owner shall advise the City that it will attempt to cure any one or more of the Title Objections, Owner shall undertake all actions reasonably necessary to cure any such Title Objections in a timely and diligent manner but shall have no obligation to file any lawsuits or expend any sums of money with respect to any such Title Objections. If Owner advises the City in writing that Owner will not attempt to cure one or more of the Title Objections or, after previously advising the City that Owner will attempt to cure one or more of the Title Objections Owner fails to cure the same, then the City shall have the right, at the election of the City in its sole discretion, to either waive the Title Objections or to terminate this Agreement in accordance with the terms and provisions of Paragraph 11 below. Any matters reflected in the Survey or Title Commitment which are accepted by the City or about which the City has waived or has made no objection, shall be deemed "Permitted Exceptions".

6. **Inspection Period.** During the Inspection Period, Owner grants to the City, its agents, employees and representatives the right to enter upon the City Property to undertake tests, evaluations and other inspections regarding the City Property. The City shall be responsible for any claims, liability or loss suffered by or asserted against Owner resulting from the exercise by the City of its right of inspection, including attorneys' fees and cost of defense; provided, the City shall not be responsible with respect to claims, losses or liabilities caused by acts or omissions of Owner. The provisions of this Paragraph 6 shall survive the Closing.

7. **Donation of City Property.**

(a) Subject to the satisfaction of all of the Conditions, Owner covenants and agrees to donate, transfer and convey to the City the City Property on the Closing Date, which conveyance shall be made by Owner to the City by a statutory warranty deed in form reasonably acceptable to the City, free and clear of all liens, mortgages and other encumbrances other than the Permitted Exceptions.

(b) Owner agrees, at such time as Owner or any of its successors and assigns begins any development or construction activities on any portion of the R-9 Property, as hereinafter defined, to construct, diligently pursue, and timely complete within 360 days after the

issuance of a grading/land disturbance permit by the City for the R-9 Property, an access road (the “Access Road”) to the City Property in a location reasonably approved by the City and reflected on the Approved R-9 District Development Plan, as hereinafter defined, which Access Road shall (i) be constructed in accordance with all the minimum street design and construction statutes and requirements of the City for public roadways and (ii) contain underground utilities within the right-of-way of such Access Road in such sizes and capacities reasonably determined by the City to be necessary to serve the City Property, as reflected on the Approved R-9 District Development Plan, which utilities shall include electricity, water, sanitary sewer and storm water drainage lines, pipes, wiring, conduit and other apparatus. Upon the transfer of title to the R-9 Property by Owner to another party (the “Transferee”), the Transferee shall be deemed to have assumed, and shall be responsible for the performance of, the obligations of Owner as described in this sub-paragraph 7(b), and Owner shall be forever released from any obligation or responsibility for the performance thereof.

(c) It is contemplated that the City Property will be developed by the City for recreational uses which may include athletic fields with lighting, concessions stands (to the extent the same may be constructed in accordance with Federal Emergency Management Agency guidelines), parking areas, nature trails, walking trails and other recreational amenities and for maintenance facilities to support City operations. Owner, for itself and its successors and assigns consents to all of the foregoing uses of the City Property; provided, however, that the City shall have no obligation to construct or operate any of the above-described improvements on the City Property.

(d) The conveyance of the City Property by Owner to the City shall be subject to the reservation, in favor of Owner and for the benefit of the R-9 Property and the rest of the Development, a non-exclusive easement (the “Reserved Sewer Easement”) for the installation, maintenance and repair of underground sanitary sewer lines and related facilities in such location as is acceptable to both Owner and the City, and reflected on the Approved R-9 District Development Plan. The Reserved Sewer Easement shall be deemed to be a Permitted Exception.

8. **Representations and Warranties of Owner.**

(a) Owner makes the following representations and warranties to the City, which representations and warranties are limited with respect to items (v), (vi) and (vii), to the actual knowledge of Owner, without independent inquiry, and are being relied upon by the City without independent investigation or inquiry, and which representations and warranties shall be deemed made as of the date hereof (unless otherwise provided herein to the contrary) and as of the Closing Date:

(i) Owner is the holder of record title to all of the Development;

(ii) Owner has all requisite power and authority and the legal right to enter into this Agreement and has obtained all consents and approvals necessary or required in order to enter into this Agreement and perform its obligations hereunder;

(iii) All actions and proceedings have been duly taken by Owner so as to authorize the execution and delivery of this Agreement by Owner and the performance by Owner of all of its obligations hereunder;

(iv) This Agreement has been duly executed and delivered on behalf of Owner and constitutes the legal, valid and binding obligation of Owner;

(v) The execution and delivery of this Agreement by Owner and the performance by Owner of all of its obligations under this Agreement, including the consummation of the transactions contemplated herein, will not conflict with or be in contravention of any law, regulation, order or judgment applicable to Owner or any material agreement, instrument, judgment, decree or order to which Owner is a party or by which Owner may be bound;

(vi) As of the Closing Date, the City Property will be free and clear of all liens, judgments, mortgages, encumbrances, leases (ground leases or otherwise) and any rights of third parties to enter upon or use any portion of the City Property except to the extent specifically authorized by any of the Permitted Exceptions; and

(vii) There are no actions, suits, proceedings or judgments pending or threatened against the City Property, or against Owner which would affect the City Property.

(b) Owner does hereby indemnify, agree to defend and hold the City harmless from and against any and all demands, actions, causes of actions, damages, losses, costs, liabilities and expenses, including reasonable attorneys' fees and expenses, suffered, paid or incurred by the City as a result of the material breach of any of the representations and warranties of Owner set forth in Paragraph 8(a) above. The indemnification obligations of Owner set forth herein shall survive the Closing.

(c) Burnham represents and warrants to the City that no portion of the Development constitutes the homestead of Burnham or his spouse.

9. **Zoning.** Promptly following the execution of this Agreement, Owner will file with the City a rezoning request to rezone the Development as follows: (a) the City Property will be zoned to an INST Institutional District zoning classification and (b) the remainder of the Development will be zoned to the following zoning classifications: (i) the approximately 8 acres, more or less, of the Development shown in green on the Conceptual Development Plan will be zoned to an A-Agricultural District zoning classification, (ii) the approximately 29 acres, more or less, of the Development shown in red on the Conceptual Development Plan (the "R-9 Property") will be zoned to an R-9 Planned Residential District zoning classification pursuant to a development/site plan approved by the City's Planning Commission and City Council (the "Approved R-9 District Development Plan") which provides for no less than 60 and no more than 70 lots for improvement with single-family detached residential dwellings, with lot widths

ranging from no less than 40 feet to no more than 60 feet and shall reflect the proposed location of the Access Road, and (iii) the approximately 13 acres, more or less, of the Development shown in yellow on the Conceptual Development Plan will be zoned to a B-2 General Business District zoning classification, with a restriction against automotive sales, servicing or repair. The City and Owner acknowledge and agree that pursuant to *Ala. Code* (1975) Section 11-51-85, a municipality may zone property proposed for annexation prior to the effective date of such annexation. Based on the foregoing, Owner agrees to proceed in good faith with its rezoning application with the City.

10. **Conditions.**

(a) The Closing of the transaction contemplated herein is expressly subject to and conditioned upon the satisfaction of all of the following conditions (collectively, the “Conditions”) on or prior to the Closing Date:

(i) The City shall have approved (or shall be deemed to have approved) the Survey, the Phase I Report and the Title Commitment in accordance with the terms and provisions of Paragraph 3, 4 and 5 above, respectively;

(ii) This Agreement has not been terminated pursuant to the terms and provisions of Paragraph 11 below;

(iii) The Development shall have been rezoned by the City in accordance with the terms and provisions of Paragraph 9 above;

(iv) Owner’s application for annexation of the Development into the City and this Agreement shall have been approved by the City Council of the City;

(v) All of the representations and warranties of Owner and Burnham set forth in Paragraphs 8(a) and 8(c) above shall be true and correct as of the Closing Date;

(vi) The current tenancy and occupancy of the Development by the Altadena Valley Country Club has been terminated and possession of the Development surrendered to Owner; and

(vii) Owner and the City shall have mutually agreed upon the form and content of a separate representation and warranty (the “Termination Representation”) to be provided by Owner at the Closing to the City regarding the termination of the ground lease affecting the Development and whether Owner has any knowledge of pending or threatened litigation regarding the termination of such ground lease.

(b) If, for any reason, any of the Conditions have not been satisfied by the Outside Closing Date, then the terms and provisions of Paragraph 11 below shall be applicable.

11. **Termination.** If, pursuant to the terms and provisions of Paragraphs 3, 4 or 5 above the City elects to terminate this Agreement or if any of the Conditions have not been satisfied by the Outside Closing Date, then, in either event, this Agreement shall automatically terminate, be deemed null and void and of no further force and effect and, to the extent the Development has been annexed into the City, the City agrees to promptly take such action as may be required to de-annex the Development from the municipal limits of the City and, following such de-annexation, if applicable, neither Owner nor the City shall have any further obligations or liabilities to the other hereunder.

12. **Closing.**

(a) Subject to the satisfaction of the Conditions, the consummation of the transactions contemplated by this Agreement (the "Closing") shall occur on the Closing Date; provided, however, that if the Closing has not occurred by the Outside Closing Date, then the terms and provisions of Paragraph 11 above shall be applicable.

(b) At the Closing, Owner shall execute and deliver (i) the Statutory Warranty Deed to the City conveying the City Property to the City in accordance with the terms and provisions of Paragraph 7(a) above, (ii) an easement agreement in favor of the City with respect to the use of the Access Road for access to and utilities for the City Property and (iii) the Termination Representation to the City. In addition, Owner agrees to execute any and all other documents, instruments and agreements reasonably required by either the City or the Title Company in connection with the consummation of the transactions contemplated herein or in the issuance of the Title Policy. Possession of the City Property shall be given on the Closing Date, free of any tenancy, leases or rights of occupancy other than any such rights arising out of the Permitted Exceptions.

(c) Owner shall be solely responsible for the payment of all costs and expenses relating to the preparation (and revisions, if necessary) of the Survey, the Phase I Report, the Title Commitment and the premium for the Title Policy.

(d) To the extent the Closing occurs, Owner shall pay all reasonable attorneys' fees and expenses paid or incurred by the City in connection with the preparation and negotiation of this Agreement, the review and approval of the Survey, the Phase I Report and the Title Commitment and the Closing of the transactions contemplated by this Agreement. Owner shall be sole responsible for the payment of its own attorneys' fees and expenses.

(e) Owner shall be solely responsible for, and agrees to pay when due, (i) all real estate ad valorem taxes and assessments with respect to the Development (including the City Property) for the current tax year, (ii) all library district dues and assessments, if any, with respect to the Development (including the City Property) for the current tax year, and (iii) all fire district dues and assessments with respect to the Development (including the City Property) for the current tax year, including, without limitation, all so-called "buy-out" fees payable to any

applicable fire district resulting from the annexation of the Development into the municipal limits of the City.

(f) At the Closing, Owner and Seller shall enter into the agreement for the Reserved Sewer Easement referenced in Paragraph 7(d) above.

13. **Covenants Running with the Land.** To the extent the Closing hereunder occurs, all of the terms, provisions, agreements, rights, powers, covenants and obligations set forth in this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, including any subsequent owner(s) of the Development, and shall constitute covenants running with the land.

14. **Miscellaneous Provisions.**

(a) Notices. All notices required or permitted hereunder shall be in writing and shall be served on all of the parties hereto at the following addresses:

If to Seller: City of Vestavia Hills, Alabama
513 Montgomery Highway
Vestavia Hills AL 35216
Attention: Mr. Butch Zaragoza, Mayor
Facsimile: (205) 978-0189
Email: butchzaragoza@ci.vestaviiahills.al.us

and City of Vestavia Hills, Alabama
513 Montgomery Highway
Vestavia Hills AL 35216
Attention: Mr. Jeff Downes, City Manager
Facsimile: (205) 978-0189
Email: jdownes@vahal.org

With copies to: Stephen R. Monk
Bradley Arant Boult Cummings LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, Alabama 35203
Facsimile: (205) 488-6429
Email: smonk@babco.com

Patrick H. Boone
215 Richard Arrington Jr., Blvd. N., Suite 705
Birmingham, Alabama 35203
Fax (205) 324-2295
Email: patrickboone@bellsouth.net

If to Owner:

Nall Partnership, Ltd. and Wesley L. Burnham, Jr.
119 Euclid Avenue
Birmingham, AL 35213
Attention: Robert D. Reich, Jr.
Facsimile: 205-879-8143
Email: JWNall@aol.com and
BReich@nalldev.com

Any such notices shall be deemed to be sufficiently given or served upon any party hereto when (i) sent by personal delivery to the address set forth above, (ii) deposited in the United States mail by registered or certified mail, return receipt requested, postage prepaid and addressed as provided above, (iii) deposited with a nationally recognized overnight delivery courier service for next business day delivery and addressed as set forth above, (iv) sent by facsimile transmission during regular business hours of any business day, in which case notice shall be deemed given upon confirmation of transmission of such facsimile notice, or (v) sent by electronic mail (email) to the email address set forth above, in which case notice shall be deemed given upon confirmation of transmission of such email notice. The above addresses may be changed by written notice to the other parties given in the manner set forth above.

(b) Applicable Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Alabama.

(c) Modification. Neither this Agreement nor any provision hereof may be waived, modified or amended, except by a written instrument signed by both the City and Owner.

(d) Captions. The captions or headings used herein are included for convenience and general reference only and shall not be construed to describe, define or limit the scope, intent or construction of this Agreement.

(e) Exhibits. Each exhibit which is referred and attached to this Agreement is incorporated herein as if set out fully in the body hereof.

(f) Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

(g) Time. Time is of the essence in the performance of all obligations of each party to this Agreement.

(h) Brokerage Commissions. Owner and the City represent and warrant to each other that they have not dealt with any broker or sales agent in connection with this transaction. Owner and the City (to the extent allowed by law) each hereby agree to indemnify, defend and hold the other harmless from and against any and all claims, suits, liabilities, judgments and expenses, including reasonable attorneys' fees and expenses, suffered, paid or incurred by the other party as a result of any claim or claims for brokerage commissions, finder's fees or other compensation asserted by any person, firm or corporation in connection

with the execution of this Agreement and the consummation of the transactions contemplated by this Agreement.

(i) Entire Agreement. This Agreement constitutes the entire and complete agreement between the parties hereto and supersedes any prior oral or written agreements or understandings between the parties with respect to the Property and the matters set forth in this Agreement. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants and conditions herein set forth, and that no modification of this Agreement and no waiver of any of its terms and conditions shall be effective unless made in writing and duly executed by the parties hereto.

(j) Partial Invalidity. If any provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each provision shall be valid and enforceable to the fullest extent permitted by law.

(k) Attorneys' Fees. In the event any party hereto fails to fully perform its obligations hereunder at any time after the Closing, then the defaulting party agrees to pay to the non-defaulting party all reasonable costs, charges and expenses, including attorneys' fees and expenses, expended or incurred in connection therewith.

(l) Survival. All of the terms and provisions of this Agreement shall survive the Closing.

(m) Rules of Construction. The parties hereto and their respective counsel have participated in the drafting and redrafting of this Agreement and the general rules of construction which would construe any provision of this Agreement in favor or to the advantage of one party as opposed to the other as a result of one party drafting this Agreement as opposed to the other or in resolving any conflict or ambiguity in favor of one party as opposed to the other on the basis of which party drafted this Agreement are hereby expressly waived by both parties hereto.

(n) Amendments. Neither this Agreement nor any provision hereof may be waived, modified or amended, except by a written instrument, signed by the party against whom the enforcement of such waiver, modification or amendment is sought, and then only to the extent set forth in such instrument.

(o) No Partnership and No Third Party Beneficiaries. Nothing contained in this Agreement and no action by the parties hereto will be deemed or construed to create the relationship of principal and agent, or a partnership, or a joint venture or any association between or among any of the parties hereto. Except for any successors and assigns of the parties hereto, this Agreement does not create any rights or obligations in favor of any third parties who have not executed this Agreement.

(p) Liability of the City. Notwithstanding anything provided herein to the contrary, Owner acknowledges and agrees that the obligations of the City set forth herein are

limited by the limitations imposed on public bodies, municipalities and public corporations by the Constitution of the State of Alabama and laws affecting the use and maintenance of public property.

(q) No Waiver. No consent or waiver, express or implied, by any party hereto or to any breach or default by any other party in the performance by such other party of its obligations hereunder shall be valid unless in writing, and no such consent or waiver to or of one breach or default shall constitute a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligations of such party hereunder. Failure on the part of any party to complain of any act or failure to act of any party or to declare such other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder. The granting of any consent or approval in any one instance by or on behalf of any party hereto shall not be construed to be a waiver or limit the need for such consent in any other or subsequent instance.

(r) Counterparts and Facsimile/Portable Document Format Execution. This Agreement may be executed and delivered, by facsimile and portable document format and/or in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument and shall become a binding Agreement when one or more of the counterparts have been signed by each of the parties and delivered to the other party.

[The remainder of this page has been left intentionally blank]

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

CITY:

CITY OF VESTAVIA HILLS, ALABAMA, an Alabama municipal corporation

By: _____
Printed Name: _____
Title: _____

By: _____
Printed Name: _____
Title: _____

OWNER:

NALL PARTNERSHIP, LTD., an Alabama limited partnership

By: _____
Printed Name: _____
Title: _____

Wesley L. Burnham, Jr.

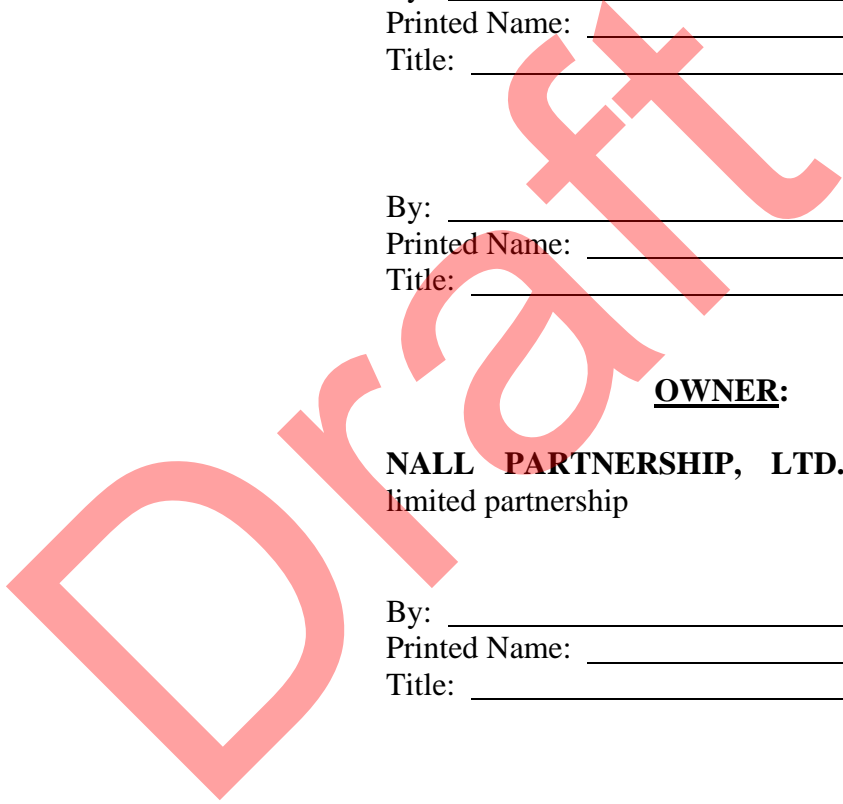


EXHIBIT A

Conceptual Development Plan

Draft