

Join us! In an effort to enhance meetings post COVID-19 emergency orders, the City Council invites you to join and/or participate in a variety of ways: Via computer Zoom meetings (no app is necessary), telephone, email and/or text! See details on page 3.

**Vestavia Hills
City Council Agenda
October 24, 2022
6:00 PM**

1. Call to Order
2. Roll Call
3. Invocation – Jim Cartledge, Vestavia Hills Chaplain
4. Pledge Of Allegiance
5. Approval Of The Agenda
6. Announcements, Candidates and Guest Recognition
7. Proclamation – National Hospice and Palliative Care Month
8. Certificate of Recognition – John Michael Chandash
9. Special Presentation To The City Council – Vestavia Hills Girl Scout Troop 30688
10. City Manager’s Report
11. Councilors’ Reports
12. Financial Reports, FY 2022 Preliminary Year End – Melvin Turner, III, Finance Director
13. Infrastructure And Community Spaces Projects Update – Raynor Boles, TCU
14. Approval Of Minutes –September 26, 2022 (Regular Meeting) And October 10, 2022 (Regular Meeting)

Old Business

15. Public Hearing – Ordinance Number 3124 – Rezoning – 901 Montgomery Highway; Rezone from Jefferson County Unknown to Vestavia Hills O-1; David and Rozanne Emory, Owners
16. Public Hearing – Ordinance Number 3125 – An Ordinance Adopting The Second Amendment To The Liberty Park Planned Unit Development For Development Of The Undeveloped Parts Of Liberty Park; Liberty Park Joint Venture, Owners

New Business

17. Public Hearing – Resolution Number 5417 – A Resolution Authorizing The Installation Of A New Support Structure For A Small Cell Facility To Be Located In The Right-Of-Way Adjacent To 2701 Anna Steele Lane
18. Resolution Number 5418 – A Resolution Declaring Certain Personal Property As Surplus And Authorizing The City Manager To Sell/Dispose Of Said Property
19. Ordinance Number 3134 – An Ordinance Authorizing The Mayor And City Manager To Execute And Deliver A Lease Agreement With Longford LLC To Lease A Facility To Be Utilized As The City’s Public Works Location

New Business Requesting Unanimous Consent)

First Reading (No Action To Be Taken At This Meeting)

20. Citizens Comments
21. Time Of Adjournment

SPECIAL NOTICE CONCERNING CITY COUNCIL MEETINGS

Due to the COVID-19 safety advice given by the ADPH, the City Council work sessions and meetings are available via video-conference and teleconference. If you choose not to attend in person, you may still participate. Following are instructions for three options to participate remotely.

COMPUTER PARTICIPATION (view/participate in real time)

To participate in by videoconference, click <https://us02web.zoom.us/j/5539517181>. When the Zoom.us window opens in your browser, click “Allow” so that the page may open to a waiting room. The host will open the meeting and bring all into the meeting room at that time. All participants will be automatically muted upon entrance to the meeting. If you wish to speak during time(s) identified for public input, activate the “Raise Hand” feature and unmute yourself by toggling the mute button. When the Mayor recognizes you and gives you the floor, state your name and address for the record and then you may address the Council.

Using the icons on the Zoom screen, you can:

- Mute/unmute your microphone (far left)
- Turn on/off camera (“Start/Stop Video”)
- View Participants – opens a pop-out screen that includes the “Raise Hand” icon that you may use to raise a virtual hand
- Change your screen name displayed in the participant list and video window
- Toggle between “speaker” and “gallery” views – “Speaker view” shows the active speaker; “Gallery view” tiles all of the meeting participants

TELEPHONE PARTICIPATION (view/participate in real time)

To participate by telephone, dial 312.626.6799 and enter the meeting ID: 455 534 3275. All participants will be automatically muted upon entrance to the meeting. If you wish to speak during time(s) identified for public input, press *6 on your phone keypad to unmute yourself. Then state your name and wait for the Mayor to recognize you. When the Mayor recognizes you and gives you the floor, state your name and address for the record and then address the Council.

TEXT AND/OR EMAIL (prior to the meeting or in real time)

If you do not wish to join the meeting but would like to ask a question or make a statement regarding an item on the agenda, you may email the City Council directly at City.Council@vhal.org. You may also text your question/statement to City Council at 205.517.1370. Both of these options are available prior to and during each work session and meeting. Be sure to provide your name and address for the record and your comments will be recited to the City Council as the corresponding item is being addressed. Note: As a matter of record, your name and address are required. If identification is not provided, your comment/question will not be presented.

Zoom meetings may be recorded. By participating in the meeting, you are consenting to be recorded. Zoom-bombing is a cyber-crime and is punishable by law. In the event of an attendee intruding into any City of Vestavia Hills Zoom meeting, the online broadcast will be ended immediately. Council and/or board members may be readmitted but online attendees will not. Although Zoom-bombing is not a frequent occurrence, those wishing to make public comment should attend the meeting in person.

WHEREAS, for more than 40 years, hospice has helped provide comfort and dignity to millions of people allowing them to spend their final months at home, surrounded by their loved ones; and

WHEREAS, the hospice model involves an interdisciplinary, team-oriented approach to treatment, including expert medical care, quality symptom control, and comprehensive pain management as a foundation of care; and

WHEREAS, hospice also attends to the patient’s emotional, spiritual and family needs, and provides family services like respite care and bereavement counseling; and

WHEREAS, palliative care delivers expertise to improve quality of life and relief from pain, can be provided at any time during an illness, and hospices are some of the best providers of community-based palliative care; and

WHEREAS, in an increasingly fragmented and broken health care system, hospice is one of the few sectors that demonstrates how health care can – and should – work at its best for its patient; and

WHEREAS, 1.61 million Americans living with life-limiting illness, and their families, received care from the nation’s hospice programs in communities throughout the United States in 2021; and

WHEREAS, hospice and palliative care organizations are advocates and educators about advance care planning that help individuals make decisions about the care they want.

NOW, THEREFORE, I, Ashley C. Curry, by virtue of the authority vested in me as Mayor of the City of Vestavia Hills in the State of Alabama, do hereby proclaim November 2022 as

NATIONAL HOSPICE & PALLIATIVE CARE MONTH

and encourage all residents to increase their understanding and awareness of care at the end of life and to observe this month with appropriate activities and programs.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Vestavia Hills to be affixed this the 24th day of October 2022.

Ashley C. Curry
Mayor

CITY OF VESTAVIA HILLS

CITY COUNCIL

MINUTES

SEPTEMBER 26, 2022

The City Council of Vestavia Hills met in regular session on this date at 6:00 PM, following publication and posting pursuant to Alabama law. A number of staff and members of the general public also attended virtually, via Zoom.com, following publication pursuant to Alabama law. The Mayor called the meeting to order. The City Clerk called the roll with the following:

MEMBERS PRESENT:

Mayor Ashley C. Curry
Rusty Weaver, Mayor Pro-Tem
Paul Head, Councilor
George Pierce, Councilor

MEMBERS ABSENT:

Kimberly Cook, Councilor

OTHER OFFICIALS PRESENT:

Jeff Downes, City Manager
Patrick Boone, City Attorney
Rebecca Leavings, City Clerk
Dan Rary, Police Chief
Cinnamon McCulley, Communications Specialist
Melvin Turner, Finance Director
Zach Clifton, Deputy Finance Director
Marvin Green, Fire Chief
Christopher Brady, City Engineer
**present virtually via Zoom or telephone*

Huey Davis, Vestavia Hills Chaplain, led the invocation, followed by the Pledge of Allegiance.

APPROVAL OF THE AGENDA

The Mayor stated that the agenda needed to be amended to add an Executive Session and some possible action from the Session. He opened the floor for a motion for approval of the agenda as amended.

MOTION Motion to approve the agenda as amended was made by Mr. Weaver and seconded by Mr. Pierce. Roll call vote as follows:

Mr. Head– yes Mr. Pierce– yes
Mr. Weaver Mayor Curry – yes

motion carried.

ANNOUNCEMENTS, CANDIDATES, GUEST RECOGNITION

- Mr. Pierce stated that the representatives from the Chamber were unable to attend this evening because of the lack of internet and Zoom access.
- Mr. Pierce announced that the reception, tomorrow night, to honor Chamber trustees and elected officials at Leaf and Petal in Cahaba Heights on Crosshaven Drive beginning at 5 PM.
- Mayor Curry announced that the City is hosting a watercolor art exhibit in City Hall throughout the next couple of weeks. He stated that the paintings are original watercolor pieces from the Alabama Water Color Society. This exhibit includes 38 artists with more than 50 paintings. The artwork displayed in the hallways is beautiful display. He asked everyone to enjoy the artwork.
- Mayor Curry announced openings on the Board of Zoning Adjustment. He stated that they are looking for a replacement for a member whose appointment is expiring. This is a 3-year term and applications will be accepted until October 17, 2022 with the appointment made the last meeting of October. Interested applicants should submit a letter of interest to his office prior to the deadline.

PROCLAMATION

The Mayor presented a Proclamation designating September 2022, as “Down Syndrome Awareness Month.” Mr. Downes read the proclamation aloud. The Mayor presented it to Betsy Fetner, Program Director for the Laura Crandall Brown Foundation. Participants to receive the Proclamation included: Katherine Gorham, Nate Gorham, Chambers Thornton, Bratley Kate Moellinger, Joshua Maners, John Haugherty, Matthew Foster and Noah Bryant.

Katherine Gorham announced their annual walk to celebrate those in the area with Down Syndrome which will be at Wald Park on the grand lawn on October 23rd and invited everyone to attend.

CITY MANAGER’S REPORT

- Mr. Downes stated Miracle League Fall baseball starts tomorrow.
- Mr. Downes showed a photograph of the Altadena Valley Park to prepare it for construction of the proposed bathrooms and some other amenities and commended the Parks and Recreation Maintenance staff for getting this property to this.
- Mr. Downes stated that the City recently purchased the former Days Inn property and have secured it. He stated that the City has engaged an asbestos testing company and found that there will be a need for some asbestos remediation on the property. He stated they are putting together the specifications to get a bidding process begun in December. During November, the VHPD and VHFD will be doing to training exercises on the property.

Once demolition is begun, there'll be a planning charrette held to determine the highest and best use of the property, preliminarily in January.

COUNCILOR REPORTS

- Mr. Pierce stated that he'd like to add a discussion at a work session or strategic meeting to move into a formal process for the appointment of members to all the boards in the City.
- Mr. Weaver stated he has some reports from the Planning and Zoning Commission which will come forward during the requests and presentations to follow in the agenda tonight.

FINANCIAL REPORTS

Zachary Clifton, Assistant Finance Director, presented the financial reports for month ending August 2022. He read and explained the balances.

APPROVAL OF MINUTES

The Mayor stated that the approval of the minutes from the September 12, 2022 (Work Session) and September 12, 2022 (Regular Meeting) was needed and opened the floor for a motion.

MOTION Motion to approve the minutes of the September 12, 2022 (Work Session) and September 12, 2022 (Regular Meeting) was made by Mr. Pierce and second was by Mr. Head. Roll call vote as follows:

Mr. Head– yes

Mr. Pierce– yes

Mr. Weaver - abstained

Mayor Curry – yes

motion carried.

OLD BUSINESS

RESOLUTION NUMBER 5406

Public Hearing – Resolution Number 5406 – A Resolution Dedicating The Existing Vestlake Roads (Defined Herein) To The City Of Vestavia Hills, Alabama

MOTION Motion to approve Resolution Number 5406 was by Mr. Weaver and seconded by Mr. Pierce.

Mr. Downes explained that this and the following resolution will dedicate all roadways that aren't behind the gates to the City. Along with that, funding will be obtained to help to offset the expenses of maintaining these streets. For the record, Mr. Downes indicated that these

funds will be committed to use on Liberty Park streets and the City's financial statements will track and reflect the commitment. Ultimately, the City will maintain the roads same as all others in the City.

The Mayor opened the floor for a public hearing of this and the following Resolution, Resolution Number 5407. There being no one to address this issue, the Mayor closed the public hearing and called for the question. Roll call vote as follows:

Mr. Head– yes	Mr. Pierce– yes
Mr. Weaver – yes	Mayor Curry – yes

motion carried.

RESOLUTION NUMBER 5407

Public Hearing – Resolution Number 5407 – A Resolution Dedicating Corporate Woods Drive (Defined Herein) To The City Of Vestavia Hills

MOTION Motion to approve Resolution Number 5407 was by Mr. Weaver and seconded by Mr. Pierce.

There being no one to address this issue, the Mayor closed the public hearing and called for the question. Roll call vote as follows:

Mr. Head– yes	Mr. Pierce– yes
Mr. Weaver – yes	Mayor Curry – yes

motion carried.

ORDINANCE NUMBER 3111

Public Hearing – Ordinance Number 3111 – Annexation – 90 Day Final – 3516 And 3524 Ridgedale Drive; Lots 27 And 33, Rocky Ridge Estates; Patricia Lucas, John And Helen White, Owner(s)

MOTION Motion to approve Ordinance Number 3111 was made by Mr. Pierce and seconded by Mr. Weaver.

Mr. Pierce reported that the Standing Annexation Committee met a few months ago on this property with no adverse information given. The property was annexed overnight, this is the 90-day final.

The Mayor opened the floor for a public hearing for this and the following Ordinance, Ordinance Number 3112, representing the compatible zoning of the same property. There being no one further to address the Council, the Mayor closed the public hearing and called for the question. Roll call vote was as follows:

Mr. Head– yes	Mr. Pierce– yes
Mr. Weaver – yes	Mayor Curry – yes

motion carried.

ORDINANCE NUMBER 3112

Public Hearing – Ordinance Number 3112 – Rezoning – 3516 and 3524 Ridgedale Drive; Lots 27 and 33, Rocky Ridge Estates; Rezone from Jefferson County E-2 to Vestavia Hills R-1; Patricia Lucas and John & Helen White, Owner(s)

MOTION Motion to approve Ordinance Number 3112 was made by Mr. Weaver and seconded by Mr. Head.

Mr. Weaver pointed out that this is a compatible rezoning for this property.

There being no one further to address the Council, the Mayor closed the public hearing and called for the question. Roll call vote was as follows:

Mr. Head– yes	Mr. Pierce– yes
Mr. Weaver – yes	Mayor Curry – yes

motion carried.

ORDINANCE NUMBER 3113

Public Hearing – Ordinance Number 3113 – Annexation – 90 Day Final – 2632 Rillwood Road; Lot 15, Altadena Park; Jason Womack, Owner(s)

MOTION Motion to approve Ordinance Number 3113 was made by Mr. Weaver and seconded by Mr. Pierce.

Mr. Pierce reported that the Standing Annexation Committee met a few months ago on this property with no adverse information given. The property was annexed overnight, this is the 90-day final.

The Mayor opened the floor for a public hearing for this and the following Ordinance number 3114, representing the compatible zoning of the same property. There being no one further to address the Council, the Mayor closed the public hearing and called for the question. Roll call vote was as follows:

Mr. Head– yes	Mr. Pierce– yes
Mr. Weaver – yes	Mayor Curry – yes

motion carried.

ORDINANCE NUMBER 3114

Public Hearing – Ordinance Number 3114 – Rezoning – 2632 Rillwood Road; Lot 15, Altadena Park; Rezone From Jefferson County E-1 To Vestavia Hills E-2; Jason Womack, Owner(s)

MOTION Motion to approve Ordinance Number 3114 was made by Mr. Weaver and seconded by Mr. Pierce.

Mr. Weaver stated that this is the compatible rezoning.

There being no one further to address the Council, the Mayor closed the public hearing and called for the question. Roll call vote was as follows:

Mr. Head– yes	Mr. Pierce– yes
Mr. Weaver – yes	Mayor Curry – yes

motion carried.

ORDINANCE NUMBER 3115

Public Hearing – Ordinance Number 3115 – Annexation – 90 Day Final – 2644 Yorkmont Drive; Lot 16, Chimney Hills; Daniel And Fay Cambron, Owner(s)

MOTION Motion to approve Ordinance Number 3115 was made by Mr. Weaver and seconded by Mr. Pierce.

Mr. Pierce reported that the Standing Annexation Committee met a few months ago on this property with no adverse information given. The property was annexed overnight, this is the 90-day final.

The Mayor opened the floor for a public hearing for this and the following Ordinance Number 3116, representing the compatible zoning of the same property. There being no one further to address the Council, the Mayor closed the public hearing and called for the question. Roll call vote was as follows:

Mr. Head– yes	Mr. Pierce– yes
Mr. Weaver – yes	Mayor Curry – yes

motion carried.

ORDINANCE NUMBER 3116

Public Hearing – Ordinance Number 3116 – Rezoning – 2644 Yorkmont Drive; Lot 16, Chimney Hills; Rezone From Jefferson County R-1 To Vestavia Hills R-2; Daniel And Fay Cambron, Owner(s)

MOTION Motion to approve Ordinance Number 3116 was made by Mr. Pierce and seconded by Mr. Weaver.

Mr. Weaver stated that this is compatible zoning.

There being no one further to address the Council, the Mayor closed the public hearing and called for the question. Roll call vote was as follows:

Mr. Head– yes	Mr. Pierce– yes
Mr. Weaver – yes	Mayor Curry – yes

motion carried.

ORDINANCE NUMBER 3121

Public Hearing – Ordinance Number 3121 – Rezoning – 2245 And 2249 Blue Ridge Blvd; Rezone From Jefferson County R-T, R-4, And R-2 To Vestavia Hills R-9 For Construction Of 25 Townhomes; Taylor Burton And Alicia And Donald Huey (Townes Development Group, LLP), Owner(s)

MOTION Motion to approve Ordinance Number 3121 was made by Mr. Weaver and seconded by Mr. Pierce.

Mr. Weaver reported that the Planning and Zoning Commission heard this request for the construction of 25 townhomes. He stated that the current zoning is for townhomes and multi-family zoning which means this might be a bit of a downzoning. He stated that there will be some improvements to Blue Ridge Blvd to curbing, etc. He read the conditions that were given by P&Z as follows: That the developer file and record private restrictive covenants that

- a. Preserves and protects the rear portion of the property left undeveloped pursuant to this preliminary plat to be left primitive and undeveloped with only the removal of diseased or dead trees; and
- b. That buffering to be provided for the private residence located beside this development pursuant to the buffering requirements of the zoning code; and
- c. For both areas to be maintained and preserved by the proposed homeowner’s association; and
- d. That the zoning not become effective until the CC&Rs are filed in the Office of the Judge of Probate with a copy submitted to the City Clerk prior to the effective date of the ordinance.

Mr. Weaver stated that these conditions have been written into the Ordinance. He stated this comes to the Council with unanimous recommendation for approval.

Taylor Burton, part owner and developer, explained that they have owned the property for many years and feel this development is the best for the property.

The Mayor opened the floor for a public hearing.

Rebekah Goldman, 1201 Chester Street, stated that she addressed the Commission about the drainage and traffic. She stated she submitted photos that her backyard already floods and she would like to have the creek redirected away from her property. She stated that traffic is an issue, especially when the schools are in session. She stated many people use these streets as a cut-thru. She reported that the Hoover engineers feel this will be a problem flooding downstream. She reported that there has been so much washout that a gas main is showing.

Mr. Brady stated that they are somewhat aware of some erosion in the area. It will help to get some of this drainage, improve the infrastructure in the area and direct the flow into the drainage areas. He stated that he hasn't heard anything from Hoover and he believes that their drainage plans meet the City's standards and should not cause adverse impacts to surrounding properties.

Phillip Criswell, 1408 Linda Vista Drive, stated that his property is adjacent to the detention pond. He stated that the kids of the area play in that creek and he has concerns of Ms. Goldman being a resident of Hoover and has some visual evidence of the impact of the water.

Mr. Burton stated that they are addressing most of the concerns being expressed here tonight. He explained the condition of the pipes and the creek, etc.

Ms. Goldman stated they are concerned about the direction of the creek and how her property is just barely above grade.

Mr. Weaver stated that the City has an engineer to review these plans and has worked with the developers engineer. If the Hoover engineer had enough concern, he could have contacted the City with his concerns. He stated he assumes that the developer cannot increase drainage onto her property.

Mr. Burton stated she's speaking of a pipe that ends at her driveway and contains drainage from the Hoover area, not from this property. The other pipe which is on this property ends and is messed up and will begin to flow out. He stated that they are holding their stormwater and releasing it later along with passing the current water easier. It will also be maintained by the HOA. He added that they did have a preliminary meeting with the residents and he did tell them then that the people above the ridge will not even know they are there. Mrs. Goldman will be the only resident affected by this and he will continue to meet with her and try to address her concerns. He stated he also believes that this will help to calm the traffic by making this a neighborhood rather than a vacant property along a rural road.

Mrs. Goldman stated she would like a compromise to not have 25 units on this property.

Mr. Criswell stated that the Commission meeting stated that the covenants will protect the buffer. He asked if this can be rezoned in the future and what is the legal standing of the buffer zone.

Mr. Boone explained the purpose of having restrictive covenants because once recorded, it can only be removed by a court. Mr. Boone also described a Supreme Court decision that if

there is an interest in a zoning case, the governmental body has an obligation to listen to residents whether they are residents of the City or not.

Mr. Pierce stated that the original request was 38 townhomes 2 years ago and when the City requested an updated drainage study, the request was reduced to 25 homes.

There being no one further to address the Council, the Mayor closed the public hearing and called for the question. Roll call vote was as follows:

Mr. Head– yes	Mr. Pierce– yes
Mr. Weaver – yes	Mayor Curry – yes

motion carried.

ORDINANCE NUMBER 3122

Public Hearing – Ordinance Number 3122 – Annexation – 90 Day Final – 2245 & 2249 Blue Ridge Blvd; Taylor Burton And Donald & Alicia Huey, Owner(s)

MOTION Motion to approve Ordinance Number 3122 was made by Mr. Weaver and seconded by Mr. Pierce.

Mr. Pierce reported that any questions or concerns for this property should occur within this 90-day period.

There being no one further to address the Council, the Mayor closed the public hearing and called for the question. Roll call vote was as follows:

Mr. Head– yes	Mr. Pierce– yes
Mr. Weaver – yes	Mayor Curry – yes

motion carried.

ORDINANCE NUMBER 3123

Public Hearing – Ordinance Number 3123 – Third Amendment To The Patchwork Farms Planned Unit Development For The Purpose Of Increasing The Number Of Attached Dwelling To Maximum Of 37 Units; Christopher, LLC, Owner(s)

MOTION Motion to approve Ordinance Number 3123 was made by Mr. Weaver and seconded by Mr. Pierce.

Mr. Downes stated that this property was recommended for approval by the Commission making the maximum for the condos planned for this property to 37 units.

Mr. Weaver concurred.

Chris Reebels was present in regard to this request. He stated that this will allow a 37-unit condominium development.

The Mayor opened the floor for a public hearing. There being no one further to address the Council, the Mayor closed the public hearing and called for the question. Roll call vote was as follows:

Mr. Head– yes	Mr. Pierce– yes
Mr. Weaver – yes	Mayor Curry – yes

motion carried.

NEW BUSINESS

RESOLUTION NUMBER 5412

Resolution Number 5412 – A Resolution Reappointing A Member To The Design Review Board

MOTION Motion to approve Resolution Number 5412 was by Mr. Weaver and seconded by Mr. Pierce.

The Mayor explained that this is the reappointment of a member to this Board. He stated that they did make an announcement and he was the only architect who applied so he recommends him for this appointment. The one other wasn't qualified.

MOTION The Mayor called for the question. Roll call vote as follows:

Mr. Head– yes	Mr. Pierce– yes
Mr. Weaver – yes	Mayor Curry – yes

motion carried.

RESOLUTION NUMBER 5413

Resolution Number 5413 – A Resolution Determining That Certain Personal Property Is Not Needed For Public Or Municipal Purposes And Directing The Sale/Disposal Of Said Surplus Property

MOTION Motion to approve Resolution Number 5413 was by Mr. Pierce and seconded by Mr. Weaver.

Mr. Downes stated this is a variety of Parks and Recreation pieces that need to be sold or donated.

There being no one to further address the Council, the Mayor closed the public hearing and called for the question. Roll call vote as follows:

Mr. Head– yes	Mr. Pierce– yes
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Mr. Weaver – yes

Mayor Curry – yes
motion carried.

ORDINANCE NUMBER 3126

Ordinance Number 3126 – An Ordinance Authorizing The Mayor And City Manager To Execute And Deliver A Regional Training Center Agreement With The Alabama Fire College And Personnel Standards Commission, The Cities Of Hoover, Mountain Brook, And Homewood And The Rocky Ridge Fire Department To Provide Classroom Space And Associated Facilities For Training Use

MOTION Motion to approve Ordinance Number 3126 was made by Mr. Weaver and seconded by Mr. Pierce.

There being no one further to address the Council, the Mayor called for the question. Roll call vote was as follows:

Mr. Head– yes

Mr. Pierce– yes

Mr. Weaver – yes

Mayor Curry – yes
motion carried.

ORDINANCE NUMBER 3127

Ordinance Number 3127 – An Ordinance Accepting A Bid For Mowing Of Rights-Of-Way In The City Of Vestavia Hills And Executing A Contract Pursuant To Said Bid

MOTION Motion to approve Ordinance Number 3127 was made by Mr. Weaver and seconded by Mr. Pierce.

Mr. Downes explained both this item and the next are budgeted expenses and these are the low bidders.

Discussion ensued as to the difference in the bid amounts. Mr. Downes explained that the low bidder has less overhead.

There being no one further to address the Council, the Mayor called for the question. Roll call vote was as follows:

Mr. Head– yes

Mr. Pierce– yes

Mr. Weaver – yes

Mayor Curry – yes
motion carried.

ORDINANCE NUMBER 3128

Ordinance Number 3128 – An Ordinance Accepting A Bid For Landscaping Maintenance In The City Of Vestavia Hills And Executing A Contract Pursuant To Said Bid

MOTION Motion to approve Ordinance Number 3128 was made by Mr. Weaver and seconded by Mr. Pierce.

There being no one further to address the Council, the Mayor called for the question. Roll call vote was as follows:

Mr. Head– yes	Mr. Pierce– yes
Mr. Weaver – yes	Mayor Curry – yes
	motion carried.

ORDINANCE NUMBER 3129

Ordinance Number 3129 – An Ordinance Authorizing The Mayor And City Manager To Take All Actions Necessary To Settle A Workman’s Compensation Claim

MOTION Motion to approve Ordinance Number 3129 was made by Mr. Weaver and seconded by Mr. Pierce.

Jonathan Berryhill, attorney, is presented. Mr. Downes explained this is a settlement that’s deemed beneficial to both parties and recommended for approval by the attorneys.

Mr. Berryhill stated that this is a disputed claim.

There being no one further to address the Council, the Mayor called for the question. Roll call vote was as follows:

Mr. Head– yes	Mr. Pierce– yes
Mr. Weaver – yes	Mayor Curry – yes
	motion carried.

NEW BUSINESS (UNANIMOUS CONSENT REQUESTED)

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

1. Ordinance Number 3130 – An Ordinance Approving The Terms, Provisions, Conditions And Substance Of Six (6) Different Template Contracts To Be Executed And Delivered By Citizens Who Rent Facilities In The New Civic Center And Vendors And To Authorize The City Manager And Director Of Parks And Leisure Services To Sign The Said Template Contracts For And On Behalf Of The City Of Vestavia Hills, Alabama

CITIZEN COMMENTS

- Mr. Pierce stated Med Properties trust is an outstanding building set to open at Liberty Park. He stated that they involved Vestavia Students because of the unique design of the building utilizing nature and water into the building.

EXECUTIVE SESSION

The Mayor indicated a need for an executive session for existing/possible litigation. He asked Mr. Boone if that was permissible and Mr. Boone stated that it was. The Mayor stated it was for approximately 30 minutes and there may or may not be action afterward. He opened the floor for a motion:

MOTION Motion to move into Executive Session for existing/possible litigation for an estimated 30 minutes was by Mr. Weaver seconded by Mr. Pierce. Mr. Boone indicated that is a valid reason for Executive Session and indicated he will be present. Roll call vote as follows:

Mr. Head– yes	Mr. Pierce– yes
Mr. Weaver – yes	Mayor Curry – yes

motion carried.

At 7:15 PM, the Council exited the Chamber and entered into Executive Session. At 7:35 PM, the Council re-entered the Chamber and the Mayor called the meeting back to order.

MOTION Motion for Unanimous Consent for immediate consideration and action on Resolution 5415 was by Mr. Weaver, seconded by Mr. Pierce.

Mr. Head– yes	Mr. Pierce– yes
Mr. Weaver – yes	Mayor Curry – yes

motion carried.

RESOLUTION NUMBER 5415

A Resolution Authorizing The City Attorney To File An Appeal To A Board Of Zoning Adjustment Variance Granted For 1110 Mayland Lane

MOTION Motion to approve Resolution Number 5415 was made by Mr. Weaver and seconded by Mr. Pierce.

“RESOLUTION NUMBER 5415

A RESOLUTION AUTHORIZING THE CITY ATTORNEY TO FILE AN APPEAL TO A BOARD OF ZONING ADJUSTMENT VARIANCE GRANTED FOR 1110 MAYLAND LANE

WHEREAS, Lisa Holmes submitted an application for a variance for location of a fence on the property located at 1110 Mayland Lane; and

WHEREAS, the Vestavia Hills Board of Adjustment granted said application at their regular meeting of September 15, 2022; and

WHEREAS, in light of certain facts, the Mayor and City Council feel it is in the best public interest to appeal the granting of said variance.

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

1. The City Attorney is hereby authorized to file an appeal of said variance to the Jefferson County Circuit Court; and
2. This Resolution Number 5415 shall become effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 26th day of September, 2022.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk.”

The Mayor opened the floor for a public hearing. There being no one further to address the Council, the Mayor closed the public hearing and called for the question. Roll call vote was as follows:

Mr. Head– yes

Mr. Pierce– yes

Mr. Weaver – yes

Mayor Curry – yes

motion carried.

At 7:44 PM, Mr. Weaver made a motion to adjourn. The meeting adjourned at 7:45 PM.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CITY OF VESTAVIA HILLS

CITY COUNCIL

MINUTES

OCTOBER 10, 2022

The City Council of Vestavia Hills met in regular session on this date at 6:00 PM, following publication and posting pursuant to Alabama law. A number of staff and members of the general public also attended virtually, via Zoom.com, following publication pursuant to Alabama law. The Mayor called the meeting to order. The City Clerk called the roll with the following:

MEMBERS PRESENT:

Mayor Ashley C. Curry
Rusty Weaver, Mayor Pro-Tem*
Kimberly Cook, Councilor
Paul Head, Councilor
George Pierce, Councilor*

OTHER OFFICIALS PRESENT:

Jeff Downes, City Manager
Cinnamon McCulley, Asst. City Manager
Rebecca Leavings, City Clerk
Dan Rary, Police Chief
Jason Hardin, Deputy Police Chief
Melvin Turner, Finance Director
Marvin Green, Fire Chief
Christopher Brady, City Engineer
Umang Patel, Court Director*
Keith Blanton, Building Official*

**present virtually via Zoom or telephone*

David Harwell, Member of the Vestavia Hills United Methodist Church, led the invocation, followed by the Pledge of Allegiance.

APPROVAL OF THE AGENDA

The Mayor stated that the agenda needed to be amended to delay the approval of the minutes until October 24 since they were not included in tonight's packet. He opened the floor for a motion for approval of the agenda as amended.

MOTION Motion to approve the agenda as amended was made by Mrs. Cook and seconded by Mr. Head. Roll call vote as follows:

Mrs. Cook – yes Mr. Head – yes
Mr. Pierce – yes Mr. Weaver – yes

Mayor Curry – yes motion carried.

ANNOUNCEMENTS, CANDIDATES, GUEST RECOGNITION

- Mr. Pierce, who was attending via Zoom, indicated that he couldn't see them to recognize them but that Rachel Patterson and Ben Chambliss should be in attendance representing the Chamber of Commerce Board.

PROCLAMATION

The Mayor presented a Proclamation designating October 2022, as “Domestic Violence Awareness Month.” Mr. Downes read the proclamation aloud. The Mayor presented it to the following: Allison Dearing, Executive Director of One Place Metro Alabama Family Justice Center and Susann Montgomery-Clark, Rod Clark, Meredith Montgomery Price, Jason Price, Evie Cleckler and Izzy Cleckler of the Megan Montgomery Domestic Violence Prevention Fund.

Mrs. Montgomery-Clark stated the reason they are there today is because she lost her daughter due to domestic violence and started a fund in Megan Montgomery's memory. The Jefferson County Mayor's Association will host an event to bring awareness to domestic violence and brochures for this are located by the agendas.

Ms. Dearing stated that this Proclamation helps to shine a light on this issue and that no one needs to be hurt. Everyone is impacted in some way by domestic violence and this helps to shine awareness in order that no other lives are lost to domestic violence.

Mrs. Montgomery-Clark stated that a Gingerbread Jam will be held here in the Council Chambers on December 3 in honor of Megan Montgomery, her daughter, because gingerbread houses were something Megan really enjoyed.

PROCLAMATION

The Mayor presented a Proclamation designating October 2022, as “Fire Safety Month.” Mr. Downes read the proclamation aloud. The Mayor presented it to Rob Moser, Adrian Millican, Valerie George, John Livingston and Will Davis of the Vestavia Hills Fire Department.

CITY MANAGER'S REPORT

- Mr. Downes stated that one of the Council's priorities this year was to address stormwater issues in the City. He stated that the City has completed some major drainage projects, which included Kyle Lane and Oakview Drive. For FY23, there are four major projects they anticipate to begin this quarter. Two pipe crossings at Massey Road will be replaced

over the next two Saturdays in order to avoid workday traffic. This road will be closed except to local traffic on these two workdays. Other upcoming projects include Blue Lake and Buckhead Road. The pipes are in inventory so that the work can be done in a timely manner. Following those, there will be more projects to come.

- Mrs. Cook asked for an update on the Civic Center and Crosshaven Drive. Mr. Downes stated they are expecting a temporary Certificate of Occupancy to allow some city staff to move into the Civic Center building next week. An open house will be scheduled as soon as possible. He gave an update on the City's portion of the Crosshaven project (Overton to Green Valley intersection, continuing on just beyond the same intersection to Cahaba Heights Rd.) The City's Overton phase is complete except for a little curb work remaining. All of utilities have been relocated. Curb line and sidewalks are about 80% poured in the Cahaba Heights Road phase. The last pipe under Crosshaven was installed last week. We anticipate the City's portion of curb line and sidewalks to be 100% poured by 10/24, with paving of all three lanes to follow.
- Mrs. Cook asked about potholes in the County project area that need filling. Mr. Downes stated that the County has inspectors on site and they should repair them or, if not, the City will repair them. She asked for specific action on a pothole at the Green Valley intersection, on the White Oak side of Crosshaven. He asked Mr. Brady, City Engineer, to check on this.

COUNCILOR REPORTS

- Mr. Pierce reported that tomorrow the Chamber of Commerce will hold its monthly luncheon with the Mayor giving the annual State of the City address.
- Mr. Weaver announced the Planning and Zoning Commission meeting will be held on October 13, 2022, in the Council Chambers beginning at 6 PM.
- Mrs. Cook announced that the Board of Education will hold its next meeting on October 24, 2022, at the Board of Education building.
- Mayor Curry stated that he will be giving the State of the City address tomorrow at the Chamber of Commerce meeting.
- Mr. Head announced that the Parks and Recreation meeting will be Thursday, October 13, beginning at 7:30 AM, in the ECR.
- Mr. Head announced that vacancies were coming up on the Vestavia Hills Library Board and the Parks and Recreation Board. He stated that, beginning Wednesday, applications will be accepted in the Office of the City Clerk. Deadline for application is Monday, November 14, 2022, at 5 PM. He stated that personal interviews will follow and the appointments will be announced at the November 28 Council meeting. Applications may be obtained on the City's website.

APPROVAL OF MINUTES

The Mayor stated that the approval of the minutes from the October 10, 2022 (Regular Meeting) was delayed until October 24, 2022.

OLD BUSINESS

ORDINANCE NUMBER 3130

Public Hearing – Ordinance Number 3130 – An Ordinance Approving The Terms, Provisions, Conditions And Substance Of Six (6) Different Template Contracts To Be Executed And Delivered By Citizens Who Rent Facilities In The New Civic Center And Vendors And To Authorize The City Manager And Director Of Parks And Leisure Services To Sign The Said Template Contracts For And On Behalf Of The City Of Vestavia Hills, Alabama

Mr. Downes explained that the Parks and Recreation staff worked with City Attorney Boone to draft a template contract for caterers and alcohol vendors wishing to serve people renting space at the new civic center. Also included in the approval are updated template rental agreements for all Parks and Recreation properties and facilities.

Mrs. Cook asked for an explanation on why there was a single vendor for alcohol.

Mr. Downes stated that ABC Enforcement mandates that only one vendor may be licensed for any facility for the sale of alcohol. This provides the City protection to ensure that the vendor meets all of our requirements. The only other option would be to only allow temporary special events licenses which take a minimum of 45 days for the Council to approve. Many other municipal facilities use a competitive process to find the best deal and grant the privilege to a sole provider.

Mrs. Cook asked if Mr. Boone had reviewed and approved these contracts.

Mr. Downes stated Mr. Boone drafted the contracts and approved.

MOTION Motion to approve Ordinance Number 3130 was made by Mrs. Cook and seconded by Mr. Head.

Mr. Pierce stated that allowing a sole alcohol vendor was the procedure that they used at the BJCC.

The Mayor opened the floor for a public hearing. There being no one further to address the Council, the Mayor closed the public hearing and called for the question. Roll call vote was as follows:

Mrs. Cook – yes	Mr. Head– yes
Mr. Pierce – yes	Mr. Weaver – yes
Mayor Curry – yes	motion carried.

NEW BUSINESS

RESOLUTION NUMBER 5414

Resolution Number 5414 – A Resolution Determining That Certain Personal Property Is Not Needed For Public Or Municipal Purposes And Directing The Sale/Disposal Of Said Surplus Property

MOTION Motion to approve Resolution Number 5412 was by Mrs. Cook and seconded by Mr. Head.

Mr. Downes stated that these are four police department vehicles that have been wrecked and used to salvage parts. They are done with the vehicles and now want to sell them as scrap.

MOTION There being no one further to address the Council, the Mayor called for the question. Roll call vote was as follows:

Mrs. Cook – yes Mr. Head– yes
Mr. Pierce – yes Mr. Weaver – yes
Mayor Curry – yes motion carried.

RESOLUTION NUMBER 5416

Resolution Number 5416 – A Resolution Changing The Date Of The Regular City Council Meeting Of December 26, 2022

MOTION Motion to approve Resolution Number 5416 was by Mrs. Cook and seconded by Mr. Pierce.

The Mayor explained that this Resolution changes the date of the second December Council meeting to December 19, moving the work session on that day to 5 PM to accommodate City Hall being closed on December 26 in observance of the holiday.

MOTION There being no one further to address the Council, the Mayor called for the question. Roll call vote was as follows:

Mrs. Cook – yes Mr. Head– yes
Mr. Pierce – yes Mr. Weaver – yes
Mayor Curry – yes motion carried.

ORDINANCE NUMBER 3131

Ordinance Number 3131 – An Ordinance Authorizing The Mayor And City Manager To Execute And Deliver A First Amendment To Solid Waste Collection And Disposal Contract To Allow A For Fuel Surcharge

MOTION Motion to approve Ordinance Number 3131 was by Mr. Head and seconded by Mrs. Cook.

The Mayor explained that this allows for a fuel surcharge.

Mr. Downes stated the Cahaba Solid Waste Authority met and agreed to a fuel surcharge due to an extreme increase in fuel costs. This Ordinance approves the formula presented by the Authority by Amwaste, the Authority's chosen provider. He stated that the money is already budgeted in the FY23 budget and will allow the City to remain under the Authority.

Mrs. Cook noted that the float in pricing is tied to the consumer price index for fuel. Mr. Downes concurred.

MOTION There being no one further to address the Council, the Mayor called for the question. Roll call vote was as follows:

Mrs. Cook – yes Mr. Head– yes
Mr. Pierce – yes Mr. Weaver – yes
Mayor Curry – yes motion carried.

ORDINANCE NUMBER 3132

Ordinance Number 3132 – An Ordinance Accepting A Bid For The Cahaba Heights Connector Sidewalk Addition And Authorizing The Mayor And City Manager To Execute And Deliver Documents Necessary For Said Project

MOTION Motion to approve Ordinance Number 3132 was by Mrs. Cook and seconded by Mr. Head.

Mr. Downes gave the background of this project which includes some sidewalk connections through some private property where the owners of the properties gave some sidewalk easements and construction easements for sidewalk. Bids were let and the recommendation is to accept the low bid from Avery Landscaping.

Mrs. Cook asked about the timeline.

Mr. Downes stated that they are under a strict timeline dictated by the easements, so the work will be done as soon as possible, and they are hoping completion by the year's end, which might be too optimistic.

MOTION There being no one further to address the Council, the Mayor called for the question. Roll call vote was as follows:

Mrs. Cook – yes Mr. Head– yes
Mr. Pierce – yes Mr. Weaver – yes
Mayor Curry – yes motion carried.

ORDINANCE NUMBER 3133

Ordinance Number 3133 – An Ordinance Authorizing The Mayor And City Manager To Execute And Deliver A Funding Agreement With ALDOT For The Proposed Pedestrian Bridge Over US-31 And Sidewalks In Vestavia Hills; Project Numbers DE-IBRD-A104(916) & HPP-TAPBH-CMAQ-A104(916)

MOTION Motion to approve Ordinance Number 3133 was by Mrs. Cook and seconded by Mr. Head.

Mr. Downes stated that the Council recently approved some professional services for a redesign of the pedestrian bridge and acceptance of this \$200,000 in grant money helps to offset that cost.

MOTION There being no one further to address the Council, the Mayor called for the question. Roll call vote was as follows:

Mrs. Cook – yes Mr. Head– yes
Mr. Pierce – yes Mr. Weaver – yes
Mayor Curry – yes motion carried.

NEW BUSINESS (UNANIMOUS CONSENT REQUESTED)

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

- Public Hearing – Ordinance Number 3124 – Rezoning – 901 Montgomery Highway; Rezone from Jefferson County Unknown to Vestavia Hills O-1; David and Rozanne Emory, Owners
- Public Hearing – Ordinance Number 3125 – An Ordinance Adopting The Second Amendment To The Liberty Park Planned Unit Development For Development Of The Undeveloped Parts Of Liberty Park; Liberty Park Joint Venture, Owners

CITIZEN COMMENTS

- None.

At 6:37 PM, Mrs. Cook made a motion to adjourn. The meeting adjourned at 6:38 PM.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

ORDINANCE NUMBER 3124

AN ORDINANCE TO FURTHER AMEND THE ZONING ORDINANCE AND THE ZONING MAP OF THE CITY OF VESTAVIA HILLS, ALABAMA, ADOPTED SEPTEMBER 16, 1985, AND AS LAST AMENDED SO AS TO CHANGE THE CLASS OF DISTRICT ZONING OF PROPERTY FROM JEFFERSON COUNTY UNKNOWN TO VESTAVIA HILLS O-1

BE IT ORDAINED by the City Council of the City of Vestavia Hills, Alabama, as follows: That the Zoning Ordinance and Zoning Map of the City of Vestavia Hills, Alabama, adopted September 16, 1985, and as last amended so as to change the class of district zoning of the following described property from Jefferson County unknown to Vestavia Hills O-1 (office park district):

901 Montgomery Highway
David and Rozanne Emory, Owner(s)

More particularly described as follows:

Parcel I. Lots 15, 16 and 17, Block 15, of South Birmingham Heights, as recorded in Map Book 7, Page 41, in the Probate Office of Jefferson County, Alabama and also a portion of vacated Pine Street all being more particularly described by metes and bounds as follows:

Beginning at the Southwest corner of Lot 15 of said South Birmingham Heights and run in an Easterly direction along the South line of said Lot 15 for a distance of 158.02 feet to the center of the vacated Pine Street; thence turn an interior angle to the right of 85 degrees 52 minutes 49 seconds and run in a Northerly direction along the center of the vacated Pine Street for a distance of 97.97 feet; thence turn an interior angle to the right of 90 degrees 00 minutes 00 seconds and run in a Westerly direction for a distance of 8.00 feet to a point on the West right of way line of Pine Street; thence turn an interior angle to the right of 270 degrees 00 minutes 00 seconds and run in a Northerly direction along said right of way for a distance of 84.00 feet to the Northeast corner of Lot 17 of said South Birmingham Heights, said point also being on the Southern-most right of way line of a 16 foot public alley; thence turn an interior angle to the right of 76 degrees 21 minutes 09 seconds and run along the Northern line of said Lot 17 and the said Southern-most right of way line for a distance of 154.11 feet to the Northwest corner of said Lot 17, said point also being on the Eastern-most right of way line of U.S. Highway 31; thence turn an interior angle to the right of 103 degrees 35 minutes 05 seconds and run in a Southerly direction along the West line of said Lot 17 and along said Eastern-most right of way line for a distance of 134.26 feet to the point of beginning.

Parcel II. A parcel of land situated in the Southeast Quarter of the Northwest Quarter of Section 30, Township 18 South, Range 2 West, Huntsville Meridian, Jefferson County, Alabama, being more particularly described as follows:

Begin at the NE corner of Lot 17, Block 15, South Birmingham Heights Land Company, as recorded in Map Book 7, Page 41, in the Office of the Judge of Probate, Jefferson County, and run South 74 degrees 11' 00" West along the Northerly line of said Lot 17 for a distance of 31.07 feet; thence angle left and run South 0 degrees 48'15" East for a distance of 39.31 feet; thence angle left and run North 89 degrees 11' 45" East for a distance of 30.00 feet to a point on the Easterly line of said Lot 17; thence angle left and run North 0 degrees 48' 15" West along said Easterly line of Lot 17 for a distance of 47.38 feet to the point of beginning.

BE IT FURTHER ORDAINED, that said zoning shall become effective immediately upon the publishing/posting of this Ordinance Number 3124 following the approval and recordation of a plat map combining all the portions of property into a single lot and a copy of said recorded plat submitted to the Office of the City Clerk.

APPROVED and ADOPTED this the 24th day of October, 2022.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

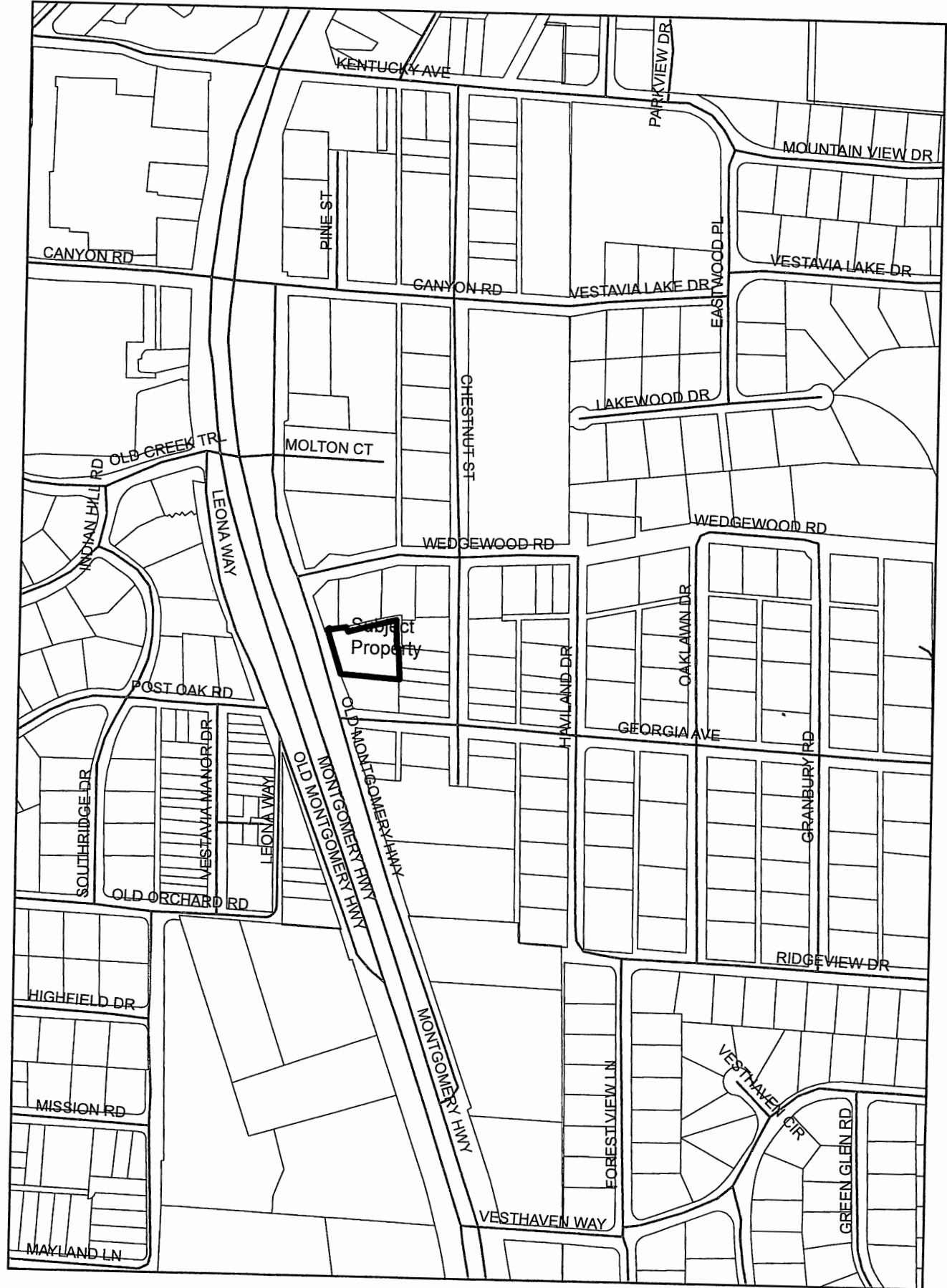
CERTIFICATION:

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 # 3124 is a true and correct copy of such 24th day of October, 2022, as same appears in the official records of said City.

Posted at Vestavia Hills City Hall, Vestavia Hills Library in the Forest, New Merkle House and Vestavia Hills Recreational Center this the _____ day of _____, 2022.

Rebecca Leavings
City Clerk

901 & 903 Montgomery Highway





City of Vestavia Hills

Planning and Zoning Commission Review and Recommendation



Case Number: RZ-22-6

Representative: Mark E. Gualano

Owner Name: David R. Emory and Rozanne S. Emory

Rep. Address: 701 Chestnut St., Vestavia Hills, AL 35216

Owner Address: 901 Montgomery Hwy, Vestavia Hills, AL 35216

Project Address: 901 Montgomery Hwy

Legal Description: 200505/6230:

Lots 15, 16 and 17, Block 15, of South Birmingham Heights, as recorded in Map Book 7, Page 41, in the Probate Office of Jefferson County, Alabama and also a portion of vacated Pine Street all being more particularly described by metes and bounds as follows:

Beginning at the Southwest corner of Lot 15 of said South Birmingham Heights and run in an Easterly direction along the South line of said Lot 15 for a distance of 158.02 feet to the center of the vacated Pine Street; thence turn an interior angle to the right of 85 degrees 52 minutes 49 seconds and run in a Northerly direction along the center of the vacated Pine Street for a distance of 97.97 feet; thence turn an interior angle to the right of 90 degrees 00 minutes 00 seconds and run in a Westerly direction for a distance of 8.00 feet to a point on the West right of way line of Pine Street; thence turn an interior angle to the right of 270 degrees 00 minutes 00 seconds and run in a Northerly direction along said right of way for a distance of 84.00 feet to the Northeast corner of Lot 17 of said South Birmingham Heights, said point also being on the Southern-most right of way line of a 16 foot public alley; thence turn an interior angle to the right of 76 degrees 21 minutes 09 seconds and run along the Northern line of said Lot 17 and the said Southern-most right of way line for a distance of 154.11 feet to the Northwest corner of said Lot 17, said point also being on the Eastern-most right of way line of U.S. Highway 31; thence turn an interior angle to the right of 103 degrees 35 minutes 05 seconds and run in a Southerly direction along the West line of said Lot 17 and along said Eastern-most right of way line for a distance of 134.26 feet to the point of beginning.

200505/6229:

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

Begin at the NE corner of Lot 17, Block 15, South Birmingham Heights Land Company, as recorded in Map Book 7, Page 41, in the Office of the Judge of Probate, Jefferson County, and run South 74 degrees 11' 00" West along the Northerly line of said Lot 17 for a distance of 31.07 feet; thence angle left and run South 0 degrees 48'15" East for a distance of 39.31 feet; thence angle left and run North 89 degrees 11' 45" East for a distance of 30.00 feet to a point on the Easterly line of said Lot 17; thence angle left

and run North 0 degrees 48' 15" West along said Easterly line of Lot 17 for a distance of 47.38 feet to the point of beginning.

Access and Utility Easement:

A strip of land 15 feet in width for access and utilities situated in the Southeast Quarter of the Northwest Quarter of Section 30, Township 18 South, Range 2 West, Huntsville Meridian, Jefferson County, Alabama, lying 7.5 feet to either side of the following described centerline:

Commence at the NE corner of Lot 17, Block 15, South Birmingham Land Company, as recorded in Map Book 7, Page 41, in the Office of the Judge of Probate, Jefferson County, Alabama, and run South 74 degrees 11' 00" West along the Northerly line of said Lot 17 for a distance of 31.07 feet; thence angle left and run South 0 degrees 48' 15" East for a distance of 7.77 feet to the point of beginning; thence angle right and run South 74 degrees 11' 00" West along a line 7.5 feet South of and parallel to said Northerly line of Lot 17 for a distance of 124.75 feet more or less to the Easterly line of Pine Street (60' right of way unopened) and the ending point of this centerline.

Parcel ID Number: 28 00 30 2 012 004.000
Current Zoning: Jefferson County Unknown
Requested Zoning: Vestavia Hills O-1
Intended Purpose: Currently under contract for sale. Buyer has plans to renovate. Currently unzoned, was told by city that re-zoning must be completed before renovations can begin.

MOTION Mr. Weaver made a motion to recommend Rezoning from JC Unknown to Vestavia Hills O-1 for the property located at 901 Montgomery Hwy. subject to the following condition: Lots be recombined before zoning is final. Second was by Mr. Farrell. Motion was carried on a roll call; vote as follows:

P&Z

Recommendation: Mr. Weaver– yes Mr. Farrell – yes
Mr. Honeycutt– yes Mr. Romeo – yes
Mr. Larson – yes Mr. Vercher – yes
Motion carried.

Date of P&Z Meeting: September 8, 2022

Authorized by: Vestavia Hills Planning and Zoning Commission, Michael Vercher, Chair
Issued by: Conrad Garrison, City Planner



09/20/2022

RZ-22-6**Rezoning Application****Status:** Active**Date Created:** Aug 4, 2022**Applicant**

Mark Gualano
 mg@mgualanolaw.com
 701 Chestnut St.
 Vestavia Hills, AL 35216
 205-536-6999

Primary Location

901 MONTGOMERY HWY
 VESTAVIA HILLS, AL 35216

Owner:

David R. Emory & Rozanne S. Emory
 901 Montgomery Hwy Vestavia Hills, AL 35216

Property Information**Subject Property Address**

901 Montgomery Hwy

Tax Parcel ID Number

28 00 30 2 012 004.000

Legal Description

200505/6230:

Lots 15, 16 and 17, Block 15, of South Birmingham Heights, as recorded in Map Book 7, Page 41, in the Probate Office of Jefferson County, Alabama and also a portion of vacated Pine Street all being more particularly described by metes and bounds as follows:

Beginning at the Southwest corner of Lot 15 of said South Birmingham Heights and run in an Easterly direction along the South line of said Lot 15 for a distance of 158.02 feet to the center of the vacated Pine Street; thence turn an interior angle to the right of 85 degrees 52 minutes 49 seconds and run in a Northerly direction along the center of the vacated Pine Street for a distance of 97.97 feet; thence turn an interior angle to the right of 90 degrees 00 minutes 00 seconds and run in a Westerly direction for a distance of 8.00 feet to a point on the West right of way line of Pine Street; thence turn an interior angle to the right of 270 degrees 00 minutes 00 seconds and run in a Northerly direction along said right of way for a distance of 84.00 feet to the Northeast corner of Lot 17 of said South Birmingham Heights, said point also being on the Southern-most right of way line of a 16 foot public alley; thence turn an interior angle to the right of 76 degrees 21 minutes 09 seconds and run along the Northern line of said Lot 17 and the said Southern-most right of way line for a distance of 154.11 feet to the Northwest corner of said Lot 17, said point also being on the Eastern-most right of way line of U.S. Highway 31; thence turn an interior angle to the right of 103 degrees 35 minutes 05 seconds and run in a Southerly direction along the West line of said Lot 17 and along said Eastern-most right of way line for a distance of 134.26 feet to the point of beginning.

200505/6229:

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

Begin at the NE corner of Lot 17, Block 15, South Birmingham Heights Land Company, as recorded in Map Book 7, Page 41, in the Office of the Judge of Probate, Jefferson County, and run South 74 degrees 11' 00" West along the Northerly line of said Lot 17 for a distance of 31.07 feet; thence angle left and run South 0 degrees 48'15" East for a distance of 39.31 feet; thence angle left and run North 89 degrees 11' 45" East for a distance of 30.00 feet to a point on the Easterly line of said Lot 17; thence angle left and run North 0 degrees 48' 15" West along said Easterly line of Lot 17 for a distance of 47.38 feet to the point of beginning.

Access and Utility Easement:

A strip of land 15 feet in width for access and utilities situated in the Southeast Quarter of the Northwest Quarter of Section 30, Township 18 South, Range 2 West, Huntsville Meridian, Jefferson County, Alabama, lying 7.5 feet to either side of the following described centerline:

Commence at the NE corner of Lot 17, Block 15, South Birmingham Land Company, as recorded in Map Book 7, Page 41, in the Office of the Judge of Probate, Jefferson County, Alabama, and run South 74 degrees 11' 00" West along the Northerly line of said Lot 17 for a

distance of 31.07 feet; thence angle left and run South 0 degrees 48' 15" East for a distance of 7.77 feet to the point of beginning; thence angle right and run South 74 degrees 11' 00" West along a line 7.5 feet South of and parallel to said Northerly line of Lot 17 for a distance of 124.75 feet more or less to the Easterly line of Pine Street (60' right of way unopened) and the ending point of this centerline.

Existing Parking Spaces

35

Proposed Parking Spaces

35

Submission Date

08/04/2022

Type of Project

New Non-Residential Development/use

Action Requested:

From Existing Zoning Classification

Jefferson County Unknown

To Requested Zoning Classification

Vestavia Hills O-1

For the Intended Purpose of:

Currently under contract for sale. Buyer has plans to renovate. Currently unzoned, was told by city that re-zoning must be completed before renovations can begin.

Acreage of Subject Property

0.72

Acreage of Property to be Disturbed

?

Setbacks

Front

--

Back

--

Side

--

Open Space

--

Lot Coverage Percentage

--

Tree Save Plan - I acknowledge that a if this is a new non-residential development or is a residential development in excess of 3 units, that I am required to submit a tree save plan concurrent with this application (excludes PUDs).



Owner Information

Applications must be either submitted by the owner of the property or a representative duly appointed by the owner by way of a notarized letter and/or power of attorney.

Property Owner Name

David R. Emory and Rozanne S. Emory

Company Name

Re/Max Southern Homes

Owner Address City State Zip

901 Montgomery Hwy, Vestavia Hills, AL 35216

Owner's Phone Number

205-914-1126

Email Address of Owner

demory1126@yahoo.com

By checking this box, I hereby affirm that I am the representative of the owner duly authorized to represent this petition for rezoning. Simultaneously with this application, I am submitting notarized documentation from the owner which authorizes me to represent this case. If no authorization is provided, this application cannot be processed.



Owner Representative/Responsible Party

Mark E. Gualano

Company Name

Mark E. Gualano, LLC

Contact Email of Responsible Party

ORDINANCE NUMBER 3125

AN ORDINANCE TO FURTHER AMEND THE ZONING ORDINANCE AND THE ZONING MAP OF THE CITY OF VESTAVIA HILLS, ALABAMA, ADOPTED SEPTEMBER 16, 1985, AND AS LAST AMENDED, SO AS TO ADOPT THE SECOND AMENDMENT TO THE LIBERTY PARK PLANNED UNIT DEVELOPMENT PURSUANT TO APPLICATION DATED AUGUST 2, 2022

WHEREAS, on February 19, 2001, the City Council of the City of Vestavia Hills, Alabama adopted Ordinance Number 1864 establishing the Liberty Park Planned Unit Development pursuant to the Liberty Park Planned Unit Development Zoning Application dated December 5, 2000; and

WHEREAS, on July 7, 2003, the City Council adopted Ordinance Number 2001 approving the amendments set forth in the Application for Amendment to the Liberty Park Planned Unit Development dated April 1, 2003; and

WHEREAS, Liberty Park Joint Venture, LLP (“LPJV”) has submitted an Application for Second Amendment to the Liberty Park Planned Unit Development dated August 2, 2022 (the “Amendment Application”) requesting certain amendments to the Liberty Park PUD with respect to the Remaining Undeveloped Land (as such terms are defined in the Amendment Application). A copy of the Amendment Application is marked as Exhibit “A,” attached to and incorporated into Ordinance Number 3125 as if written fully therein.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Vestavia Hills, Alabama, as follows: That the Zoning Ordinance and Zoning Map of the City of Vestavia Hills, Alabama, adopted September 16, 1985, and as last amended, be further amended so as (i) to adopt the Revised Land Use District Map to establish the applicable land use districts for the Remaining Undeveloped Land effective as of the date hereof; (ii) to adopt the planning criteria set forth in the Amendment Application for the development of the Remaining Undeveloped Land effective as of the date hereof; (iii) to confirm that no changes are being made to the land use districts or planning criteria with respect to any of the Developed Areas (as such term is defined in the Amendment Application) of the Liberty Park PUD; and (iv) to provide notice the City amended and restated the City’s Zoning Code in full by Ordinance 3099 adopted by the City on July 27, 2022 (the “2022 Zoning Code”)

and that the provisions of Section 6.9 et. seq. of the 2022 Zoning Code supersede and replace all prior planned unit development provisions of the City and is henceforth the operative zoning code applicable to the Liberty Park PUD.

The Revised Land Use District Map is set forth in Tab 1 of the attached Exhibit “A” (Exhibit 6.9.2.3.c.).

A depiction of and legal description of the Remaining Undeveloped Land are set forth in Tab 3 of the attached Exhibit “A” (Exhibit 6.9.2.4.a) attached hereto and made part hereof.

Remainder of Page Intentionally Deleted

APPROVED and ADOPTED this the 24th day of October, 2022.

Ashley C. Curry
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 Number 3125 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 24th day of October, 2022 as same appears in the official records of said City.

Posted at Vestavia Hills City Hall, Vestavia Hills Library in the Forest, Vestavia Hills City Hall, Vestavia Hills New Merkel House and Vestavia Hills Recreational Center this the _____ day of _____, 2022.

Rebecca Leavings
City Clerk

**APPLICATION FOR SECOND AMENDMENT TO
LIBERTY PARK PLANNED UNIT DEVELOPMENT**

**SECTION 6.9.2.1.
INTRODUCTION AND APPLICATION**

This Application for Second Amendment to Liberty Park Planned Unit Development (this “**Amendment Application**”) is made as of August 2, 2022, by **LIBERTY PARK JOINT VENTURE, LLP**, an Alabama limited liability partnership (“**LPJV**”), requesting certain amendments to the Liberty Park PUD (as hereinafter defined).

To date, (A) approximately 2,188 acres have been (or are currently being) developed in Liberty Park, a partially developed master-planned community (the “**Development**” or “**Liberty Park**”) within the corporate limits of the City of Vestavia Hills, Alabama (the “**City**”) in accordance with the requirements of the Liberty Park PUD (as hereinafter defined), consisting of single-family homes, multi-family units, commercial office space, retail/commercial space, an elementary school, municipal ball fields, a municipal fire station, and a church (defined herein as the “**Developed Areas**”); and (B) approximately 1,408 acres of Liberty Park is undeveloped (defined herein as the “**Remaining Undeveloped Land**”).

On or about June 27, 2022, the City adopted Ordinance Number 3099 to amend and restate the City’s Zoning Code in full (the “**2022 Zoning Code**”). The 2022 Zoning Code does not change the zoning of the Development, which remains Planned Unit Development, or otherwise affect the Liberty PUD as the same relates to the developed areas of Liberty Park. LPJV acknowledges, on behalf of itself only, that Ordinance 3099 reflects the City’s current operative zoning code and that the provisions of Section 6.9 et. seq. of the 2022 Zoning Code supersede and replace all prior planned unit development zoning provisions of the City and is henceforth the operative zoning code applicable to the Development.

Pursuant to City Ordinance No. 3085, which was adopted by the City on or about March 18, 2022, the City approved certain changes in the residential density allowances applicable to Liberty Park.

LPJV hereby submits the following information to the Planning and Zoning Commission and the City Council of the City pursuant to the requirements of Section 6.9.2 of the 2022 Zoning Code. The Section numbers referenced at the top of the following pages correspond with the Section Numbers of the 2022 Zoning Code.

DEFINITIONS

For the purposes of this Amendment Application, the defined terms used in the Introduction or in Section 6.9.2.4.f. of this Amendment Application shall have the meanings set forth therein and the following definitions shall apply to the designated capitalized terms. Other terms in this Amendment Application that are not herein defined herein shall have the meanings ascribed thereto in the PUD Ordinance.

“**2022 Zoning Code**” shall mean and refer to the Zoning Code of City by the adoption of Ordinance Number 3099.

“**Amendment Application**” shall mean and refer to this Amendment Application for a second amendment to the existing Liberty Park PUD and the existing Liberty Park PUD Application.

“**Annexation Amendment**” shall mean and refer to that certain Amendment to Annexation Agreements between the City and LPJV dated March 18, 2022, adopted by the City pursuant to City Ordinance 3085.

“**ARCs**” shall mean and refer to the Liberty Park Architectural Review Committee, together with such additional architectural review and/or control committees as may be created from time to time as the Remaining Undeveloped Land continues to develop.

“**Associations**” shall mean and refer to associations listed in Section 6.9.2.4.k. of this Amendment Application, together with such additional associations as may be created from time to time as Liberty Park continues to develop.

“**City**” shall mean and refer to the City of Vestavia Hills, Alabama.

“**Cottage Homes**” shall mean single-family detached residential dwellings located in close proximity to each other with shared common open space, as more particularly described in the Design Guidelines.

“**Design Guidelines**” has the meaning set forth in Section 6.9.2.4.c. of this Amendment Application.

“**Developed Areas**” means all of the property shown on the Revised Land Use District Map attached hereto as **Exhibit 6.9.2.4.(a)**, which is not designated as Remaining Undeveloped Land.

“**First Amendment to Liberty Park PUD**” means the amendments set forth in the Application for Amendment to Liberty Park Planned Unit Development dated April 1, 2003, approved by the City in Ordinance Number 2001 adopted by the City on July 7, 2003.

“**Liberty Park PUD**” means the existing Liberty Park PUD established by Ordinance Number 1864 adopted by the City on or about February 19, 2001, approving the Liberty Park Planned Unit Development Zoning Application submitted by Developer and other parties thereto dated December 5, 2000, as amended by the First Amendment to Liberty Park PUD.

“**Liberty Park Restrictive Covenants**” shall mean and refer to the protective and restrictive covenants listed in Section 6.9.2.4.k. of this Amendment Application, together with such additional protective and restrictive covenants as may be adopted from time to time to govern future development of the Remaining Undeveloped Land.

“**Owner**” or “**LPJV**” shall mean Liberty Park Limited Joint Venture LLP, an Alabama limited liability partnership.

“Planning Commission” shall mean The City of Vestavia Hills Planning and Zoning Commission.

“PUD” shall mean and refer to a planned unit development pursuant to the PUD Ordinance.

“PUD Ordinance” shall mean and refer to Section 6.9 et. seq. (Planned Unit Development) of the 2022 Zoning Code.

“Remaining Undeveloped Land” shall mean and refer to the property described in Section 6.9.2.4.a. of this Amendment Application and depicted in **Exhibit 6.9.2.4.(a)**. hereto.

“Revised Land Use District Map” shall mean the 2022 Revised Land Use District Map attached hereto as Exhibit 6.9.2.3.C.

“Watershed Covenants” shall mean and refer to the Declarations of Watershed Protective Covenants listed in Section 6.9.2.4.k. of this Amendment Application.

SECTION 6.9.2 (2)

AREA REQUIREMENTS

The Liberty Park PUD is in excess of the 75-acre minimum area of the PUD Zoning Ordinance.

SECTION 6.9.2 (3)

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SECTION 6.9.2.3.a.

AMENDMENT APPLICATION FEE

In accordance with the above referenced section of the PUD Ordinance, LPJV submits herewith a check in the amount of \$1,000 payable to the City, representing the application fee required for this Amendment Application. LPJV acknowledges and agrees to be responsible for all costs of notification and advertisement incurred by the City in connection with this Amendment Application.

SECTION 6.9.2.3.b.

OWNERS

LPJV is the sole owner of the Remaining Undeveloped Land.

Within the Developed Areas, approximately 1700 single family residential lots/houses are owned by residential owners and/or builders. A list of such single family lot/homeowners will be provided to the City if requested. In addition, there are approximately 26 owners of commercial properties in the Urban Center, which is not affected by this Amendment Application. A list of Urban Center owners will be provided to the City if requested. Listed below are the owners of the remaining commercial or institutional properties in the Developed Areas Liberty Park:

- 8001 Liberty Parkway, LLC
- 8844 Project, LLC
- ARG EHBIRAL001, LLC
- Board of Education of the City of Vestavia Hills, Alabama (Liberty Park Elementary and Middle School)
- CMF 15 Portfolio, LLC
- City of Vestavia Hills, Alabama (Liberty Park Sports Complex)
- Community Bank of Mississippi
- Corporate Woods Partners, LLC
- Enviro Services, LLC
- Fairway-Prominence, LLC
- Encompass Health Corporation
- High Noon, LLC
- KADD, LLC
- Liberty Park Joint Venture, LLP
- LP Development, LLC
- LPP II, LLC
- Main Street South Fulton, LLC
- Moore Oil Co., Inc.
- Parker Ophthalmic Properties, LLC
- RTR Partners, LLC
- STAS Networks, LLC
- Vestlake Communities Property Owners' Association, Inc.
- WK Services Co., LLC
- Woodlawn Baptist Church, Inc. (The Church at Liberty Park)

SECTION 6.9.2.3.c.

REVISED LIBERTY PARK PUD MAPS

A Revised Land Use District Map is attached hereto as Exhibit 6.9.2.3.c.(1), showing the location of the various land uses by PUD land use districts, the location of existing and proposed public or private streets, greenbelts, buffers, natural or man-made open spaces, schools, park and community service areas within and adjacent to the Liberty Park PUD and the location of any proposed gates for control of access on private streets.

A Revised Site Topographical Map is attached hereto as Exhibit 6.9.2.3.c.(2) showing known waterways, flood plains, forest cover and wetlands.

All of the property in Liberty Park may previously have been subject to subsurface or surface mining activities.

SECTION 6.9.2.4.a.

PLANNING CRITERIA OF THE LIBERTY PARK PUD

LEGAL DESCRIPTION OF APPLICABLE PORTIONS OF LIBERTY PARK PUD

No change is made to the legal description of the Developed Areas of Liberty Park as set forth in the existing Liberty Park PUD.

A depiction and legal description for the Remaining Undeveloped Land is attached as Exhibit 6.9.2.4.a.

SECTION 6.9.2.4.b.

PLANNING CRITERIA OF THE LIBERTY PARK PUD

GENERAL DESCRIPTION OF AREAS SURROUNDING LIBERTY PARK

No change is made to the general description areas surrounding Liberty Park from that set forth in the existing Liberty Park PUD.

SECTION 6.9.2.4.c.**PLANNING CRITERIA OF THE LIBERTY PARK PUD****STATEMENT OF PLANNING OBJECTIVES****1. Planning Objectives**

No change is made to the planning objectives for the Developed Areas of Liberty Park from that set forth in the existing Liberty Park PUD.

The Remaining Undeveloped Land is planned to include a mixed-use component that incorporates both residential and commercial uses in a town center (the “**Town Center**”). The Town Center shall incorporate traditional design principles to encourage walkability and convenience and include the following:

- An organized street and block network which incorporates open spaces, promotes flexibility and adaptability, and allows the Town Center and its public spaces to evolve, change and grow over time.
- Arrangement of streets, sidewalks, public spaces, and walkways connecting to parking facilities and surrounding areas. Elements which reinforce one another and work together to create gathering spaces and sidewalk areas where retail and leisure meet.
- Sidewalks sized for their intended use – wider sidewalks where restaurants and al fresco will be concentrated and narrower sidewalks planned on less intensively used streets.
- Scale that is comfortable for pedestrians with buildings that engage the street through windows, awnings, store signage and lighting. Storefronts shall avoid commonality and banality and allow for differentiation.
- On street parking convenient to retail and commercial buildings.
- Landscaping and hardscaping to enhance streetscapes and public places.

LPJV will finalize design guidelines (“**Design Guidelines**”) in the Town Center that implement the planning objectives above to serve as a guideline for development of individual projects in the Town Center. LPJV will consider in good faith all suggestions of the City’s Design Review Board which are in furtherance of the design principles set forth in this Section 6.9.2.4.c. prior to finalizing the Design Guidelines. The covenants for both the residential and commercial projects in the Town Center will incorporate the Design Guidelines by reference.

Without limitation on the foregoing, the following are the planning objectives for the Remaining Undeveloped Land:

A. Permit more flexible and, consequently, more creative and imaginative design in order to accommodate planned residential developments and planned office, commercial, retail, civic, institutional, and recreational developments within the context of a topographically difficult site;

B. Permit flexibility in land use densities in conjunction with provisions for more expansive functional open space and community services;

C. The combination and coordination of uses, building types, building relationships, and architectural systems within the Remaining Undeveloped Land;

D. The preservation and enhancement of existing natural features, their scenic qualities and amenities to the greatest extent possible, and the utilization of such features in a harmonious fashion; and,

E. The exception of the Liberty Park development from the conventional zoning regulations of the City Zoning Ordinance regarding setbacks, minimum yard sizes, minimum green belts, landscape regulations, off-street parking regulations minimum floor areas, and other regulations enabling LPJV to achieve the foregoing planning objectives.

2. Character of Liberty Park PUD

No change is made to the character of the Developed Areas of Liberty Park from that set forth in the existing Liberty Park PUD.

The Liberty Park PUD is or will be subject to recorded protective and restrictive covenants as listed in Section 6.9.2.4.k. of this Amendment Application, including, without limitation, the Watershed Covenants listed in Section 6.9.2.4.k. of this Amendment Application.

With authority granted by the Liberty Park Restrictive Covenants, the ARCs have review and approval rights for all plans and modifications relating to development in Liberty Park, as set forth in the respective Liberty Park Restrictive Covenants. In general, the overall character of the Liberty Park PUD will be one that complements and harmonizes with the existing natural and man-made environment of the area.

It is contemplated that there will be a variety of Residential Dwelling Units within the Remaining Undeveloped Land. These may include attached and detached Single-Family Units (which may include cluster residential, Cottage Homes, garden homes, duplexes, and townhouses), and Multi-Family Rental Units, to include Age-Restricted Rental Units, Market-Rate Rental Units, and Senior Housing Rental Units, subject to the limitations and conditions set forth in the Annexation Amendment. A mix of Residential Dwelling Units within the Remaining Undeveloped Land serves to provide diverse living spaces for families in various stages of life and income levels.

It is also contemplated that there will also be a variety of commercial building types and character within the Remaining Undeveloped Land, including retail, commercial, and hotel. A second elementary school site is located within the Remaining Undeveloped Land.

It is also contemplated that the Town Center will be constructed around a “Great Lawn” which will provide a park/gathering area to hold events such as farmer’s markets and holiday markets. In addition, it is contemplated that there will be other small parks and natural areas throughout the Remaining Undeveloped Land, as well as community connectivity improvements in the form of multi-use trails and sidewalk for walking, jogging, biking, and other forms of pedestrian traffic that will connect with the developed sectors of Liberty Park.

All of Liberty Park, including the Remaining Undeveloped Land, is organized to be self-governing through the Associations. The Associations established to date are listed in Section 6.9.2.4.(k) below. The Associations regulate matters of common area maintenance.

Other than those within Old Overton (which is a gated community with private roads maintained by the applicable Association), all roads within the Remaining Undeveloped Land (including all improvements within the rights-of-way of such roads other than pedestrian walkways (sidewalks/multi-use trails)) may, at LPJV’s option, be dedicated to the City upon final completion thereof in accordance with the City’s subdivision ordinances and the City’s acceptance of such roads. Additionally, LPJV may also transfer and convey to the City, in accordance with the City’s subdivision ordinances and upon the City’s acceptance of same, all of its right, title and interest in and to any other green space, parks, or other similar spaces intended for use by the general public within the Town Center (including, without limitation, the Great Lawn).

The Cahaba River borders and/or traverses Liberty Park. The Development has been planned from inception to protect, and will be continue to be planned, with this valuable asset in mind. Maintaining practical building setbacks along the Cahaba River frontage, along with other water quality designs within the Development, is a primary strategy that has been, and will continue to be, used.

3. Assumptions and Rationale for Remaining Undeveloped Land.

LPJV has assumed and projected the following in regard to the development of the Remaining Undeveloped Land:

A. Liberty Park lies in a growth area of the Birmingham metropolitan area and in one of the most desirable areas of the metropolitan area, i.e. the “Over the Mountain” area of the south Jefferson County area. The location of Liberty Park with the City places the community in a city with a national reputation for excellence in education. The great potential for growth in the Liberty Park area can be witnessed by the local indicators--the growth of adjacent and surrounding communities, the Summit development, the continued growth of the north Shelby County area, and the continued growth of the City.

B. The “planned mixed use” or “planned community” concept of development has been popular since the 1960s and has been found to be desirable for both residential and business markets. Liberty Park will offer the quality and uniqueness desired in a planned community and attract upscale residential and business markets.

C. The size, scale and projected development of Liberty Park will create a complete community, containing essentially all of the uses and services required in a suburban community, as contrasted to smaller planned developments

SECTION 6.9.2.4.d.

PLANNING CRITERIA OF THE LIBERTY PARK PUD

PHASES OR STAGES OF DEVELOPMENT

The development of Liberty Park began with the development of The Urban Center at Liberty Park in the mid-1980s in unincorporated Jefferson County. LPJV was formed in 1990 and the development of the initial 2,500-acres of Liberty Park began in 1991 pursuant to the Jefferson County Planned Unit Development Zoning Ordinance. Liberty Park was annexed into the City in 1992, and other parcels acquired by LPJV since that date have been subsequently annexed into the City so that the development now contains approximately 3,596 acres. The development of Liberty Park has continued to this date. It is anticipated that development of Remaining Undeveloped Land will continue until it is fully developed.

SECTION 6.9.2.4.e.**PLANNING CRITERIA OF THE LIBERTY PARK PUD****GENERAL DELINEATION OF LAND USE DISTRICTS**

Listed below are the gross acreage (more or less) planned for each land use district of the Liberty Park PUD:

Land Use District	Gross Acreage	% of Land
PR-1	2,757.6	77%
PR-2	30.6	1%
PO	120.0	3%
PNC	20.6	1%
PB	629.0	18%
PI	11.2	0%
TOTAL	3,596.0	100.0

SECTION 6.9.2.4.f.

PLANNING CRITERIA OF THE LIBERTY PARK PUD

CALCULATION OF RESIDENTIAL DENSITY

No change is made to the residential density calculation of the Developed Areas of Liberty Park from that set forth in the existing Liberty Park PUD.

Pursuant to the City Ordinance No. 3085:

1. The Residential Density Allowance for Liberty Park was increased to 3,870 Residential Dwelling Units;
2. The Multi-Family Density Allowance for Liberty Park was decreased to 870, to consist solely of Multi-Family Rental Units.
3. Of the reduced Multi-Family Density Allowance, Market-Rate Rental Units shall not exceed 270 units in the Remaining Undeveloped Land, with no more than 10% of the total additional Market Rate Rental Units to contain 3 bedrooms; and
4. Additional Market Rate Rental Units allowed by City Ordinance No. 3085 are to be located within the Town Center.

As used in this Section 6.9.2.4.f. of this Amendment Application, the following defined terms shall have the following meanings:

“Age-Restricted Rental Units” means Multi-Family Rental Units available for rent to individuals 55 years or older in compliance with the Housing for Older Persons Act of 1995.

“Market-Rate Rental Units” means Multi-Family Rental Units available for rent to the general public under The Fair Housing Act, 42 U.S.C. 3601 et. seq.

“Multi-Family Rental Units” means all multifamily units (including Senior Housing Rental Units) which are offered for rent. Multi-Family Rental Units shall not include individual units held for rent by an individual owner.

“Residential Dwelling Units” means all Single-Family Units and Multi-Family Rental Units.

“Restricted Rental Units” means Age-Restricted Rental Units and Senior Housing Rental Units.

“Senior Housing Rental Units” means rental units within a senior housing community which provide services marketed towards seniors or the elderly in a congregate setting such as independent living, assisted living, memory care, or skilled nursing care.

“Single Family Units” means residential dwellings for single family use.

SECTION 6.9.2.4.g.

PLANNING CRITERIA OF THE LIBERTY PARK PUD

DEVELOPMENT CRITERIA

1. **General.** No change is made to the General Statement of the Development Criteria of Liberty Park from that set forth in the existing Liberty Park PUD.

2. **Maximum Land Use Density; Uses.** The Maximum Land Use Density for the Liberty Park PUD was amended by the Annexation Amendment. Otherwise, no change is made to the Maximum Land Use Density; Uses section of the Development Criteria for the Developed Areas of Liberty Park as set forth in the existing Liberty Park PUD.

3. **Development Criteria for PR-1 Land Use Districts in Developed Areas of Liberty Park.**

- A. Minimum Setback/Yards. No change is made to the Minimum Setback/Yard requirements for any of the Developed Areas in the PR-1 Land Use Districts of Liberty Park from that set forth in the existing Liberty Park PUD.
- B. Floor Areas. No change is made to the Minimum Floor Area requirements for any of the Developed Areas in the PR-1 Land Use Districts of Liberty Park from that set forth in the existing Liberty Park PUD.
- C. Building Height Limitations. No change is made to the maximum building height requirements for any of the Developed Areas in the PR-1 Land Use Districts of Liberty Park from that set forth in the existing Liberty Park PUD.
- D. Off-Street Parking. No change is made to the off-street parking requirements for any of the Developed Areas in the PR-1 Land Use Districts of Liberty Park from that set forth in the existing Liberty Park PUD.

4. **Development Criteria for PR-1 Land Use Districts in the Remaining Undeveloped Land:**

- A. Minimum Setbacks. Setbacks for all lots upon which Single-Family Units are to be constructed in either the PR-1 or PB Land Use Districts of the Remaining Undeveloped Land (i) will be determined based on the type of Single-Family Unit planned for a particular sector or phase as set forth in the Design Guidelines, (ii) will be set forth on the subdivision plats for the various sectors or phases as development proceeds, and (iii) will be subject to the review and approval of the Planning Commission as part of its subdivision approval process as set forth in the 2022 Zoning Code.
- B. Floor Areas. The minimum floor area for Single-Family Units in either the PB or PR-1 Land Use Districts of the Remaining Undeveloped Land shall be 750 square feet.
- C. Building Height Limitations. Building heights for Single-Family Units in the PR-1 Land Use Districts of the Remaining Undeveloped Land shall conform to Section 6.9.5.1.c. of the PUD Ordinance.
- D. Off-Street Parking. The minimum off-street parking requirements for Single-Family Units in the PR-1 Land Use Districts of the Remaining Undeveloped Land shall be two (2) spaces per Single-Family Unit. The minimum off-street parking requirements for Single-Family Units in the PB Land Use Districts of the Remaining Undeveloped Land shall be one (1) space per Single-Family Unit if no dedicated on-street parking is provided. Parking shall only be allowed on paved surfaces specifically approved for such use by the applicable ARC.

5. Development Criteria for Planned Multifamily Residential (PR-2) Districts in the Developed Areas of Liberty Park.

- A. Conditional Use. No change is made to the Conditional Use requirements for any of the Developed Areas in the PR-2 Land Use Districts of Liberty Park from that set forth in the existing Liberty Park PUD.
- B. Maximum Land Use Density. No change is made to the Maximum Land Use Density requirements for any of the Developed Areas in the PR-2 Land Use Districts of Liberty Park from that set forth in the existing Liberty Park PUD.
- C. Minimum Setback/Yards. No change is made to the Minimum Setback/Yard requirements for any of the Developed Areas in the PR-2 Land Use Districts of Liberty Park from that set forth in the existing Liberty Park PUD.
- D. Floor Areas. No change is made to the Minimum Floor Area requirements for any of the Developed Areas in the PR-2 Land Use Districts of Liberty Park from that set forth in the existing Liberty Park PUD.
- E. Building Height Limitations. No change is made to the maximum building height requirements for any of the Developed Areas in the PR-2 Land Use Districts of Liberty Park from that set forth in the existing Liberty Park PUD.
- F. Minimum Lot Width. No change is made to the minimum lot width requirements for any of the Developed Areas in the PR-2 Land Use Districts of Liberty Park from that set forth in the existing Liberty Park PUD.
- G. Off-Street Parking. No change is made to the off street requirements for any of the Developed Areas in the PR-2 Land Use Districts of Liberty Park from that set forth in the existing Liberty Park PUD.
- H. Service Yards. No change is made to the Service Yards requirements for any of the Developed Areas in the PR-2 Land Use Districts of Liberty Park from that set forth in the existing Liberty Park PUD.
- I. Construction Standards. No change is made to the Construction Standards requirements for any of the Developed Areas in the PR-2 Land Use Districts of Liberty Park from that set forth in the existing Liberty Park PUD.

6. **Development Criteria for the Multi-Family Residential Units in PB Land Use Districts in the Remaining Undeveloped Land:**

- A. Minimum Setbacks. Setbacks for all lots or parcels upon which Multi-Family Units in the PB Land Use District in the Remaining Undeveloped Land are to be constructed as set forth in the Design Guidelines and will be set forth on the subdivision plats for the various sectors or phases as development proceeds, and will be subject to the review and approval of the Planning Commission as part of its subdivision approval process as set forth in the 2022 Zoning Code.
- B. Floor Areas. The minimum floor areas for typical multi-family dwelling units in PB Land Use Districts in the Remaining Undeveloped Land shall be 650 square feet per unit. The minimum floor area for efficiency apartments/dwelling units in PB Land Use Districts in the Remaining Undeveloped Land shall be 450 square feet per unit.
- C. Building Height Limitations. Building heights of the Multi-Family Units in the PB Land Use Districts in the Remaining Undeveloped Land shall conform to Section 6.9.5.2.c. of the PUD Ordinance.
- D. Minimum Lot Width. There shall be no minimum lot width so long as such development complies with the setback requirements stated above.
- E. Off-Street Parking. The minimum off-street parking requirements for each Multi-Family Unit development in the PB Land Use Districts in the Remaining Undeveloped Land shall be 1.6 spaces per dwelling unit. Each Multi-Family Unit development in the PB Land Use Districts in the Remaining Undeveloped Land must contain adequate onsite parking with no dedicated on-street parking.
- F. Service Yard. Each Multi-Family Unit development in the PB Land Use Districts in the Remaining Undeveloped Land shall have a service yard or yards, adequate for the handling of waste and garbage and the loading and unloading of vehicles. Such service yards shall (i) be paved, (ii) have access to a street, alley or service road, and (iii) be located as approved by the ARC. The applicable ARC may, depending on various site planning characteristics, site lines and other related factors, require that such service yard or yards be enclosed by a structure with access through a gate, and adequate to conceal from visibility the service yard, equipment and material stored within such structure.

7. **Development Criteria for Planned Office (PO) Districts in the Liberty Park PUD.**

- A. Conditional Use. No change is made to the Conditional Use requirements for any of the PO Land Use Districts of Liberty Park from that set forth in the existing Liberty Park PUD.
- B. Maximum Land Use Density. No change is made to the Maximum Land Use Density requirements for any of the PO Land Use Districts of Liberty Park from that set forth in the existing Liberty Park PUD.
- C. Minimum Setback/Yards. No change is made to the Minimum Setback/Yard requirements for any of the PO Land Use Districts of Liberty Park from that set forth in the existing Liberty Park PUD.
- D. Floor Areas. No change is made to the Minimum Floor Area requirements for any of the PO Land Use Districts of Liberty Park from that set forth in the existing Liberty Park PUD.
- E. Building Height Limitations. No change is made to the maximum building height requirements for any of the PO Land Use Districts of Liberty Park from that set forth in the existing Liberty Park PUD.
- F. Minimum Lot Width. No change is made to the minimum lot width requirements for any of the PO Land Use Districts of Liberty Park from that set forth in the existing Liberty Park PUD.
- G. Off-Street Parking. No change is made to the off street requirements for any of the PO Land Use Districts of Liberty Park from that set forth in the existing Liberty Park PUD.
- H. Service Yards. No change is made to the Service Yards requirements for any of the PO Land Use Districts of Liberty Park from that set forth in the existing Liberty Park PUD.
- I. Construction Standards. No change is made to the Construction Standards requirements for any of PO Land Use Districts of Liberty Park from that set forth in the existing Liberty Park PUD.

8. Development Criteria for Planned Neighborhood Commercial (PNC) Districts in the Liberty Park PUD.

- A. Conditional Use. No change is made to the Conditional Use requirements for any of the PNC Land Use Districts of Liberty Park from that set forth in the existing Liberty Park PUD.
- B. Maximum Land Use Density. No change is made to the Maximum Land Use Density requirements for any of the PNC Land Use Districts of Liberty Park from that set forth in the existing Liberty Park PUD.
- C. Minimum Setback/Yards. No change is made to the Minimum Setback/Yard requirements for any of the PNC Land Use Districts of Liberty Park from that set forth in the existing Liberty Park PUD.
- D. Floor Areas. No change is made to the Minimum Floor Area requirements for any of the PNC Land Use Districts of Liberty Park from that set forth in the existing Liberty Park PUD.
- E. Building Height Limitations. No change is made to the maximum building height requirements for any of the PNC Land Use Districts of Liberty Park from that set forth in the existing Liberty Park PUD.
- F. Minimum Lot Width. No change is made to the minimum lot width requirements for any of the PNC Land Use Districts of Liberty Park from that set forth in the existing Liberty Park PUD.
- G. Off-Street Parking. No change is made to the off street requirements for any of the PNC Land Use Districts of Liberty Park from that set forth in the existing Liberty Park PUD.
- H. Service Yards. No change is made to the Service Yards requirements for any of the PNC Land Use Districts of Liberty Park from that set forth in the existing Liberty Park PUD.
- I. Construction Standards. No change is made to the Construction Standards requirements for any of PNC Land Use Districts of Liberty Park from that set forth in the existing Liberty Park PUD.

9. **Development Criteria for Planned Business (PB) Land Use Districts in the Developed Areas of Liberty Park.**

- A. Principal or Conditional Use. No change is made to the Principal or Conditional Use requirements for any of the Developed Areas in the PB Land Use Districts of Liberty Park from that set forth in the existing Liberty Park PUD.
- B. Maximum Land Use Density. No change is made to the Maximum Land Use Density requirements for any of the Developed Areas in the PB Land Use Districts of Liberty Park from that set forth in the existing Liberty Park PUD.
- C. Minimum Setback/Yards. No change is made to the Minimum Setback/Yard requirements for any of the Developed Areas in the PB Land Use Districts of Liberty Park from that set forth in the existing Liberty Park PUD.
- D. Floor Areas. No change is made to the Minimum Floor Area requirements for any of the Developed Areas in the PB Land Use Districts of Liberty Park from that set forth in the existing Liberty Park PUD.
- E. Building Height Limitations. No change is made to the maximum building height requirements for any of the Developed Areas in the PB Land Use Districts of Liberty Park from that set forth in the existing Liberty Park PUD.
- F. Minimum Lot Width. No change is made to the minimum lot width requirements for any of the Developed Areas in the PB Land Use Districts of Liberty Park from that set forth in the existing Liberty Park PUD.
- G. Parking/Loading and Unloading Areas. No change is made to the parking/loading and unloading requirements for any of the Developed Areas in the PB Land Use Districts of Liberty Park from that set forth in the existing Liberty Park PUD.
- H. Service Yards. No change is made to the Service Yards requirements for any of the Developed Areas in the PB Land Use Districts of Liberty Park from that set forth in the existing Liberty Park PUD.
- I. Construction Standards. No change is made to the Construction Standards requirements for any of the Developed Areas in the PB Land Use Districts of Liberty Park from that set forth in the existing Liberty Park PUD.

10. Development Criteria for the Planned Business District (PB) Land Use Districts in the Remaining Undeveloped Land:

- A. Maximum Land Use Density. No change is made to the Maximum Land Use Density requirements for any of the PB Land Use Districts of Liberty Park from that set forth in the existing Liberty Park PUD.

The maximum land use density of the PB Land Use Districts of the Liberty Park PUD is further subject to the total density limitation of 7,500,000 square feet for office, commercial and retail uses in all of Liberty Park, pursuant to the original Annexation Agreement which is described in the Annexation Amendment.

- B. Minimum Setback/Yard. Setbacks for all lots or parcels within the PB Land Use Districts in the Remaining Undeveloped Land will be as set forth in the Design Guidelines and will be set forth on the subdivision plats for the various sectors or phases as development proceeds, and will be subject to the review and approval of the Planning Commission as part of its subdivision approval process as set forth in the 2022 Zoning Code.

- C. Parking, Loading and Unloading Areas. The minimum requirements for off-street parking, loading and unloading areas for developments in the PB Land Use Districts in the Remaining Undeveloped Land shall be as follows:

- (1) Parking shall be as set forth in Section 3 above for Single-Family Unit developments in the PB Land Use Districts in the Remaining Undeveloped Land (except to the extent such parking is covered by a shared use parking agreement as set forth below) and as set forth in Section 4 above for Multi-Family developments in the PB Land Use Districts in the Remaining Undeveloped Land. Other uses permitted in the PB Land Use Districts in the Remaining Undeveloped Land shall comply with the applicable parking requirements set forth in (3) below (except to the extent such parking is covered by a shared use parking agreement as set forth below). No parking shall be permitted on any street or drive, or any place other than approved parking spaces.
- (2) Except where common loading areas are designated on an approved site plan, loading areas shall not encroach into setback areas or be visible from any street or highway unless specifically approved by the applicable ARC. Loading docks shall be set back and screened to minimize the effect of their appearance from neighboring sites.
- (3) Parking for an establishment may be provided either by spaces located physically within the lot or parcel or by the provision of adjacent or shared parking with cross or shared parking agreements. Developments with cross agreements must provide the minimum number of spaces as herein stipulated when tabulated as a whole or by dedicated on street parking. The Developments with shared parking arrangements (i) shall comply with the

City's shared parking calculations set forth in Table 8.1.1. of the Zoning Code or (ii) may have reduced parking required from those otherwise specified based the review and approval of the recommendations of qualified parking consultant.

- (4) Retail developments require a minimum of four (4) parking spaces per 1,000 square feet of retail space. Non-integer numbers of spaces computed from this relationship shall be rounded to the next higher number;
- (5) Office developments require a minimum of two and one-half (2 ½) parking spaces per 1,000 square feet of office space. Non-integer numbers of spaces computed from this relationship shall be rounded to the next higher number
- (6) Restaurants, cafes, nightclubs or similar recreational or amusement establishments require a minimum of six (6) parking spaces per 1,000 square feet of floor area;
- (7) For all those land uses not covered above or elsewhere in this Amendment Application, the provisions of Article 8, "Regulations for Off-Street Parking" of the City Zoning Ordinance shall apply.

- E. Service Yard. Except where common service yards are designated on an approved site plan, each PB development in the Remaining Undeveloped Land (other than a Single-Family development) shall have a service yard or yards, adequate for the handling of waste and garbage and the loading and unloading of vehicles, or shall have access to a shared or central waste/garbage facility. Such service yards shall (i) be paved, (ii) have access to a street, alley, or service road, (iii) be located to the side or rear of a development and/or building. The applicable ARC may, depending on various site planning characteristics, sight lines and other related factors, require that such service yard or yards be enclosed by a structure with access through a gate, and adequate to conceal from visibility the service yard, equipment and material stored within such structure. Common service yards shall (i) be paved, (ii) have access to a street, alley, or service road, and (iii) be enclosed by a structure approved by the ARC with architecture compatible with the applicable buildings.

11. **Development Criteria for Planned Light Industrial (PI) Land Use District of Liberty Park.** No change is made to the Development Criteria for any of the Planned Light Industrial (PI) Land Use Districts of Liberty Park from that set forth in the existing Liberty Park PUD.

13. Generally Applicable Development Criteria and Land Use Districts

(1) Signage. Development in any land use district within the Remaining Undeveloped Land shall be subject to the applicable signage standards to be set forth in the Design Guidelines.

(2) Sidewalks. Sidewalks will be allowed, but not required, in any land use district within the Liberty Park PUD.

(3) Underground Utilities. To the extent practical, all units, buildings and/or structures constructed in any land use district within the Liberty Park PUD will be served by underground utilities. Infrastructure utilities may be underground or above ground, pursuant to separate agreements with the various utility companies.

(4) Accessory Structures, Fences and Buffer Strips. Any accessory structures, fences and/or buffer strips within any land use district of the Liberty Park PUD shall be governed by the Liberty Park Restrictive Covenants and subject to the review and approval of the ARC pursuant thereto.

(5) Watershed Covenants. Development in any land use district within the Liberty Park PUD shall be subject to the Watershed Covenants.

(6) Multi-Use Trails. Multi-Use trails will be allowed, but not required in the Remaining Undeveloped Land. Sidewalks and multi-use trails will be owned by the applicable Association. Any sidewalks or multi-use trails located within a City right-of-way that is to be dedicated will be subject to an easement in favor of the applicable Associations and its members for the use of such sidewalks and trails.

SECTION 6.9.2.4.h.

PROPOSED OPEN SPACE

The Proposed Open Space Network is shown on Exhibit 6.9.2.4.h.(1) attached hereto. The open space in the Remaining Undeveloped Land will total approximately 150 acres, representing approximately 18% of the Remaining Undeveloped Land and 4% of the overall Liberty Park PUD. The open space in the overall Liberty Park PUD will total approximately 843 acres, representing approximately 23% of the overall Liberty Park PUD.

SECTION 6.9.2.4.i.

AVAILABILITY OF TRANSPORTATION AND UTILITIES

Listed below are the utilities presently serving Liberty Park; however, such providers may change from time to time and other technologies may be developed which may affect the list of utility providers and services for Liberty Park:

1. Water: Birmingham Water Works.
2. Power: Alabama Power Company.
3. Telephone: AT&T and Spectrum.
4. Natural Gas. Spire.
5. Sewer: Enviro Services, LLC.
6. Cable television: Spectrum among other providers.

No regularly scheduled public transportation serves Liberty Park at this time.

SECTION 6.9.2.4.j.

OWNERSHIP AND MAINTENANCE OF COMMON AREAS

No change is made to provisions set forth in the existing Liberty Park PUD regarding streets and common areas within the Developed Areas of Liberty Park. Portions of Liberty Parkway have been dedicated to the City as of the date of this Amendment Application.

All roads *other than* those within Old Overton (which is a gated community with private roads maintained by the applicable Association) within the Remaining Undeveloped Land (including all improvements within the rights-of-way of such roads other than pedestrian walkways (sidewalks/multi-use trails)), may, at LPJV's option, be dedicated to the City upon final completion thereof in accordance with the City's subdivision ordinances and acceptance by the City.

Additionally, LPJV may also transfer and convey to the City, in accordance with the City's subdivision ordinances and the City's acceptance thereof, all of its right, title and interest in and to any other green space, parks, or other similar spaces intended for use by the general public within the Town Center (including, without limitation, the Great Lawn).

All other common areas within the Remaining Undeveloped Land will be privately owned by LPJV and/or various Associations, subject to the provisions of paragraph immediately following below. Funding for the maintenance and repair of such common areas in Remaining Undeveloped Land will be provided through dues, assessments, maintenance charges and other fees paid to the Associations by the members thereof.

SECTION 6.9.2.4.k.**PROTECTIVE COVENANTS, ASSOCIATIONS AND
ARCHITECTURAL REVIEW COMMITTEES**

1. The Remaining Undeveloped Land (or portions thereof) is subject to the following restrictive covenants:

A. As to the commercial areas: Declaration of Protective Covenants for the Commercial Development Area at Liberty Park, recorded as Instrument Number 9307/4579 in the Office of the Judge of Probate of Jefferson County, Alabama, as amended by Supplementary Declaration to the Original Covenants, recorded as Instrument Number 9309/4645 in said Probate Office; as further amended by Amendment No. 1 to the Original Covenants, recorded as Instrument Number 9313/3250 in said Probate Office; as further amended Amendment No. 2 to the Original Covenants, recorded as Instrument Number 9315/6020 in said Probate Office; as further amended by Amendment No. 3 to the Original Covenants, recorded as Instrument Number 9505/1755 in said Probate Office; as further amended by Amendment No. 4 to the Original Covenants, recorded as Instrument Number 9507/2675, and re-recorded as Instrument Number 9508/8221 in said Probate Office; as further amended by Amendment No. 5 to the Original Covenants, recorded as Instrument Number 9509/2804 in said Probate Office; as further amended by Amendment No. 6 to the Original Covenants, recorded as Instrument Number 9709/1114 in said Probate Office; as further amended by Amendment No. 7 to the Original Covenants, recorded as Instrument Number 9805/8300 in said Probate Office; as further amended by Amendment No. 8 to the Original Covenants, s recorded as Instrument Number 9807/0024 in said Probate Office; as further amended by Amendment No. 9 to the Original Covenants, recorded as Instrument Number 9810/3035 in said Probate Office; as further amended by Amendment No. 10 to the Original Covenants, recorded as Instrument Number 9810/4463 in said Probate Office; as further amended by Amendment No. 11 to the Original Covenants, recorded as Instrument Number 9815/9602 in said Probate Office; as further amended by Amendment No. 12 to the Original Covenants, recorded as Instrument Number 200003/0549 in said Probate Office; as amended by Amendment No. 13 to the Original Covenants, recorded as Instrument Number 200108/0736 in said Probate Office; as further amended by Amendment No. 14 to the Original Covenants, which is recorded as Instrument Number 201009/27432 in said Probate Office; as further amended by Amendment No. 15 to the Original Covenants, which is recorded as Instrument Number 2017129486 in said Probate Office and re-recorded as Instrument Number 2017131920 in the Probate Office of Jefferson County, Alabama, which said Amendment No. 15 was amended and restated in the Amended and Restated Fifteenth Amendment dated March 30, 2018, recorded as Inst. # 2018032286 in the Probate Office, which was then vacated, terminated, and declared null and void ab initio by Amendment No. 16 dated May 18, 2018, recorded as Inst. # 2018051538 in the Probate Office; as further amended by Amendment No. 17 dated August 29, 2018, recorded as Inst. # 2018091727 in the Probate Office; as further amended by Amendment No. 18 dated November 16, 2018, recorded as Inst. # 2018118326 in the Probate Office; as further amended by Amendment No. 19 dated August 17, 2021, recorded as Inst. # 2021095644 in the Probate Office, and as further amended by Amendment No. 20 dated March 1,

2022, recorded in Inst. # 2022024428 in the Probate Office (as amended, the “**Commercial Covenants**”).

B. As to the residential areas within The Bray sector of the Remaining Undeveloped Land: The Bray Single-Family Residential Declaration of Covenants, Conditions, and Restrictions, dated September 9, 2022, recorded as Instrument 2022096861 in the Office of the Judge of Probate of Jefferson County, Alabama (as the same may hereafter be amended, the “**Bray Residential Covenants**”).

C. As to the residential areas within Old Overton: Old Overton Ridge Covenants, Conditions, and Restrictions, recorded in Book 9313, Page 8012 in the Office of the Judge of Probate of Jefferson County, Alabama (as amended, the “**Old Overton Covenants**”).

D. All of the land within the Liberty Park PUD is subject to the Declaration of Watershed Protective Covenants for Liberty Park, dated 5/1/91, recorded in Real 4037, page 122, in the Probate Office of Jefferson County, Alabama, as amended by that certain Supplementary Declaration of Watershed Protective Covenants for Liberty Park recorded in Instrument 2017112666, in the Probate Office of Jefferson County, Alabama (as amended, the “**Watershed Covenants**”).

Additional restrictive covenants may be adopted from time to time to govern future development in Liberty Park.

The Developed Areas of Liberty Park remain subject to the restrictive covenants described in the existing Liberty Park PUD, as the same may have been subsequently amended.

2. **Associations.** The following Associations currently exist and are applicable to the Remaining Undeveloped Land (or portions thereof):

A. The Bray Single-Family Residential Property Owners' Association, Inc., an Alabama not-for-profit corporation. This Association provides services to its members in connection with the residential areas known as The Bray located in the PB and PR-1 land use districts of the Remaining Undeveloped Land.

B. Old Overton Single-Family Residential Property Owners' Association, Inc., an Alabama not-for-profit corporation. This Association provides services to its members in connection with the residential areas known as the Old Overton Communities, including those portions of the Remaining Undeveloped Land located within the Old Overton gated community (PR- 1 District).

C. Liberty Park Commercial Development Area Owners' Association, Inc., an Alabama not-for-profit corporation. This Association provides services to its members in connection the commercial, office, and retail areas of Liberty Park (PO, PB, and PNC districts), other than The Urban Center at Liberty Park.

D. Liberty Park Master Owners' Association, Inc., an Alabama not-for-profit corporation. This Association is primarily responsible for maintenance and upkeep of the private roadways and streets within Liberty Park (except the streets within the interior of The Urban Center at Liberty Park. Such streets are maintained by The Urban Center at Liberty Park Owners' Association, Inc.) and certain other common areas as set forth in the Liberty Park Restrictive Covenants.

Additional owners' associations may be created from time to time as the Remaining Undeveloped Land continues to develop.

The Associations described in the existing Liberty Park PUD remain in effect with respect to the Developed Areas of Liberty Park.

3. **Architectural Review and/or Control Committees.**

A. With authority granted by the applicable Liberty Park Restrictive Covenants, the following architectural review committee and architectural control committee (sometimes herein collectively referred to as the "**ARC**") have review and approval rights for all plans relating to development in Liberty Park, as set forth in the Liberty Park Restrictive Covenants. Liberty Park Architectural Review Committee performs such functions as to all property within the Remaining Undeveloped Land.

B. The ARC, in its sole and absolute discretion, shall have the exclusive right to grant variances with respect to any of the development requirements set forth in any of the Liberty Park Restrictive Covenants. The ARC will provide the City with copies of all written variances approved by the ARC for its records.

C. All of the covenants and related documents listed in this Section 6.9.2.4.k. are private; therefore, the City has no right or obligation to enforce any of such covenants, instruments, and documents. Nothing in this Amendment Application or the approval hereof shall be interpreted to infer any such right or obligation of enforcement insofar as the City is concerned. Non-residential developments are subject to the City's Design Review Board processes after approvals have been obtained from the ARC.

SECTION 6.9.2.4.m.

PLANNED INTERIM USES
WITHIN THE REMAINING UNDEVELOPED LAND

LPJV may make use of the undeveloped land within the PB Land Use District in the Remaining Undeveloped Land until such time as the land or area of said interim or temporary land use is permanently developed, provided such uses will not be detrimental to its planned permanent use. Such planned interim uses may include, without limitation:

1. Plant/landscape nursery(s) for stocking, growing and maintaining plants and necessary landscape equipment, garages, tools, and building(s) to be used in the development of Liberty Park.
2. Construction material storage area(s) to store construction material, including dirt rock, equipment, machinery, etc. LPJV will keep such areas as orderly as possible.
3. Borrow and fill areas for the purpose of mass grading operations on any portion of the Remaining Undeveloped Land and the preparation of lots/areas in the Remaining Undeveloped Land.
4. Information and sales center.

SECTION 6.9.2.4.n.

TRAFFIC STUDY

[ON FILE WITH THE CITY]

SECTION 6.9.2.4.o.

LANDSCAPING CRITERIA

All landscaping within the Remaining Undeveloped Land will be subject to the criteria set forth in the applicable Liberty Park Restrictive Covenants, and rules, regulations and standards relating to landscaping as adopted from time to time by the applicable ARC. The applicable ARC also has the rights of review and approval with respect to any and all landscaping plans in connection with development in all land use districts of the Remaining Undeveloped Land.

Landscaping for non-residential developments are subject to the City's Design Review Board processes after approvals have been obtained from the ARC.

SECTION 6.9.2.4.p.

PROPOSED MODIFICATION OF SUBDIVISION REGULATIONS

**STREET/ SUBDIVISION DESIGN
STANDARDS FOR THE REMAINING UNDEVELOPED LAND**

All roads *other than* those within Old Overton (which is a gated community with private roads maintained by the applicable Association) within the Remaining Undeveloped Land (including all improvements within the rights-of-way of such roads other than pedestrian walkways (sidewalks/multi-use trails)) may be dedicated to the City upon final completion thereof in accordance with the City’s subdivision ordinances and acceptance by the City.

As noted above, roadways, streets and alleys within Old Overton are privately owned and maintained by the applicable Association. The use of such roadways, streets and alleys by the public is granted by recorded easement document. The upkeep and maintenance of such roadways, streets and alleys is the responsibility of various Associations. The street/subdivision design standards and regulations for the private roadways, streets and alleys within Old Overton shall be generally the same as subdivision regulations of the City. However, LPJV may request that the City allow certain road designs that differ from the current Subdivision Regulations of the City. Such differences would typically include such things as reduced rights-of-way, reduced pavement widths, eliminations of curbs and gutters, and variations in inlet types. Such design changes are intended to reduce the effects of the Remaining Undeveloped Land development on the environment and to allow for the reasonable development of topographically difficult land as is typical of many areas of the Remaining Undeveloped Land.

Where differences exist between the design as proposed and City standards, the differences will be noted on the plans submitted for approval before the Planning and Zoning Commission of the City as a part of the subdivision plat approval process (when required). Approval of such differences shall not be unreasonably withheld, assuming adequate provision is made for safety and for the access of emergency vehicles.

The overall development plan for Liberty Park contemplates using alleys to provide access to certain lots for better traffic control, safety and aesthetics.

Approval of the Remaining Undeveloped Land application shall not constitute approval of any such modification, each of which must be submitted to and approved by the Planning and Zoning Commission of the City as part of the subdivision plat approval process.

Typical Standards Employed Within Liberty Park

Street Right-of-Way (Common Area) Widths

Parkways 4 lane	100 feet
Parkways 2 lane	60 feet
Local streets	50 feet
Minor streets	40 feet (minimum)

Cul-de-sacs	96 foot diameter (minimum)
Alleys	20 feet

Notes: Rights of ways may have variable dimensions to accommodate variations in streetscapes due to median widths, walkways, or other improvements.

Street Pavement Widths

Standard street 24 feet of paving with 18” curb and gutter= 27 feet back-to back(b/b) width
 22 feet of paving with 30” valley gutter =27 feet b/b

Minor street width 20 feet of paving with 18” curb and gutter= 23 feet bib

20 feet of paving with 24” valley gutter= 24 feet b/b

20 feet of paving (no edge treatment)

*18 feet of paving plus 24” valley gutter = 22 feet b/b

* This section to be used where topographic constraints call for a reduced pavement and roadway cross-section. In no instance will less than 20' be allowed (measured to the center of the gutter, or to the face of the curb, as applicable).

Parkways 4 lane (2) lanes of 24 feet of paving with 18” curb and gutter = 27 feet b/b

Parkways 2 lane 24 feet of paving with 18” curb and gutter = 27 feet b/b

Bifurcated residential 14 feet of paving with 18” curb and gutter or 24” valley

Streets gutter

Alleys 16 feet of paving with no edge treatment

Cul-de-sac 96 foot diameter to back of gutter or curb (minimum)

Roadway Grades

Maximum roadway grades for roadways within Liberty Park shall normally not exceed 15%. Exceptions to this maximum shall be reviewed on a case by case basis and shall only be allowed where topographic considerations dictate.

IN WITNESS WHEREOF, LPJV has caused this Amendment Application to be executed
as of August 2, 2022.

LIBERTY PARK JOINT VENTURE, LLP
an Alabama limited liability partnership

By: Richard Mullen
Name: Richard Mullen
Title: Its MANAGER

TAB 1

Exhibit 6.9.2.3.c.
Revised Land Use District Map

[See Attached]

- LEGEND**
- a) THE URBAN CENTER AT LIBERTY PARK
 - b) FEDERAL RESERVE BANK OF ATLANTA
 - c) ENCOMPASS HEALTH
 - d) LIBERTY PARK BAPTIST CHURCH
 - e) LIBERTY PARK BAPTIST CHURCH
 - f) LIBERTY PARK BAPTIST CHURCH
 - g) LIBERTY PARK BAPTIST CHURCH
 - h) LIBERTY PARK BAPTIST CHURCH
 - i) LIBERTY PARK BAPTIST CHURCH
 - j) LIBERTY PARK BAPTIST CHURCH
 - k) LIBERTY PARK BAPTIST CHURCH
 - l) LIBERTY PARK BAPTIST CHURCH
 - m) LIBERTY PARK BAPTIST CHURCH
 - n) LIBERTY PARK BAPTIST CHURCH
 - o) LIBERTY PARK BAPTIST CHURCH
 - p) LIBERTY PARK BAPTIST CHURCH
 - q) LIBERTY PARK BAPTIST CHURCH
 - r) LIBERTY PARK BAPTIST CHURCH
 - s) LIBERTY PARK BAPTIST CHURCH
 - t) LIBERTY PARK BAPTIST CHURCH
 - u) LIBERTY PARK BAPTIST CHURCH
 - v) LIBERTY PARK BAPTIST CHURCH
 - w) LIBERTY PARK BAPTIST CHURCH
 - x) LIBERTY PARK BAPTIST CHURCH
 - y) LIBERTY PARK BAPTIST CHURCH
 - z) LIBERTY PARK BAPTIST CHURCH

- UNDEVELOPED LAND USE**
- PB- PLANNED BUSINESS (UNDEVELOPED)
 - PR-1- PLANNED SINGLE-FAMILY RESIDENTIAL (UNDEVELOPED)
 - PNC- PLANNED NEIGHBORHOOD COMMERCIAL (UNDEVELOPED)

- DEVELOPED LAND USE**
- PB- PLANNED BUSINESS
 - PR-1- PLANNED SINGLE FAMILY RESIDENTIAL
 - PR-2- PLANNED MULTIFAMILY RESIDENTIAL
 - PO- PLANNED OFFICE
 - PI- PLANNED INDUSTRIAL
 - PNC- PLANNED NEIGHBORHOOD COMMERCIAL

NOTE: THIS PLAN IS CONCEPTUAL IN NATURE AND WILL BE UPDATED AS MORE DEFINITIVE AS MORE DEFINITIVE INFORMATION IS PLANNED UNIT DEVELOPMENT (PUD) ORDINANCE.

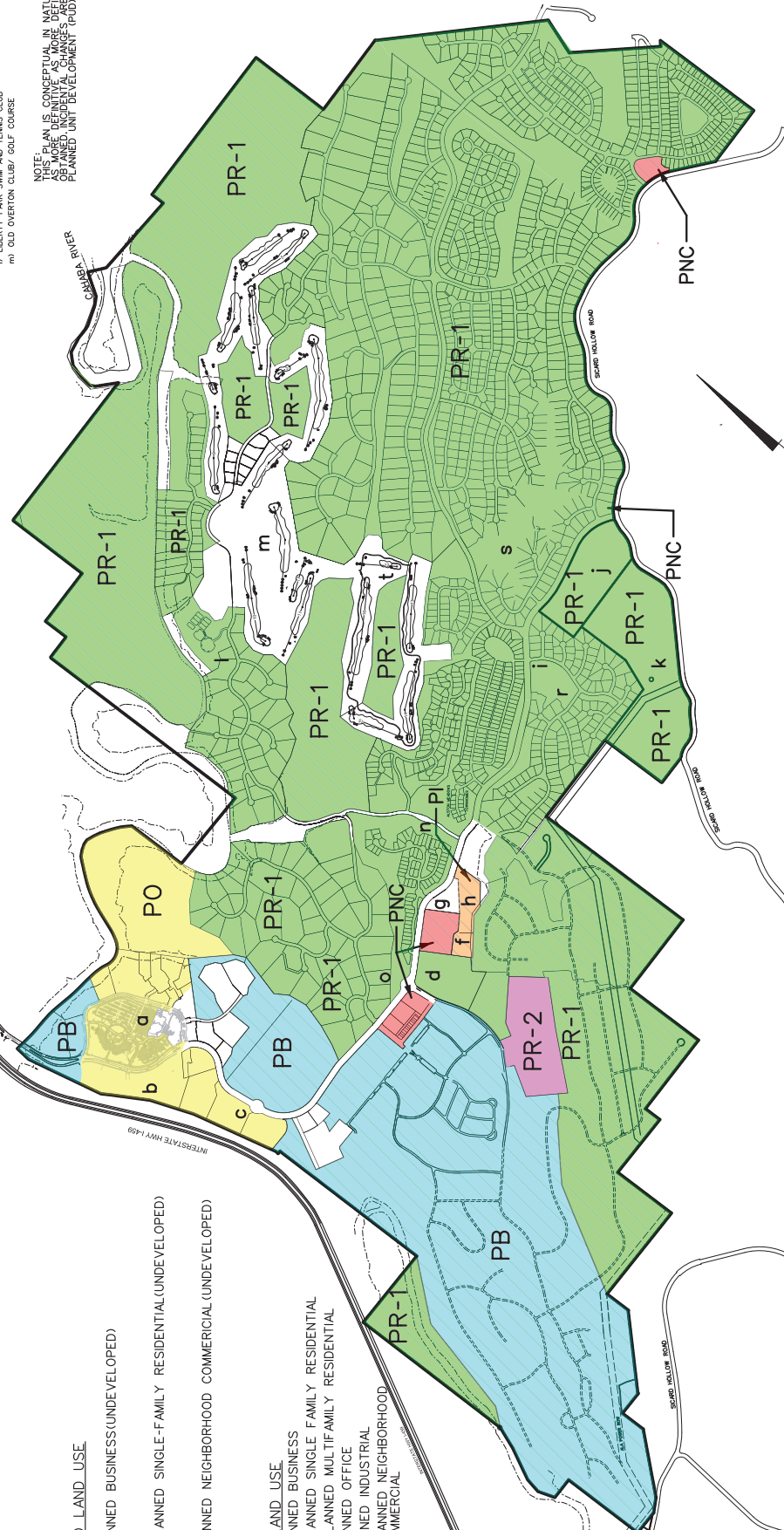
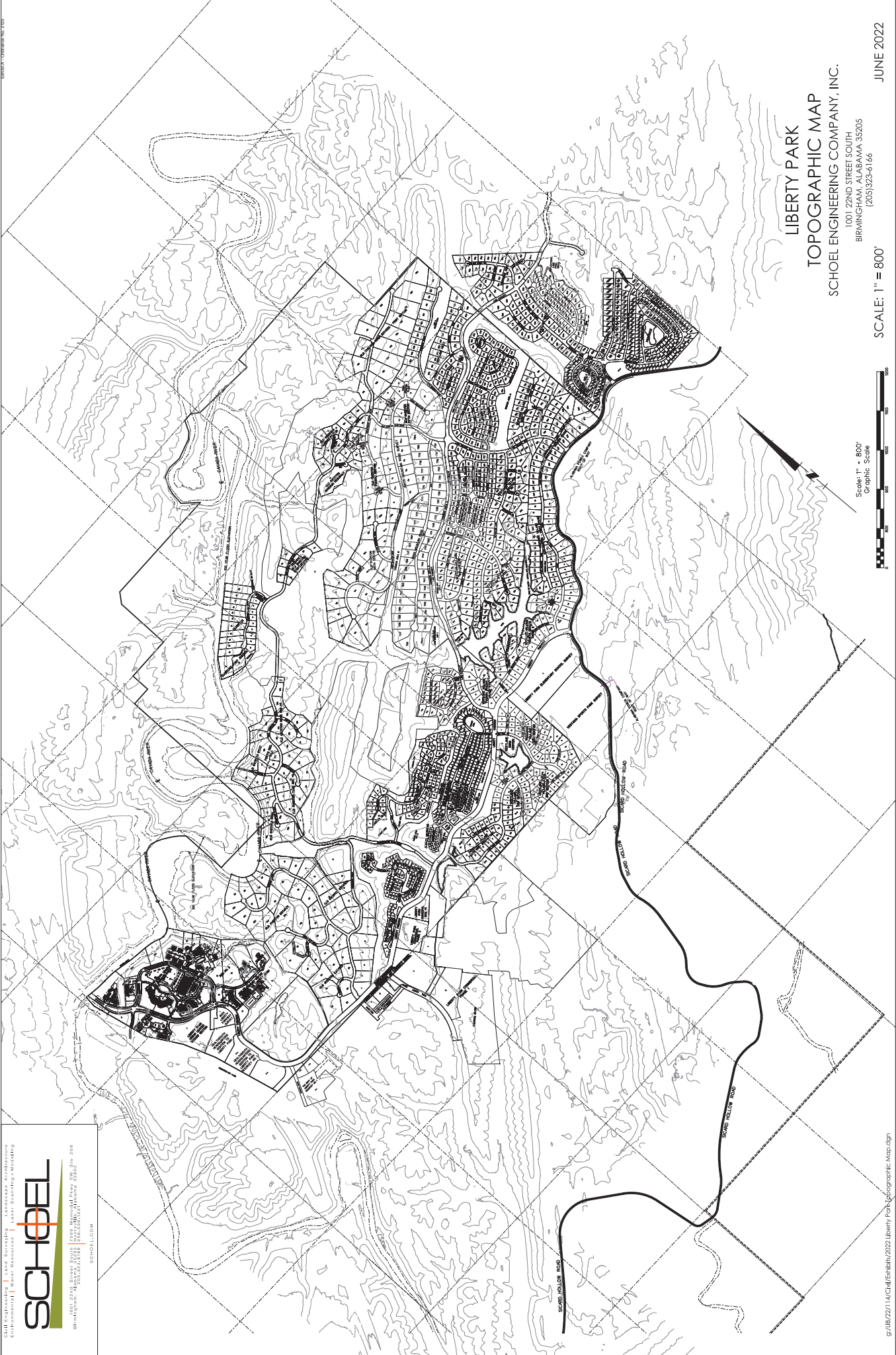


EXHIBIT 6.9.2.3.c.(1)
 LIBERTY PARK
 2022 REVISED LAND USE DISTRICT MAP
 SCHOEL ENGINEERING COMPANY, INC.
 1001 22ND STREET SOUTH
 BIRMINGHAM, ALABAMA 35205
 (205) 323-4166
 SCALE: 1" = 800'
 JUNE 2022

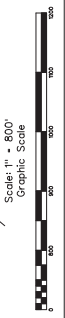
TAB 2

**Exhibit 6.9.2.3.c.
Revised Site Topographical Map**

[See Attached]



LIBERTY PARK
TOPOGRAPHIC MAP
 SCHEDEL ENGINEERING COMPANY, INC.
 1001 22ND STREET SOUTH
 BIRMINGHAM, ALABAMA 35205
 (205) 323-4166



SCALE: 1" = 800'

TAB 3

Exhibit 6.9.2.4.a.
Depiction and Legal Description of Remaining Undeveloped Land

[See Attached]

1001 27th Street South
 Birmingham, AL 35205
 205.323.6100 | 205.323.6100
 SCHOEL.COM

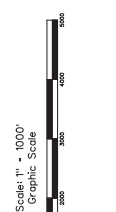
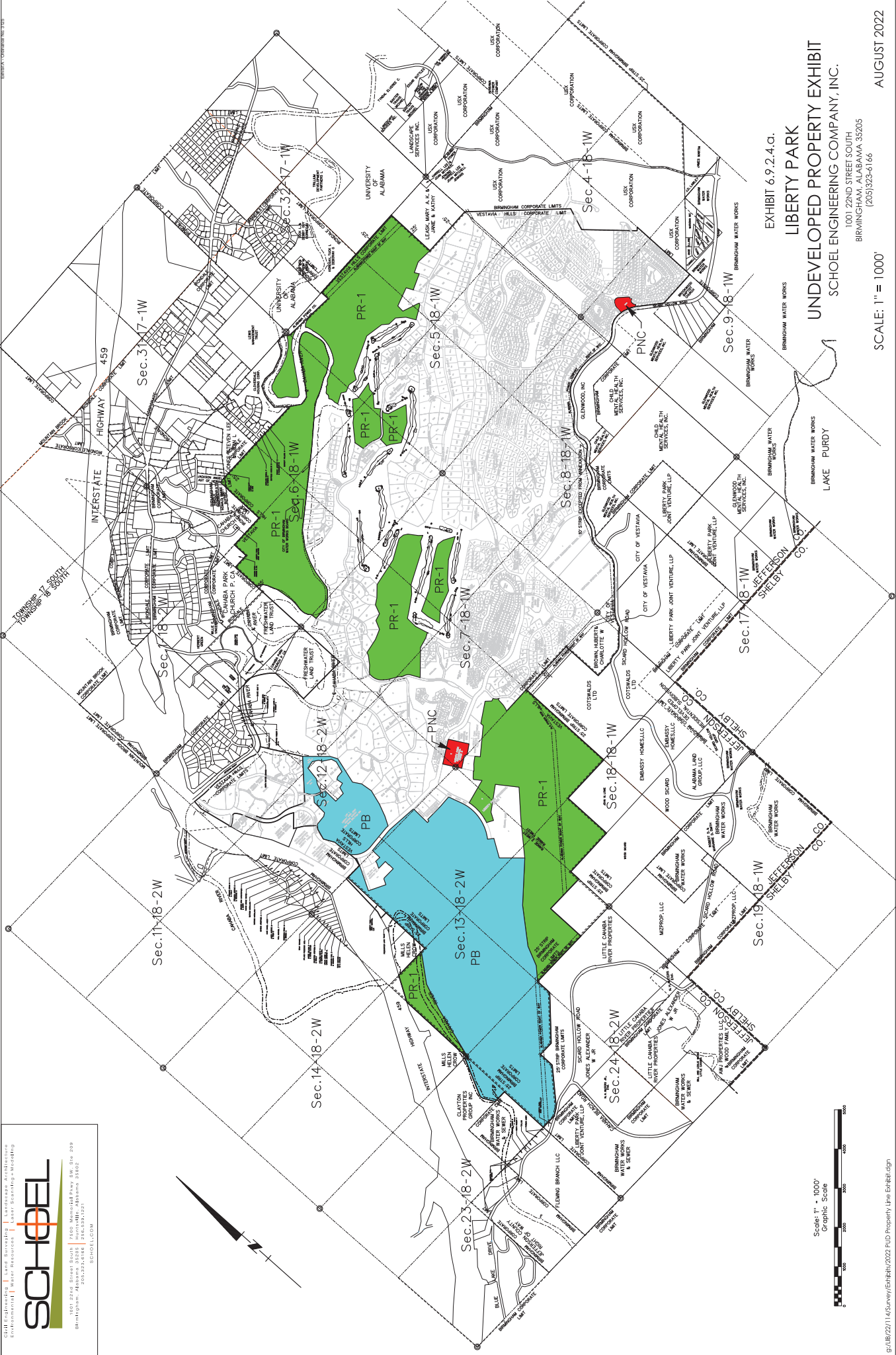


EXHIBIT 6.9.2.4.c.
LIBERTY PARK
UNDEVELOPED PROPERTY EXHIBIT
SCHOEL ENGINEERING COMPANY, INC.
 1001 27th Street South
 Birmingham, Alabama 35205
 (205) 323-6166

EXHIBIT 6.9.2.4.a.

**LEGAL DESCRIPTION
LIBERTY PARK
UNDEVELOPED PROPERTY**

Lot 1, Liberty Park Joint Venture Survey, as recorded in Map Book 256, Page 69 in the Probate Office of Jefferson County, Alabama.

Lot 1K, Corporate Woods Addition to Liberty Park Resurvey No. 6, as recorded in Map Book 248, Page 46 in the Probate Office of Jefferson County, Alabama.

Lot 1G-A and Lot 1G-B, Corporate Woods Addition to Liberty Park Resurvey No. 5, as recorded in Map Book 230, Page 52 in the Probate Office of Jefferson County, Alabama.

Lot 2, Liberty Park Commercial Phase 1, as recorded in Map Book 192, Page 63 in the Probate Office of Jefferson County, Alabama.

Lot 2, Liberty Park Commercial Phase 2, as recorded in Map Book 194, Page 25 in the Probate Office of Jefferson County, Alabama.

AND the following acreage, broken down by Section, Township and Range:

Section 12, Township 18 South, Range 2 West

That part of the Southwest 1/4 and the Southeast 1/4 being bounded on the North by Liberty Parkway, on the East by Lot 1-C, The Bray at Liberty Park Resurvey No. 1, as recorded in Map Book 252, Page 4 in the Probate Office of Jefferson County, Alabama, and bounded on the East by Iron Drive.

That part of the Southwest 1/4 bounded on the North by Liberty Parkway, bounded on the East by Highwall Drive, and bounded on the West by the Corporate Limits of the City of Birmingham.

Section 13, Township 18 South, Range 2 West

The East 1/2 of the Northwest 1/4, less and except Lots 1-A, 1-B and 1-C, The Bray at Liberty Park Resurvey No. 1, as recorded in Map Book 252, Page 4 in the Probate Office of Jefferson County, Alabama, Highwall Drive, and that portion lying within the Corporate Limits of the City of Birmingham.

That part of the Northeast 1/4 being bounded on the North and East by Iron Drive, Lime Street, and South Liberty Road, and by Lot 3, Liberty Park Commercial Phase 1, as recorded in Map Book 192, Page 63 in the Probate Office of Jefferson County, Alabama. Also, that part of the Northeast 1/4 lying Southeast of said Lot 3, Liberty Park Commercial Phase 1.

The Southwest 1/4, less and except that portion lying within the right-of-way of Interstate Highway I-459 or lying within the Corporate Limits of the City of Birmingham.

The West 1/2 of the Southeast 1/4, less and except that portion lying within the Corporate Limits of the City of Birmingham.

The Northeast 1/4 of the Southeast 1/4.

The Northern 280 feet of the Southeast 1/4 of the Southeast 1/4, less and except that portion lying within the Corporate Limits of the City of Birmingham.

The Western 280 feet of the Southeast 1/4 of the Southeast 1/4, less and except that portion lying within the Corporate Limits of the City of Birmingham.

Section 23, Township 18 South, Range 2 West

That part of the Northeast 1/4 of the Northeast 1/4 lying East of the Centerline of the Cahaba River.

Section 24, Township 18 South, Range 2 West

The Northwest 1/4 of the Northwest 1/4, less and except that portion lying within the Corporate Limits of the City of Birmingham.

The Southwest 1/4 of the Northwest 1/4 lying Northwesterly of a line lying 325 Feet more or less Southeasterly of and parallel to the diagonal of said 1/4 - 1/4 Section, less and except that portion lying within the Corporate Limits of the City of Birmingham.

The Northeast 1/4 of the Northwest 1/4 lying Northwesterly of a line lying 325 Feet more or less Southeasterly of and parallel to the diagonal of said 1/4 - 1/4 Section, less and except that portion lying within the Corporate Limits of the City of Birmingham.

Section 5, Township 18 South, Range 1 West

The West 1/2 of the Northeast 1/4 lying North of Old Overton River Estates First Sector, as recorded in Map Book 208, Page 53 and North of Lot 413-A, Old Overton River Estates First Sector Resurvey No. 1, as recorded in Map Book 244, Page 23, both in the Probate Office of Jefferson County, Alabama, less and except that portion lying within the Corporate Limits of the City of Birmingham. Also, that part of the Southwest 1/4 of the Northeast 1/4 lying between Lot 414 and Lot 413-A of the respective aforementioned record plats.

That part of the Northeast 1/4 lying North of the boundary of Old Overton Club Golf Course and East of the Cahaba River, less and except the North 200 feet, more or less, of the Northwest 1/4 of the Northwest 1/4 (owned by Alabama Power Company), less and except Lot 413-A, Old Overton River Estates First Sector Resurvey No. 1, as recorded in Map Book 244, Page 23 in the Probate Office of Jefferson County, Alabama, and less and except that portion lying within the Corporate Limits of the City of Birmingham.

That part of the Northwest 1/4 lying West of the centerline of the Cahaba River.

That part of the Southwest 1/4 of the Northwest 1/4 lying South and West of the boundary of Old Overton Club Golf Course.

That part of the West 1/2 of the Southwest 1/4 lying West of the boundary of Old Overton Club Golf Course, less and except that part lying within the right-of-way of Old Overton Club Drive.

Section 6, Township 18 South, Range 1 West

That part of the Southeast 1/4 of the Northeast 1/4 being bounded on the North and West by the boundary of Old Overton Club Golf Course.

That part of the Southeast 1/4 of the Northeast 1/4 being bounded on the South by the boundary of Old Overton Club Golf Course and bounded on the North and West by the Cahaba River.

That part of the South 1/2 of the Northeast 1/4 lying North of the centerline of the Cahaba River, less and except that portion lying within the Corporate Limits of the City of Birmingham.

The Northeast 1/4 of the Northeast 1/4 lying South of the centerline of the Cahaba River, less and except that portion lying within the Corporate Limits of the City of Birmingham.

The Northwest 1/4 of the Northeast 1/4 lying East of the centerline of the Cahaba River, less and except that portion lying within the Corporate Limits of the City of Birmingham.

The Southeast 1/4 of the Northwest 1/4 Southeasterly of a line lying 850 feet, more or less, Northwesterly of the diagonal line of said 1/4 - 1/4, less and except that portion lying in the Corporate Limits of the City of Birmingham.

That part of the Southwest 1/4 lying North of the centerline of the Cahaba River, less and except a parcel being 400 feet by 400 feet, more or less, lying in the Northwest corner, and less and except that portion lying in the Corporate Limits of the City of Birmingham

That part of the Northwest 1/4 of the Northwest 1/4 lying North of the centerline of the Cahaba River.

That part of the East 1/2 of the Southeast 1/4 being bounded on the Northwest by the boundary of Old Overton Club Golf Course, bounded on the West by a Resurvey of Old Overton First Sector, as recorded in Map Book 182, Page 57 in the Probate Office of Jefferson County, Alabama, and bounded on the South by the boundary of Old Overton Club Golf Course, less and except that part lying within the right-of-way of Old Overton Club Drive.

Section 7, Township 18 South, Range 1 West

That part of the Northwest 1/4 of the Northwest 1/4 lying North of the centerline of the Cahaba River.

That part of the Northwest 1/4 bounded on the Northwest by Old Overton Ridge Resurvey No. 3, as recorded in Map Book 180, Page 87 in the Probate Office of Jefferson County, Alabama, and the boundary line of Old Overton Club Golf Course, bounded on the Southeast by the boundary line of Old Overton Club Golf Course, Tartan Glen Resurvey No. 1, as recorded in Map Book 184, Page 7 and Tartan Glen, as recorded in Map Book 182, Page 44, both in the Probate Office of Jefferson County, Alabama, and bounded on the East by Old Overton Club Drive.

That part of the Southeast 1/4 of the Northwest 1/4 bounded on the North, West, and South by the boundary lines of Old Overton Club Golf Course.

Two parcels in the Northeast 1/4 both bounded on the Northwest, East, and Southeast by the boundary lines of Old Overton Club Golf Course.

That part of the North 1/2 of the Southwest 1/4 being bounded on the Southeast by Tartan Glen, as recorded in Map Book 182, Page 44 in the Probate Office of Jefferson County, Alabama, and on the Southwest by Old Overton Club Drive.

That part of the South 1/2 of the Southwest 1/4 being bounded on the Northwest by Amended Map Liberty Park Waste Water Treatment Plant Survey, as recorded in Map Book 237, Page 89 in the Probate Office of Jefferson County, Alabama, and by the boundary line of Willow Lake, bounded on the East by Lake Run Drive and by Vestlake Village First Sector - First Addition Resurvey No. 1, as recorded in Map Book 193, Page 47 in the Probate Office of Jefferson County, Alabama, less and except that portion lying within the Corporate Limits of the City of Birmingham.

Section 9, Township 18 South, Range 1 West

That part of the Northwest 1/4 of the Northwest 1/4 bounded on the South by Sicard Hollow Road, bounded on the West by Liberty Park Lane, bounded on the Northeast by Provence Drive, and bounded on the East by Provence – Phase I, as recorded in Map Book 236, Page 40 in the Probate Office of Jefferson County, Alabama, less and except that portion lying within the Corporate Limits of the City of Birmingham.

Section 18, Township 18 South, Range 1 West

That part of the Northwest 1/4 bounded on the West and Northwest by Liberty Park Commercial Phase 1, as recorded in Map Book 192, Page 63, Liberty Park Commercial Phase 2, as recorded in Map Book 194, Page 25, and Amended Map Liberty Park Waste Water Treatment Plant Survey, as recorded in Map Book 237, Page 89, all in the Probate Office of Jefferson County, Alabama, less and except that portion lying within the Corporate Limits of the City of Birmingham.

The Northwest 1/4 of the Southwest 1/4, less and except that portion lying within the Corporate Limits of the City of Birmingham.

TAB 4





Exhibit 6.9.2.4.h.

Proposed Open Space Network

[See Attached]

1100 27th Street South | 35208 Memorial Park SW, Ste 500
 Birmingham, AL 35243 | 205.323.4166 | 205.323.4167
 SCHOEL.COM

Environmental | Water Resources | Land Scaping & Lighting

- KEY**
-  EXISTING RECREATION FACILITY / PARK
 -  PROPOSED RECREATION FACILITY
 -  PROPOSED PARK/TOT LOT
 -  OPEN SPACE

NOTE: THIS PLAN IS CONCEPTUAL IN NATURE AND WILL BE UPDATED AS THE PROJECT DEVELOPS. ANY CHANGES OBTAINED UNDER THE PLANNED UNIT DEVELOPMENT (PUD) ORDINANCE.

- LEGEND**
- A) THE URBAN CENTER AT LIBERTY PARK
 - B) FEDERAL RESERVE BANK OF ATLANTA
 - C) BAPTIST HEALTH SYSTEMS
 - D) LIBERTY PARK BAPTIST CHURCH
 - E) COLONIAL GRAND APARTMENTS AT LIBERTY PARK
 - F) MORGAN TECHNOLOGY CENTER
 - G) MUNICIPAL SERVICES
 - H) WASTE WATER TREATMENT PLANT AND POOL
 - I) VESTLAKE COMMUNITIES FAMILY PARK
 - J) VESTAVIA HILLS ELEMENTARY
 - K) VESTAVIA HILLS SPORTS COMPLEX
 - L) LIBERTY PARK SWIM AND TENNIS CLUB
 - M) OLD OVERTON CLUB/ GOLF COURSE

- N) GATE AT OLD OVERTON CLUB DRIVE- MAN ENTRANCE
- O) GATE AT FOUNDERS DRIVE
- P) FUTURE GATE
- Q) WILLOW GATE
- R) PARK LAKE
- S) GOLF COURSE
- T) GOLF COURSE LAKE

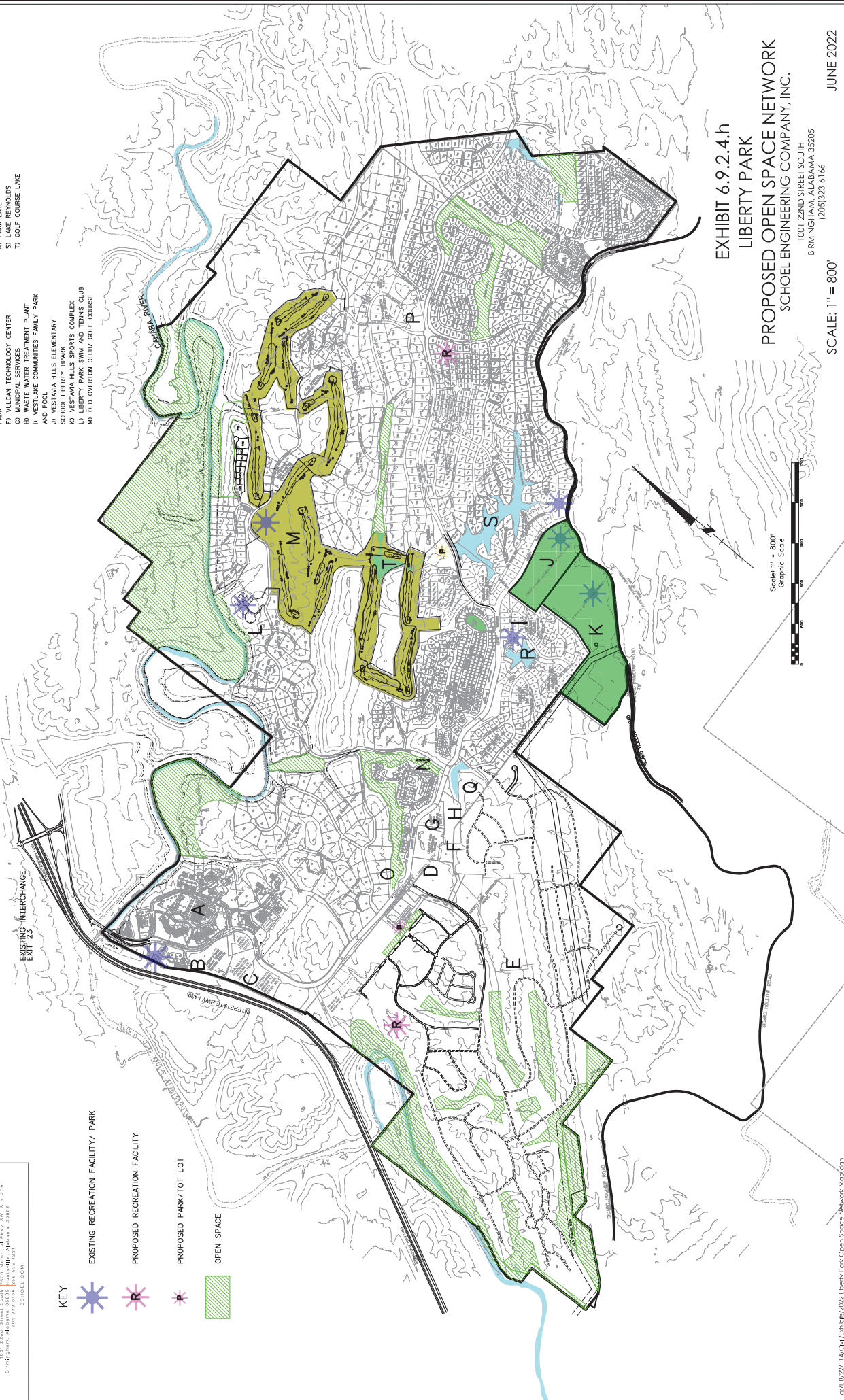


EXHIBIT 6.9.2.4.h
LIBERTY PARK
PROPOSED OPEN SPACE NETWORK
SCHOEL ENGINEERING COMPANY, INC.
 1001 22ND STREET SOUTH
 BIRMINGHAM, ALABAMA 35205
 (205)323-4166
 SCALE: 1" = 800'
 JUNE 2022

RESOLUTION NUMBER 5417

A RESOLUTION AUTHORIZING THE INSTALLATION OF A NEW SUPPORT STRUCTURE FOR A SMALL CELL FACILITY TO BE LOCATED IN THE RIGHT-OF-WAY ADJACENT TO CERTAIN PROPERTIES IN THE CITY OF VESTAVIA HILLS

WHEREAS, on December 17, 2018, the City Council adopted and approved Ordinance 2814A to adopt regulations for small cell technology facilities (“Nodes”) in the City of Vestavia Hills, Alabama; and

WHEREAS, §2.B.7 recommends that said Nodes shall be collocated when possible, however, when not possible the request shall be recommended by the City Manager and then approved by the City Council following a public hearing; and

WHEREAS, on the 1st day of June, 2022, Acquanetta Love, on behalf of Crown Castle Fiber, LLC, submitted applications for a new support structure to be located in the right-of-way (“ROW”) adjacent to the following properties as detailed in Exhibit A which is attached and incorporated into this Resolution Number 5417 as if written therein; (1) 2701 Anna Steele Lane; and

WHEREAS, a sign was erected on the ROW and the surrounding property owners were notified of a public hearing to be held on October 24, 2022 regarding said new support request; and

WHEREAS, the City Manager and the City Staff have reviewed the application and recommend approval of said request; and

WHEREAS, the Mayor and the City Council feel it is in the best public interest to accept the recommendation and authorize installation of said new support structure.

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

1. The Mayor and City Council hereby accept the recommendation of the City Manager and authorize the installation of a new support structure to be located in the ROW adjacent to (1) 2701 Anna Steele Lane as detailed in the supporting information marked as Exhibit A, attached to and incorporated into this Resolution 5417 as if written fully therein; and
2. This Resolution shall become effective immediately upon adoption and approval.

DONE, ORDERED, ADOPTED and APPROVED this the 24th day of October, 2022.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CITY OF VESTAVIA HILLS

1032 MONTGOMERY HIGHWAY
VESTAVIA HILLS, ALABAMA 35216

OFFICIAL NOTICE OF A PUBLIC HEARING

September 26, 2022

This is an OFFICIAL NOTICE to inform you of the time, date and other details of the public hearing which will be held in the Vestavia Hills City Hall on the subject as follows:

TIME/DATE OF HEARING: 6:00 P.M. October 24, 2022 Monday

PLACE OF HEARING: Vestavia Hills City Hall
1032 Montgomery Highway

BOARD: Vestavia Hills City Council

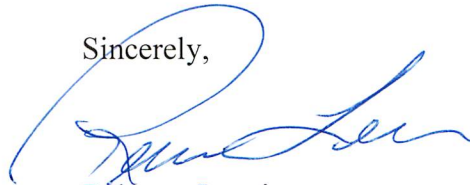
ACTION REQUESTED: Consideration of Installation of 45' Utility Pole with 6'6" embedment to be placed within the public right-of-way for Node Placement, Small Cell Wireless Facility

LOCATION OF PROPERTY: ROW adjacent to 2701 Anna Steele Lane; See Enclosed Details for location and visual

NAME OF APPLICANT: Crown Castle Fiber LLC

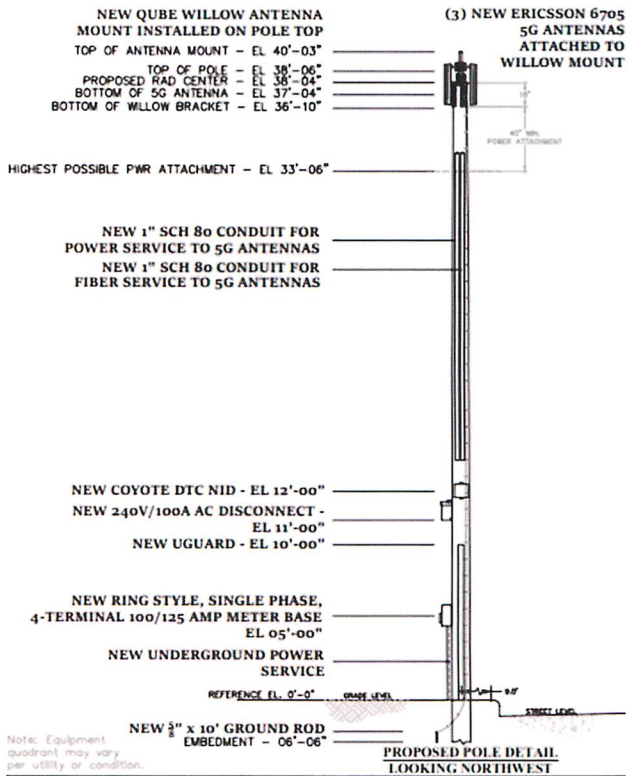
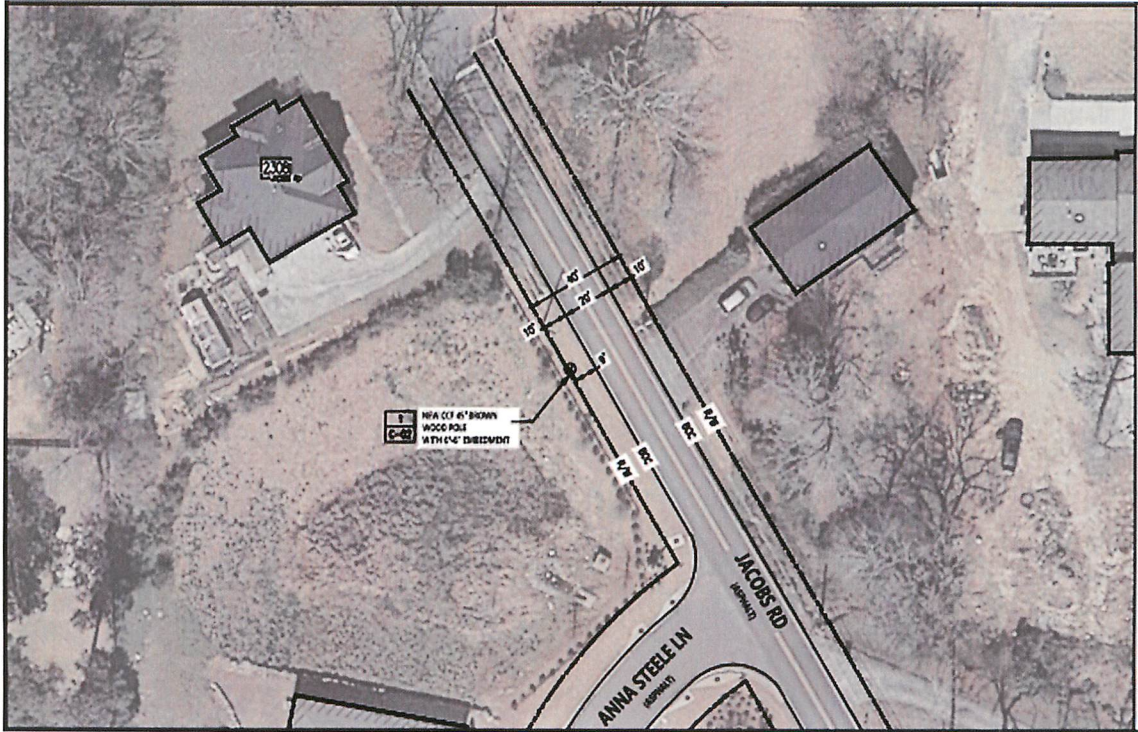
REPRESENTED BY: Acquanetta Love

Sincerely,



Rebecca Leavings
City Clerk

INDIVIDUALS WITH DISABILITIES NEEDING SPECIAL SERVICES TO PARTICIPATE IN APPLICATIONS, ACTIVITIES, PROGRAMS OR SERVICES ARE REQUESTED TO COORDINATE THEIR NEEDS IN ADVANCE, WHEN TIME PERMITS. IF SPECIAL ACCOMMODATIONS ARE REQUIRED, PLEASE CONTACT THE CITY CLERK, (205) 978-0179.



RESOLUTION NUMBER 5418

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

WITNESSETH THESE RECITALS

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

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

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

1. The City Manager is hereby authorized to sell or dispose of the above-referenced surplus personal property; and
2. This Resolution Number 5418 shall become effective immediately upon adoption and approval.

DONE, ORDERED, APPROVED and ADOPTED on this the 10th day of September, 2022.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

MEMORANDUM

TO: Jeff Downes, City Manager
FROM: Daniel Tackett, Library Deputy Director
RE: Surplus City Property
DATE: October 18, 2022

This memo requests that the Vestavia Hills City Council adopt a resolution declaring the following Library furniture as surplus at the October 24, 2022 City Council meeting.

- 4 – White leather lounging chairs
- 2 – Green cloth lounging chairs
- 10 – Mesh desk chairs
- 12 – Leather office chairs
- 2 – Wooden decorative boxes
- 2 – Wooden decorative barrels
- 1 – Portable stage

If you have any questions or concerns, please contact me at 205.978.3683. Thank you.

ORDINANCE NUMBER 3134

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER A LEASE AGREEMENT WITH LONGFORD LLC TO LEASE A FACILITY TO BE UTILIZED AS THE CITY'S PUBLIC WORKS LOCATION

WHEREAS, the City of Vestavia Hills wishes to relocate the City's Public Works Department in a centralized area of the City and;

WHEREAS, the City Manager has located a property and facilities that would adequately work for the department needs and uses; and

WHEREAS, the City Manager had negotiated a Lease Agreement ("the Agreement") with Longford LLC to lease the buildings and property. A copy of the Agreement is marked as Exhibit A, attached to and incorporated into this Ordinance Number 3134 as if written fully therein; and

WHEREAS, the Mayor and City Council feel it is in the best public interest to accept the City Manager's recommendation to lease said premises pursuant to the terms of the Agreement detailed in the attached Exhibit A.

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

1. The Mayor and City Manager are hereby authorized to execute and deliver the lease agreement detailed in Exhibit A; and
2. A copy of the lease agreement shall be submitted and maintained in the Office of the City Clerk' and
3. This Ordinance Number 3134 shall become effective immediately upon adoption and approval.

DONE, ORDERED, ADOPTED and APPROVED this the 24th day of October, 2022.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

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- | | |
|-------------|-------------------------|
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| Exhibit B | Landlord's Improvements |
| Exhibit C | Sign Criteria |

LEASE AGREEMENT

THIS LEASE AGREEMENT (hereinafter referred to as the "Lease") made and entered into this _____ day of _____, 2022 by and between Longford LLC with an address of P.O. Box 43312, Vestavia Hills, Alabama, 35243 (hereinafter referred to as "Landlord"), and City of Vestavia Hills whose address is, _____, Birmingham, Alabama (hereinafter referred to as "Tenant").

Section 1. LEASED PREMISES

(a) Landlord hereby leases to Tenant and Tenant hereby rents from Landlord the following described premises (hereinafter referred to as the "Leased Premises") situated in Jefferson County, Alabama, to-wit:

Real Property consisting of approximately 15,280 square feet of Buildings along with _____ acres of yard, parking lot, fencing and landscaping, located at 3224 Cahaba Heights Road, Vestavia, AL 35243, as a part of the Acton Center (hereinafter referred to as the "Acton Center") as shown on the attached **Exhibit "A"**. The location and boundaries of the Leased Premises are identified and outlined on the Site Plan attached hereto as **Exhibit "A-1"** and made a part hereof.

(b) Notwithstanding **Exhibit "A-1"**, Landlord shall not be deemed to, and does not represent or warrant to Tenant that the Acton Center has or will have any specified tenant or tenants, tenant mix, or type or types of business therein, or that the locations or dimensions of the premises of any other tenants of the Acton Center, nor the design or layout of the Acton Center, are exactly as indicated on **Exhibit "A-1"**, and Landlord expressly reserves the right to increase, reduce or change the number, dimensions and locations of the walks, buildings parking areas and other facilities in any manner whatsoever as Landlord shall deem proper and reserves the right to make alterations or additions to, and to build additional stories on the buildings in which the Leased Premises are contained and to add buildings adjoining the same or elsewhere in the Acton Center.

(c) For all purposes under the Lease, the term "floor area" of the the Acton Center (as shown on the attached Exhibit "A") shall be 24,454 square feet. In computing the leasable area of the Acton Center or the Leased Premises no deductions shall be made for columns, partitions, stairs or other structures or equipment. Landlord reserves the right to alter the total square footage in the Acton Center in the event Landlord alters, reconstructs, or rebuilds, the Acton Center.

Section 2. COMPLETED DOCUMENT AND WAIVER: The submission of the Lease for examination by Tenant does not constitute an offer or option to lease the Leased Premises, nor is it intended as a reservation of the Leased Premises for the benefit of Tenant. On the contrary, it is expressly understood that the Lease shall not be effective or binding upon the parties until it is fully and properly executed by Tenant and Landlord.

Section 3. LENGTH OF TERM: The term of the Lease shall be for Five years, starting on the Commencement of Term, unless sooner terminated as herein provided.

Section 4. COMMENCEMENT OF TERM: The term of the Lease shall commence Thirty (30) days after delivery of possession of the Leased Premises to Tenant for commencement of Tenant's work. If the Lease commences on a day other than the first day of a month, the term shall commence on the first day of the following month.

Section 5. SECURITY DEPOSIT: Tenant shall pay Landlord \$ N/A as security for the faithful performance of all the terms and conditions of the Lease. In no event shall Landlord be obligated to apply the Security Deposit on rent or other charges in arrears or on damages for failure to perform the terms and conditions of the Lease by Tenant. Application of the Security Deposit to the arrears of rental payments or damages shall be at the sole option of Landlord, and the right to possession of the Leased Premises by Landlord for nonpayment of rent or other charges or for any other reason shall not in any event be affected by the Security Deposit

(a) Security Deposit is to be returned to Tenant when the Lease is terminated or expires and the Leased Premises delivered to Landlord, according to the terms of the Lease, to the extent not applied toward the payment of rent or other charges in arrears or toward the payment of damages which are suffered by Landlord by reason of any breach of the terms and conditions of the Lease by Tenant.

(b) The Security Deposit will draw no interest for the credit of Tenant.

(c) In the event that Landlord repossesses the premises because of the default of Tenant or because of the failure by Tenant to carry out the terms and conditions of the Lease, Landlord may apply the Security Deposit on all damages suffered to the date of repossession and may retain the balance of the Security Deposit to apply on damages that may occur or be suffered thereafter by reason of default or breach of Tenant. Landlord shall not be obligated to hold the Security Deposit in a separate fund but may commingle the Security Deposit with other funds of Landlord.

Section 6. RENT: Tenant covenants and agrees that it will pay Landlord as fixed minimum rent for the Leased Premises during the term of the Lease, as follows:

(a) A monthly fixed minimum rent payable in equal monthly installments of \$ 11,651.00 per month, in advance, on the first day of each month during the term of the Lease without any set offer deduction whatsoever. The obligation to pay the fixed minimum rent hereunder shall begin on the commencement date of the term of the Lease. Tenant shall pay the prorata monthly portion of the fixed minimum rent for any fractional period of a month included in the term of the Lease. Such proration shall be based on a thirty (30) day month and shall be due and payable at the beginning of such fractional period. Tenant hereby agrees to pay interest on all delinquent rental charges of every type and nature specified in the Lease at the rate of 5% per month. Such interest shall accrue from a date ten (10) days after the original due date to the date of actual payment.

Section 7. ADDITIONAL RENT: In addition to the foregoing fixed minimum rent, all other payments hereunder to be made by Tenant to Landlord shall be deemed to be and shall become additional rent hereunder whether or not the same be designated as such and shall be due and payable on demand or together with the next succeeding installment of fixed minimum rent, whichever shall first occur. Landlord shall have the same remedies for failure to pay "additional rent" as for nonpayment of rent.

Section 8. NO PARTNERSHIP: Landlord shall in no event be construed, held or become in any way or for any purpose a partner, associate or joint venturer of Tenant or any party associated with Tenant in the conduct of Tenant's business or otherwise.

Section 9. TENANT RELOCATION: Intentionally Deleted

Section 10. PLACE OF PAYMENTS AND DELIVERY OF REPORTS:

All rents and other payments payable hereunder by Tenant to Landlord shall be paid, in lawful money of the United States, to Landlord, at P.O. Box 43312, Vestavia Hills, AL 35243 and all reports required to be rendered to Landlord by Tenant shall be delivered to such address, unless Landlord shall otherwise designate by notice to Tenant pursuant to Section 40 of the Lease.

Section 11. DELIVERY OF POSSESSION.

The Leased Premises are leased as is without any further work required of Landlord, except that work outlined in **Exhibit "B"**. For all purposes of the Lease the date of delivery of possession of the Leased Premises to Tenant for completion of Tenant's work as outlined in **Exhibit "B"** shall be the date that Landlord notifies Tenant that the possession of the leased Premises is given Tenant. Delivery shall occur within Ninety (90) days from the Effective Date of the Lease.

Section 12. ALTERATIONS: Tenant shall have the right to make such non-structural alterations to the interior of the building as it may desire, provided, however, that any repairs or alterations undertaken by Tenant shall not impair the structural safety of the building and provided that Tenant notifies Landlord in writing prior to the initiation of such repairs or alterations. Landlord, however, reserves the right to enter upon said premises and to make such repairs and to do such work on said premises as Landlord may deem necessary or proper or that Landlord may be lawfully required to make, with the least disturbance to Tenant. Landlord reserves the right to visit and inspect the Leased Premises at all reasonable times during the term hereof and show space to prospective tenants during the last six (6) months of the term hereof if Tenant does not exercise the option to renew within the notification period.

Section 13. TENANT'S INSTALLATIONS: Tenant shall, at Tenant's cost and expense, at all times during the term of the Lease keep the Leased Premises equipped with all trade equipment, furniture, operating equipment, furnishing, fixtures, floor coverings and exterior signs and any other equipment necessary for the proper operation of Tenant's business. Tenant shall not do any construction work or alterations, nor shall Tenant install any equipment other than unattached movable trade fixtures, without first obtaining Landlord's written approval and consent. Tenant shall present to Landlord plans and specifications for such work at the time approval is sought. Any alterations, additions, improvements, and fixtures installed by Tenant to the Leased Premises, other than unattached movable trade fixtures, furniture, and decorations, shall upon the expiration or earlier termination of the Lease become the property of Landlord. Unattached movable trade fixtures shall not include, among other things, store front, doors or gates, plumbing, electrical, wall and ceiling electrical fixtures, sprinklers, and heating, ventilating and air conditioning systems. No item of whatever nature not actually purchased and installed by Tenant shall be removed. Provided Tenant is not in default hereunder, Tenant may upon the expiration or termination of the Lease, remove unattached movable trade fixtures, furniture and decorations installed by Tenant, and Tenant shall completely and satisfactorily repair any and all damage to the Leased Premises resulting from such removal. Any such personal property of Tenant not removed within five (5) days following notice by Landlord to Tenant to remove the same shall, at Landlord's option, become the property of Landlord.

Section 14. USE OF PREMISES: Tenant covenants to use the Leased Premises solely for the purpose of City offices and maintenance and storage facilities, and for no other use

or purpose.

Section 15. OPERATING OF BUSINESS: Tenant covenants at all times during the lease term, except when and to the extent the Leased Premises are untenable by reason of fire or other casualty, or condemnation, to: (a) conduct its business in the Leased Premises in a high grade and reputable manner so as to help establish and maintain a good reputation for the Acton Center; and (b) keep the Leased Premises and exterior and interior portions of windows, doors and all glass and plate glass in a neat, clean, sanitary and safe condition.

Section 16. LAWS, WASTE OR NUISANCE: Tenant shall, at its own cost and expense: (a) comply with all governmental laws, ordinances, orders and regulations affecting the Leased Premises now in force or which hereafter may be in force; (b) comply with and execute all rules, requirements and regulations of Landlord's insurance carriers and other organizations establishing insurance rates; (c) not suffer, permit or commit any waste or nuisance; (d) keep the Leased Premises equipped with all safety appliances required by Tenant's use of the Leased Premises; and (e) procure all licenses and permits required for Tenant's use of the Leased Premises.

Section 17. SIGNS, AWNINGS AND CANOPIES: Tenant shall, at Tenant's cost and expense, purchase identification signs for the exterior of Tenant's store front as designated by Landlord, and shall install and maintain them, in good condition and repair. Such signs shall comply with the design criteria set forth in **Exhibit "C"**. Other than the foregoing identification signs, Tenant shall not place or suffer to be placed or maintain any sign, awning or canopy in, upon or outside the Leased Premises or in the Acton Center.

Section 18. ASSIGNMENT AND SUBLETTING: Tenant shall not assign, mortgage or encumber the Lease, in whole or in part, or sublet all or any part of the Leased Premises without the prior written consent of Landlord. Landlord's decision to withhold such consent, for whatever reason, if any, shall be absolute and binding on Tenant. Landlord shall have the right to arbitrarily withhold consent at its sole discretion, and both parties acknowledge that this has been separately considered and bargained for. The consent by Landlord to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting. This prohibition against assigning or subletting shall be construed to include a prohibition against any assignment or subletting by operation of law. Notwithstanding any assignment or subleases, Tenant shall remain fully liable and shall not be released from any of Tenant's obligations or liabilities under the Lease. If Tenant is a corporation and if any transfer, sale, pledge or other disposition of the common stock shall occur, or power to vote the majority of the outstanding capital stock be changed, then Tenant shall so notify Landlord and Landlord shall have the right, at its option, to terminate the Lease upon five (5) days' notice to Tenant. However, in the event Tenant sells its business, Landlord, subject to approval of the new owner's financial statements, at Landlord's discretion, will not unreasonably withhold its consent to the assignment of the Lease to such new owner.

Section 19. REPAIRS:

(a) Landlord shall not be required to make any repairs or improvements of any kind to the Leased Premises except Landlord shall keep the foundation and roof of the Leased Premises and the structural soundness of the exterior walls thereof in good repair and condition, unless any such necessary work is required because of damage caused by any act or omission of Tenant, its employees, agents, invitees, licensees or contractors in which case Tenant

shall be liable for the cost thereof as additional rent. Notwithstanding the provisions of this paragraph of the Lease to the contrary, Landlord shall not be responsible or liable at any time for any loss or damage to Tenant's merchandise, equipment, fixtures or other personal property of Tenant or Tenant's business.

(b) Except for repairs required by subsection (a) of this Section to be performed by Landlord, Tenant shall, at its own cost and expense, keep in good order, repair and condition the Leased Premises and the fixtures and equipment in, on, above or under and appurtenances thereto, including, but not limited to, the exterior and interior windows, doors and entrances, store fronts, showcases, floor covering, interior walls, columns and partitions and lighting, plumbing and sewage facilities and lighting fixtures, electrical wiring, conduits, water pipes and water closets, and heating, ventilating and air conditioning equipment, and shall replace any glass which may be broken or damaged. Tenant, at its expense, shall obtain a biannual service contract for repairs and maintenance of the heating and air conditioning systems that conforms to the warranty requirements of said systems or self-perform preventative maintenance of HVAC systems consistent with said warrant requirements. So long as Tenant stays current with all biannual maintenance, Landlord will be responsible for any repairs or replacement of all HVAC units in excess of \$1,000.00 per occurrence. If Landlord replaces a unit, that unit will no longer be included in the aggregate cap.

(c) If Tenant refuses or neglects to make repairs required hereunder to be made by Tenant, or if repairs are required by reason of the act or omission of Tenant, Tenant's employees, agents, invitees, licensees or contractors, Landlord shall have the right, but shall not be obligated, to make such repairs on behalf of and for the account of Tenant. In such event, such work shall be paid for by Tenant as additional rent promptly upon receipt of a bill therefore.

Section 20. MECHANICS', MATERIALMEN'S AND OTHER LIENS:

Should any mechanics', materialmen's or other liens be filed against the Leased Premises or any part thereof for any reason whatsoever by reason of Tenant's acts or omissions or because of a claim against Tenant, Tenant shall cause the same to be canceled and discharged of record by bond or otherwise within ten (10) days after notice by Landlord.

Section 21. UTILITY SERVICES AND CHARGES:

Landlord and Tenant shall share the cost of utilities with Tenant paying 80% of office and warehouse monthly bills. Other buildings are separately metered and are the sole responsibility of Tenant.

Section 22. USE OF COMMON AREAS AND FACILITIES:

Landlord shall make available from time to time such areas and facilities of common benefit to the tenants and occupants of the Acton Center as Landlord shall deem appropriate. All common areas and other facilities in or about the Acton Center provided by Landlord shall be subject to the exclusive control and management of Landlord. Landlord shall have the right to construct, maintain and operate lighting and other facilities on all said areas and improvements; to police the same; to change the area, level, location and arrangement of parking areas and other facilities; to restrict parking by tenants, their officers, agents and employees; to close all or any portion of said areas or facilities to such extent as may be legally sufficient to prevent a dedication thereof or the accrual of any person or the public therein; and to close temporarily all or any portion of the parking areas or facilities to discourage non-customer parking. Landlord shall operate and maintain the common areas and facilities in such manner as Landlord in its discretion shall determine, and Landlord shall have full right and authority to employ and discharge all personnel with respect thereto. Tenant agrees to abide by such regulations as Landlord may from time to time impose with respect to the use of the common areas and facilities. "Common areas and facilities," whether such terms are used individually or collectively,

shall mean all areas, space, equipment, signs and special facilities provided by Landlord for the common or joint use and benefit of the tenants in the Acton Center, and their employees, agents, servants, customers and other invitees, including, but not limited to parking areas, access roads, driveways, retaining walls, landscaped areas, truck service way, sidewalks, security, fire protection, and parcel pick-up stations. Landlord's intention is to maintain the common areas in a quality manner.

Section 23. COSTS OF MAINTENANCE:

(a) Tenant shall pay to Landlord for each lease year (or a proportionate amount for any portion of a lease year) a prorata portion, as hereinafter defined, of the Operating Costs for such period of the Acton Center and facilities. Tenant's prorata portion shall be computed by multiplying such Operating Costs by a fraction, the numerator of which shall be the number of square feet of the Leased Premises and the denominator of which shall be the total number of square feet of leasable floor area in the Acton Center.

(b) The charge required hereunder shall be paid by Tenant in monthly installments in such amounts as are estimated and billed by Landlord at the beginning of each twelve-month period commencing and ending on dates designated by Landlord, each such installment being due on the first day of each month; provided, however, that in the event Landlord's costs are increased, Landlord shall have the right to increase said monthly installments during any lease year. After the end of each twelve-month period, Landlord shall furnish Tenant a statement in reasonable detail of the actual Operating Costs and there shall then be an adjustment between Landlord and Tenant, with payment to or repayment by Landlord, as the case may require, to the end that Landlord shall receive the entire amount of Tenant's said share of Operating Costs, and no more.

(c) For the purposes of this Section, "Operating Costs" of the Acton Center and facilities shall mean the total costs and expenses incurred by Landlord, and at Landlord's discretion, in operating, maintaining and repairing the Acton Center and facilities including, but not limited to costs and expenses of security and fire protection, costs and expenses of planting, replanting and replacing flowers and landscaping; water and sewer service charges; trash removal; insurance premiums including, but not limited to, premiums for public liability, property damage, fire, extended coverage, malicious mischief, vandalism, insurance, unemployment taxes, and social security taxes; fees for audits; permits and licenses; costs and expenses for suppliers; all charges for utility services, costs and expenses of maintaining lighting fixtures, including the cost of light bulbs and electric current; depreciation of machinery and equipment and rents paid for the leasing of equipment; repair and/or replacement of water lines, sanitary sewer lines and storm water lines serving the property; and administration costs equal to fifteen percent (15%) of the total cost of operating, maintaining and repairing the common areas and facilities. – PLEASE PROVIDE THE LAST TWELVE MONTHS OF SUCH "OPERATING COSTS" FOR FINANCIAL PLANNING PURPOSES.

Section 24. INDEMNITY LIABILITY INSURANCE PAYMENT OF COSTS AND EXPENSES:

(a) Tenant shall, during the entire term of the Lease at Tenant's own expense, keep in force by advance payment of premiums, public liability insurance in an amount of not less than \$1,000,000.00 for injury to or death of one person or as a result of one occurrence and not less than \$3,000,000.00 for injury to or death of more than one person as a result of one occurrence and for damage to property in the amount of \$100,000.00 or single limit of \$3,000,000.00, insuring Tenant, Landlord and Landlord's employees (as additional assured) against any liability that may accrue against them or either of them on account of any occurrences in or about the demised premises during the term or in consequence of Tenant's occupancy thereof and resulting in personal injury or death or property damage. Tenant

shall on request furnish to Landlord certificates of all insurance required under this paragraph.

(b) Landlord shall not be responsible or liable for any loss or damage to Tenant's business or property that may be occasioned by or through the acts or omissions of persons occupying adjacent, connecting, or adjoining premises. Landlord shall not be responsible or liable for any defect, latent or otherwise, in any building in the Acton Center or in any of the equipment, machinery, utilities, appliances or apparatus therein, nor shall Landlord be responsible or liable for any injury, loss or damage to any person or to any property of Tenant by or from leakage, steam or snow or ice, running, backing up, seepage or the overflow of water or sewage or for any injury or damage caused by or resulting from acts of God or the elements, or for any injury or damage caused by or resulting from any defect or negligence in the occupancy, construction, operating or use of any premises, building, machinery, apparatus or equipment in or about the Acton Center by any person or by the acts of negligence of any occupant of any premises constituting a part of the Acton Center.

(c) Tenant covenants to provide on or before the commencement date of the term hereof and keep in force (at Tenant's expense) during the term of the Lease, a comprehensive public liability policy of insurance insuring Landlord and Tenant against any liability occasioned by accident on or about the Leased Premises. Such policy shall be written by an insurance company acceptable to Landlord, with limits in the amount of One Million Dollars (\$1,000,000) for personal injury or death in respect of any one occurrence and One Million Dollars (\$1,000,000) for property damage. The original policy or a certificate thereof together with evidence of payment thereof shall be delivered to Landlord. Tenant shall renew said policy not less than thirty (30) days prior to the expiration date thereof from time to time and furnish said renewals and evidence of payment therefore to Landlord. Said policy shall contain a thirty (30) day notice of cancellation to Landlord.

(d) Tenant certifies that its employees are covered by the Alabama Workmen's Compensation Law and regulations, which law and regulations shall be followed by Tenant in all appropriate cases. Tenant further certifies that it shall respond in accordance with applicable law to any claims, suits or actions for damages in connection with loss of life, bodily or personal injury or property damage arising from or out of any occurrence in, upon, at or from the Leased Premises.

Section 25. LANDLORD'S INSURANCE: Landlord shall procure and maintain insurance covering fire and such other risks as are from time to time included in standard extended coverage endorsements, insuring not less than ninety percent (90%) of the full insurable value (excluding foundation and excavation costs and costs of underground flues, pipes and drains) of the improvements and betterments installed by Landlord in the Acton Center or such greater coverage as may be required by Landlord's mortgagee. Tenant shall reimburse Landlord on a prorata basis for the costs of such insurance computed as follows: on the first day of each month during the lease term, Tenant shall pay to Landlord as additional rent in advance, the amount obtained by (i) computing one-twelfth of all insurance premiums as above provided payable during each lease year in which the month in question falls, and (ii) multiplying the sum resulting from the computation in step (i) by a fraction, the numerator of which fraction shall be the floor area of the Leased Premises and the denominator of which fraction shall be the floor area of all leasable space in the Acton Center. If, on the first day of the month in question the amount of insurance premiums payable during the then current lease year shall not have been determined by Landlord, then the amount payable by Tenant shall be based on the amount of the premiums for the immediately preceding lease year, subject to immediate adjustment when the amount of such premiums for the then current year shall be determined, and Tenant shall pay such adjustment when billed by

Landlord. Further, Tenant shall not stock, use or sell any article or do anything in or about the Leased Premises which may be prohibited by Landlord's insurance policies, or which may increase any insurance rates and premiums on the Acton Center, or the Leased Premises or the building of which they are a part. Tenant shall pay as additional rent within ten (10) days after written demand accompanied by the insurance premium notice or other satisfactory evidence of the amount due, any increase in Landlord's insurance resulting from the nature of Tenant's occupancy of the Leased Premises, and such increase as a result of Tenant's use shall not be charged other tenants of the Acton Center and vice versa. -PLEASE PROVIDE THE PAST EXPENSE HISTORY FOR LANDLORD INSURANCE PREMIUMS

Section 26. REAL ESTATE TAXES: Tenant agrees to pay in advance to Landlord in equal monthly installments or an annual payment as additional rent Tenant's prorata share of all real estate taxes and assessments levied or assessed directly or indirectly against the land, buildings, or other improvements in the Acton Center, as the same may be enlarged or reduced from time to time. Tenant's prorata share shall be the total of such taxes and assessments multiplied by a fraction, the numerator of which fraction shall be the floor area of the Leased Premises and the denominator of which shall be the floor area of all the leasable space in the Acton Center. In addition, Tenant shall promptly pay when due, or make reimbursement to Landlord for, all taxes imposed upon Tenant's rent, lease and business operation, including, without limitation all, value added taxes, documentary taxes and other taxes assessed upon the consideration to be received by Landlord for the Lease.,

Section 27. FIRE OR OTHER CASUALTY: If the Leased Premises shall be damaged by fire or other casualty covered by Landlord's fire and extended coverage insurance, but the Leased Premises are not thereby rendered wholly untenable, the Lease shall not terminate, but Landlord shall, with reasonable diligence, at Landlord's expense, not exceeding the amount of insurance proceeds actually received and retained by Landlord, cause such damage to be repaired and the fixed minimum rent payable hereunder shall be abated proportionately as to the portion of the Leased Premises rendered untenable bears to the total area of the Leased Premises, from the date of such casualty until the Leased Premises are rendered wholly tenable provided, however, if the Leased Premises; (a) by reason of such occurrence are rendered wholly untenable; or (b) are damaged as a result of a risk not covered by Landlord's insurance; or (c) if the building of which the Leased Premises are a part (whether or not the Leased Premises are damaged) is damaged to the extent of fifty percent (50%) or more of the floor area of the building; or (d) if the Acton Center (whether or not the Leased Premises are damaged) is damaged to the extent of fifty percent (50%) or more of the Acton Center then in any event Landlord may either elect to repair the damage or may terminate the Lease by giving Tenant notice of termination within ninety (90) days after the occurrence of such event, the termination to be effective as of the date of the occurrence of such event. Rents payable hereunder shall be paid to the date of such termination and Landlord shall make an equitable refund of rents paid in advance. Unless the Lease is terminated by Landlord, when Landlord's repairs are substantially completed and upon notification of such substantial completion by Landlord to Tenant, Tenant shall promptly repair and re-fixture the interior of the Leased Premises into a condition at least equal to that existing prior to its destruction or casualty and the proceeds of all insurance carried by Tenant on its property and improvements shall be held in trust by Tenant for the purpose of said repair or replacement. If Tenant has closed, Tenant shall promptly reopen for business when the Leased Premises shall have been repaired. Nothing hereinabove shall impose upon Landlord any liability to repair, rebuild or replace any property belonging to Tenant.

(a) Tenant agrees to purchase at Tenant's expense and carry at all times fire and extended coverage insurance, by a company licensed to do business in Alabama, in an amount adequate to restore and repair Tenant's property in, at or on the Leased Premises to its previous condition or better. Tenant will furnish Landlord certificates of such insurance.

Section 28. CONDEMNATION.

(a) Total. If the whole of the Leased Premises shall be taken by condemnation or other proceedings for any public or quasi-public use or purpose, then the Lease and the term hereof shall terminate as of the date Tenant is required to yield possession of the Leased Premises pursuant to such taking.

(b) Partial. If any part of the Leased Premises shall be taken as set forth in Section 28(a) and such partial taking shall render that portion not so taken unsuitable for the business of Tenant, then the Lease shall terminate as set forth in Section 28(a). If such partial taking is not sufficiently extensive to render the Leased Premises unsuitable for the business of Tenant, then the Lease shall continue in effect except that the fixed minimum rent shall be reduced in the same proportion that the floor area of the Leased Premises taken bears to the original floor area and Landlord shall, upon receipt of the award in condemnation, make all necessary repairs or alterations so as to constitute the Leased Premises a complete architectural unit, but in no event shall Landlord be required to spend for such work an amount in excess of the net amount received free and clear by Landlord as damages for the part of the Leased Premises so taken; provided however, if more than twenty percent (20%) of the floor area of the building of which the Leased Premises are a part shall be taken as aforesaid (whichever or not any portion of the Leased Premises is taken) Landlord may terminate the Lease by giving Tenant notice of termination within ninety (90) days after such taking, the termination to be effective as of the date Tenant is required to yield possession pursuant to such taking. If the Lease is terminated as provided in this Section, rents shall be paid to the day that possession is so taken by public authority and Landlord shall make an equitable refund of any rents paid by Tenant in advance.

(c) Award. Tenant shall not be entitled to and expressly waives all claim to any condemnation or other award for any such taking, whether whole or partial, and whether for diminution in value of the leasehold or to the fee, or otherwise, except that Tenant shall have the right, to the extent permitted by law and provided that the same shall not reduce Landlord's award, to claim from the condemner, but not from Landlord, such compensation as may be recoverable by Tenant in its own right for damage to Tenant's business and trade fixtures.

Section 29. DEFAULT BY TENANT.

(a) The happening of any one or more of the following events shall constitute a default under the Lease:

(i) Failure by Tenant to pay any rent or other payment or charge provided in the Lease to be paid by Tenant, as and when such payment becomes payable hereunder, and continuance of such failure for a period of ten (10) days after written notice to Tenant that such payment has not been received unless such failure has occurred twice in the immediately preceding twelve months, in which instance no notice shall be required.

(ii) Failure by Tenant to perform or observe any other agreement, covenant or condition required by the Lease to be performed or observed by Tenant, for a period of fifteen (15) days after written notice to Tenant of such default, or if more than fifteen (15) days shall be required because of the nature of such default, failure by Tenant to commence within said fifteen day period and thereafter to proceed diligently to cure such default; and

(iii) The filing of a petition in bankruptcy (including Chapter X and Chapter XI bankruptcy proceedings or any other reorganization proceedings under the Bankruptcy Act) by or against Tenant, where such petition is not dismissed within sixty (60) days from the filing thereof, or the adjudication of Tenant to be bankrupt.

(iv) The making of an assignment by Tenant for the benefit of any or all of its creditors;

(v) Appointment by a court of competent jurisdiction of a receiver for all or any part of the properties of Tenant where such receivership is not dismissed within sixty (60) days from such appointment;

(vi) Vacation by Tenant of all or any portion of the Leased Premises, or abandonment of the properties of Tenant;

(vii) The removal, or attempted removal from the Leased Premises, except in the usual course of business, of the goods, furniture, fixtures or other property of Tenant brought thereon;

(viii) The taking of Tenant's interest in the Lease by execution or other process of law in an action against Tenant.

(b) Whenever any such event of default shall have occurred or continues beyond the applicable period of time after any required notice has been received as provided in Section 29 (a) (i) or (a) (ii), as the case may be, Landlord shall have the right at Landlord's option, to immediately, or at any time thereafter, terminate the Lease by giving Tenant ten (10) days' notice of such termination and the Lease shall terminate on the date specified in such notice of cancellation, but Tenant shall remain liable hereunder as hereinafter provided. If the notice provided shall have been given and the Lease shall terminate as aforesaid or should Landlord elect not to terminate the Lease, in either event Landlord shall have the immediate right to re-enter the Leased Premises, with or without process of law, using such force as may be necessary, and remove all persons and property from the Leased Premises, and Landlord shall not be deemed guilty of trespassing or become liable for any loss or damage which may be occasioned thereby. Landlord shall have a lien for the payment of all costs and expenses, including attorney's fees and court costs, incurred by Landlord in taking the actions described in this Section;

(c) Should Landlord elect to re-enter, Landlord may make such alterations and repairs as may be necessary in order to relet the Leased Premises and may relet the Leased Premises or any part thereof for such time or terms (which may be for a term extending beyond the term of the Lease) and at such remit and upon such other terms and conditions as Landlord may deem advisable, applying the net rents received by Landlord from such reletting, first to the payment of Landlord's costs and expenses in dispossessing Tenant and in reletting the Leased Premises, including, but not limited to, attorney's fees, court costs, brokerage fees and the costs and expenses of such alterations and repairs, second, to the payment of rent and any other indebtedness of Tenant due and unpaid to Landlord hereunder, and the residue, if any, shall be held by Landlord and applied in payment of future rent as the same may become due and payable hereunder. If such remit received from such reletting during any month be less than that due to be paid hereunder during that month by Tenant, Tenant shall pay any deficiencies to Landlord. Such deficiency shall be calculated and paid monthly.

(d) In the event Landlord elects to terminate the Lease as provided herein, Landlord may recover from Tenant all damages Landlord may incur by reason of Tenant's default, including but not limited to, costs of repossession

the Leased Premises, attorney's fees and court costs, and including the worth at the time of such termination of the excess, if any, of the amount of rent and other charges provided herein to be paid by Tenant to Landlord for the remainder of the stated term of the Lease over the then reasonable rental value of the Leased Premises for the remainder of the stated term, all of which amounts shall be immediately due and payable by Tenant to Landlord.

(e) In determining the monthly rent which would be payable by Tenant in the event of re-entry by Landlord as provided by this Section, the annual rent for each year of the unexpired term shall be deemed to be (but only for the purpose of this Section) the average annual rental (computed upon the aggregate of the fixed minimum rent and other charges) for the period beginning with the commencement of the term of the Lease and ending with the date of reentry or for the three (3) full lease years next preceding the date of re-entry, whichever of the two periods is shorter.

(f) In addition to the rights and remedies of Landlord specified in this Section, Landlord shall, in the event of Tenant's default under the Lease, have such other rights and remedies as may be afforded by law or equity. The rights and remedies given Landlord under this Section are distinct, separate and cumulative and the exercise of any of them shall not be deemed to exclude Landlord's right to exercise any or all of the others.

(g) No re-entry by Landlord under the provisions of this Section shall bar the recovery of rent or damages for the breach of any of the covenants, agreements or conditions on the part of Tenant herein contained. The receipt of rent after breach or condition broken, or delay on the part of Landlord to enforce any right hereunder shall not be deemed a waiver or forfeiture of Landlord of any of the rights or remedies provided for herein.

(h) Landlord is not required to give notice of default and/or termination or re-enter the Leased Premises prior to the institution of any lawsuit against Tenant for breach of the terms or conditions of the Lease.

Section 30. SECURITY INTEREST IN PERSONAL PROPERTY OF TENANT. In addition to all Landlord's liens provided by the law of the State of Alabama, Tenant grants Landlord a security interest in, and a lien upon Tenant's interest in the Leased Premises and in the trade fixtures and equipment installed therein, furniture and inventory as security for the payment of rent, and performance of other obligations undertaken by Tenant in the Lease. Such lien shall be prior and superior to any and all other liens thereupon whatsoever, except that such lien shall be subordinate to Tenant's bank financing for its equipment and furnishings. Tenant agrees to execute any and all documents necessary for perfecting such security interest, at the sole discretion of Landlord.

Section 31. ACCESS TO PREMISES. Landlord shall have the right to place, maintain and repair all utility equipment of any kind in, upon and under the Leased Premises as may be necessary for the servicing of the Leased Premises or other portions of the Acton Center. Landlord shall also have the right to enter the Leased Premises at all times to inspect or to exhibit the same to prospective purchasers, mortgagees, and tenants and to make such repairs, additions, alterations and improvements as Landlord may deem desirable. Landlord shall be allowed to take all material in, to and upon the Leased Premises that may be required therefore without the same constituting an eviction of Tenant in whole or in part, and the rents reserved shall in no wise abate while said work is in progress by reason of loss or interruption of Tenant's business or otherwise and Tenant shall have no claim for damages. The provisions of this Section shall not be for the maintenance or repair of the Leased Premises or the building of which it is a part, except as otherwise herein specifically provided. During the three (3) months prior to the expiration of the Lease, Landlord may place upon the Leased Premises "For Rent" signs, which Tenant shall permit to remain therein, unless Tenant exercises an option

to renew.

Section 32. QUIET ENJOYMENT AND MORTGAGES. Landlord covenants that subject to Tenant's complying with all the terms and conditions of the Lease, Tenant shall have the peaceable and quiet possession of the Leased Premises during the term of the Lease. Landlord and Tenant agree that the Lease is and shall be subject and subordinate at all times to all ground leases, all mortgages, which may now or hereafter affect or relate to the real property of which the Leased Premises form the part, and all renewals, modifications, consolidations, participations, replacements and extensions thereof. The term "mortgages" as used herein shall be deemed to include, but in no way be limited to, trust indentures, deeds of trust and security deeds. Tenant agrees to attorn to any underlying ground lessor or mortgagee who shall succeed to Landlord's interest in the Lease upon request of such ground lessor or mortgagee, provided that Tenant's rights under the Lease shall continue in full force and effect and Tenant's possession be undisturbed so long as Tenant shall not be in default under the Lease.

(a) If any mortgagee requires that the Lease be prior rather than subordinate to any such mortgage or ground lease, Tenant shall promptly upon request therefore execute a document effecting and/or acknowledging such priority which document shall contain at the option of such mortgagee an attornment agreement to the mortgagee as Landlord in the event of foreclosure or to any party acquiring title through such mortgage in such event, provided that Tenant's rights under the Lease shall continue in full force and effect and Tenant's possession be undisturbed so long as Tenant shall not be in default under the Lease.

Section 33. FURTHER COVENANTS AND AGREEMENTS OF TENANT. Tenant further covenants and agrees to (a) receive and deliver goods and merchandise only by way of the rear of the Leased Premises or any other location designated by Landlord, and only at such times as may be designated for such purpose by Landlord; (b) store all trash and refuse in adequate containers within the Leased Premises, in a neat and clean condition so as not to be visible to the public and so as not to create any health or fire hazard and to attend to the daily disposal thereof at Tenant's expense and in a manner as may be directed by Landlord; (c) use and cause to be used plumbing facilities only for the purpose for which they are constructed and no foreign substance of any kind shall be thrown therein; (d) keep the outside areas immediately adjoining the Leased Premises clean and free from dirt and rubbish, and Tenant shall not place, suffer or permit any obstructions or merchandise in such areas; (e) not use the public or common areas in the Acton Center for business purposes and not distribute handbills or event advertising matter therein; (f) park Tenant's vehicles and cause Tenant's employees to park their vehicles only in those portions of the parking area, if any, designated for that purpose by Landlord; (g) not use or permit the use of any objectionable advertising medium such as, but not limited to, loud speakers, phonographs, public address systems, sound amplifiers, radio or broadcasts within the Acton Center which is in any way audible or visible outside the Leased Premises; (h) not burn trash or garbage in or about the Leased Premises, the Acton Center or within one mile of the outside radius of the Acton Center; (i) not place, suffer or permit displays, decorations or shopping carts on the sidewalk in front of the Leased Premises or on or upon any of the common areas in the Acton Center (j) not conduct or permit any going-out-of-business, fire, or auction sales on or about the Leased Premises; and (k) conform and cause Tenant's employees to conform to all rules and regulations which Landlord may adopt for the use and care of the Leased Premises, the building of which the Leased Premises are a part and the common areas and facilities of the Acton Center.

Section 34. UNAVOIDABLE DELAYS. In the event that either party hereto is rendered unable to carry out any obligations under the Lease, either wholly or in part, because of unavoidable delays, then such obligations shall be suspended during the continuance of any inability so caused, but for no longer period, and such cause shall, so far as

possible, be remedied with all reasonable dispatch. The term “unavoidable delay” as employed herein shall mean acts of God, strikes, lockouts, wars, insurrections, riots, epidemics, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraint of rules and people, civil disturbances, explosions, breakage or accidents to machinery, failure to obtain materials and supplies due to governmental regulations, and causes of like or similar kind, whether herein enumerated or not, and not within the control of the party claiming suspension, and which by the exercise of due diligence such party is unable to overcome; provided, however, notwithstanding any contrary provisions contained in this Section, no obligation of either party hereto shall be suspended where such obligation is for, or relates to the payment of money.

Section 35. SURRENDER AT END OF TERM. Upon the expiration of the term hereof, or sooner termination of the Lease, Tenant agrees to surrender and yield possession of the Leased Premises to Landlord, peacefully and without notice and in good order and condition. Tenant at its own cost and expense shall remove all property of Tenant and all alterations, additions and improvements which Lessor has required in writing to be removed upon the expiration or termination of the Lease and shall repair all damages to the Leased Premises caused by such removal and restore the Premises to the condition in which they existed immediately prior to the installment of the article so removed, normal wear and tear and acts of God accepted. Any property not so removed at the expiration of the term hereof shall be deemed abandoned by Tenant and may be retained by Landlord, as Landlord shall desire, but such of abandonment shall not relieve Tenant of its obligation to remove, repair and restore at its own expense, if required by Landlord. Tenant’s obligation to observe or perform this covenant shall survive the expiration or termination of the Lease.

Section 36. ESTOPPEL CERTIFICATES. At any time and from time to time, Tenant agrees, upon request in writing from Landlord, to execute, acknowledge and deliver to Landlord or mortgagee within ten (10) days of said notice a statement in writing certifying among other things, that the Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications) and the date to which the fixed minimum rent and other charges have been paid.

Section 37. WAIVER OF SUBROGATION. If the same can be done (and if payment of additional premium is required the party benefiting shall pay such additional premium), each party to the Lease shall require each of the insurers under policies of insurance which such party procures or maintains in relation to the Leased Premises the contents thereof to waive in writing any and all rights of subrogation which such insurer might otherwise have against the other party to the Lease or its agents or employees notwithstanding liability, expense, claim or damage to the other’s property or interest in respect to which and to the extent that said property or interest is covered by insurance, whether such loss or damage be occasioned by the negligence of such party, its servants, employees or otherwise. The parties hereto do hereby waive any and all right of recovery against each other for losses covered by such policies, provided the insurance companies issuing same shall waive subrogation rights.

(a) Notwithstanding any contrary provisions contained in this Section, this Section shall not apply to relieve Tenant of its obligation to repair, at Tenant’s cost and expense, as required by any other sections of the Lease.

Section 38. LANDLORD’S RIGHT TO CURE TENANT’S DEFAULTS. Landlord may, but shall not be obligated to, cure at any time, without notice, any default by Tenant under the Lease and whenever Landlord so elects, all costs and expenses incurred by Landlord in curing such default, together with interest from the time of billing at 5% per month or the highest rate permitted by law, whichever is lower, shall be paid by Tenant to Landlord on demand. In

the event Landlord cures any such default by Tenant pursuant to this paragraph, Tenant shall be given notice and right to cure, as provided in Section 29 hereof, before Tenant shall be declared in default under the Lease.

Section 39. NO WAIVER. Failure of Landlord to insist upon the strict performance of any provision of the Lease or any rules and regulations or to exercise any option shall not be construed as a waiver in the future of any such provision, rule or option. The receipt by Landlord of rent with knowledge of the breach of any provision of the Lease shall not be deemed a waiver of such breach. No provision of the Lease shall be deemed to have been waived by Landlord or Tenant unless such waiver be in writing and signed by Landlord. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly rent shall be deemed to be other than on account of the earliest rent then unpaid, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction. Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or to pursue any other remedy provided in the Lease. No waiver by Landlord in respect to one Tenant shall constitute a waiver in favor of any other Tenant in the Acton Center.

Section 40. NOTICES. Any notice and demand which may be or is required to be given under the Lease shall be in writing and sent by United States Certified or Registered Mail, postage prepaid, and shall be addressed (a) if to Landlord P.O. Box 43312, Vestavia Hill, AL 35243, and (b) if to Tenant, at the address shown above. Landlord and Tenant shall each have the right from time to time by giving written notice to the other, to change their respective above designated address and names of the parties to who notices, and demands are to be sent.

Section 41. LEASE BINDING, ETC. Except as otherwise expressly provided herein, the Lease and all provisions, conditions and agreements herein contained shall be binding upon and shall inure to the benefit of Landlord, Tenant, and their respective heirs, legal representatives, successors and assigns. Substantive and procedural law of the State of Alabama shall govern the Lease.

Section 42. MODIFICATION OF AGREEMENTS. There shall be no modification of this written Lease Agreement except in writing and signed by the party to be charged.

Section 43. PROFESSIONAL FEES AND OTHER COSTS. Tenant agrees to pay Landlord, or on Landlord's behalf, a reasonable attorney or other professional fee in the event Landlord employs an attorney or other professional for any of the following purposes to collect any rents due hereunder by Tenant to protect the interest of Landlord in the event that Tenant is adjudicated or adjudged bankrupt; legal process is levied upon the goods, furniture, effects or personal property of Tenant upon said Leased Premises or upon the interest of Tenant in the Lease or in said Leased Premises to prevent Tenant from violating or to rectify the violation of any of the terms, conditions, or covenants on the part of Tenant herein contained. Tenant further agrees to pay all other reasonable costs incurred by Landlord in securing the performance by Tenant of all said terms, conditions or covenants of the Lease. Said reasonable attorney's fees and other costs shall be not less than actual cost to Landlord for said services. Reasonable fees shall be deemed to be not less than the normal hourly rate or rates charged by Landlord's said professionals for other or similar work done by said professionals. The billing and collection of said professional fees and other costs shall not require Landlord filing suit against Tenant for the performance of the terms, conditions and obligations of said Lease. In the event of litigation under the Lease, the non-prevailing party will pay the reasonable attorney's fees and court cost of the prevailing party.

Section 44. CAPTIONS AND HEADINGS. The captions and headings of the and Sections of the Lease are for convenience only and shall not be considered or referred to in resolving questions of interpretation or

construction.

Section 45. TIME IS OF THE ESSENCE. Time is of the essence with respect to the performance of each of the covenants and agreements under the Lease.

Section 46. CONSTRUCTION OF TERMS.

(a) Printed parts of the Lease shall be as binding upon the parties hereto as other parts hereof. Parts of the Lease which are written or typewritten shall have no greater force or effect than, and shall not control, parts which are printed, but all parts shall be given equal effect. Tenant declares that Tenant has read and understands all parts of the Lease, including all printed parts hereof. If any provision contained in a rider, if any, is inconsistent with a printed provision, the rider provision shall control.

(b) Any provision or provisions of the Lease which may prove to be invalid, void, or illegal shall in no way affect, impair or invalidate any other provision hereof, and the remaining provisions hereof shall nevertheless remain in full force and effect.

Section 47. WAIVER REGARDING BILLINGS. Tenant's failure to object to any statement, invoice or billing rendered by Landlord within a period of thirty (30) days after receipt thereof shall constitute Tenant's acquiescence with respect thereto and shall render such statement invoice or billing due and payable by Tenant.

Section 48. NO PERSONAL LIABILITY OF LANDLORD. The term "Landlord" as used in the Lease means only the owner or mortgagee in possession for the time being of the building in which the Leased Premises are located or the owner of a leasehold interest in said building and/or the land thereunder (or the managing agent of any such owner or mortgagee) so that in the event of sale of said building or leasehold interests or an assignment of the Lease, or a demise of said building and/or land, Landlord shall be and hereby is entirely freed and relieved of all obligations of Landlord subsequently accruing.

(a) It is specifically understood and agreed that there shall be no personal liability of Landlord (nor Landlord's agent, if any) in respect to any of the covenants, conditions or provisions of the Lease. In the event of a breach or default by Landlord of any of its obligations under the Lease, Tenant shall look solely to the equity of Landlord in the Acton Center for the satisfaction of Tenant's remedies.

Section 49. HOLDING OVER.

(a) If Tenant holds over without Landlord's written consent after expiration or other termination of the Lease, or if Tenant continues to occupy the Leased Premises after termination of Tenant's right of possession pursuant to other provisions in the Lease, Tenant shall through the entire holdover period, pay rent equal to twice the rent which would have been applicable had the term of the Lease been continued through the period of such holding over by Tenant.

(b) No possession by Tenant after the expiration of the term of the Lease shall be construed to extend the term of the Lease unless Landlord has consented to such possession in writing.

Section 50. REPRESENTATIONS OF TENANT AND LANDLORD AS TO THE ENTIRETY OF THE AGREEMENT. ETC.: Tenant hereby represents to Landlord and Landlord hereby represents to Tenant that the Lease sets forth the entire agreement between the parties. Any prior conversation, understandings and/or oral agreements not herein reduced to writing, prior writings or any other item not contained herein are hereby merged herein and extinguished. Tenant represents to Landlord that it is entering into the Lease based solely on the writing contained herein and Tenant has not relied and is not relying on any representation, whether written or oral, not contained in writing in the Lease. Tenant further represents that Tenant will not assert in any way any claim that Landlord, its agents, or employees in any way represented, misrepresented, promised, agreed to, or had any understanding regarding the Lease of the Leased Premises not contained herein. Tenant represents that it has completely read and fully understands all the provisions of the Lease and Tenant was represented by competent counsel who read and/or explained all provisions to Tenant.

Section 51. STATEMENT AS TO NON-DISCRIMINATION.

Tenant agrees that it will not discriminate by segregation or otherwise against any person or persons because of race, religion, color, age, sex or national origin in furnishing, or by refusing to furnish to such person or persons the use of any and all services, privileges, accommodations, and activities provided on the Premises. It is agreed that Tenant's noncompliance with the provisions of this clause shall constitute a material breach of the Lease, in the event of which, Landlord may terminate this Lease.

Section 52. IMMIGRATION. By signing this Lease, the contracting parties affirm, for the duration of the Lease, that they will not violate federal immigration laws or knowingly employ, hire for employment or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the Lease and shall be responsible for the damages resulting therefrom.

Section 53. OPTION TO RENEW. Provided Tenant is not in default and is in full operation during the entire final year of the initial term of the Lease, Tenant, at its option, shall be entitled to renew the Lease for One (1) additional term of Five (5) Years each by giving a written notice of its intention to do so to Landlord not less than six (6) months before the end of the term of the Lease. The fixed monthly minimum rent during the renewal term shall be \$12,816.00.

Section 54. BROKERS.

(a) It is understood and agreed that Hydinger Stewart and Chew Commercial Properties, LLC as agent has represented Landlord in negotiating and securing the Lease with Tenant. Landlord and its successors in title to said real estate shall pay to agent a real estate commission as outlined in a separate agreement.

(b) Tenant represents and warrants that there are no claims for brokerage commissions or finder's fees other than as set forth in this Section, in connection with the Lease, and agrees to indemnify Landlord against and hold it harmless from all liability arising from any such claim, and attorney's fees, except with regard to Landlord's agent.

IN WITNESS WHEREOF, the parties have respectively executed the Lease the day and year first above-written.

LANDLORD: **Longford LLC**

BY: _____

ITS: _____

Date: _____

TENANT: **City of Vestavia Hills**

BY: _____

ITS: _____

Date: _____

BY: _____

ITS: _____

Date: _____

Exhibit "A"
(Acton Center)

Acton Center TOTAL SF 24,454



Exhibit "A-1"
(Leased Premises)

Building 1	2,500 SF
Building 2	900 SF
Building 3	9,000 SF
Building 4	2,880 SF (2 nd Floor)

TOTAL 15,280 SF



Exhibit "B"
(Landlord's Improvements)

- Sewer connections for all buildings with existing plumbing
- Landlord shall repaint the 2,500 sf offices located on the second floor of the office building with the existing wall color.

Exhibit "C"

SIGN CRITERIA

A. This sign criteria is designed to ensure continuity of signage within the Acton Center. The requirements contained herein are intended to provide adequate exposure for **Tenant's** merchandising and identification while maintaining the overall appearance critical to the success of the Acton Center.

B. **Tenant** is required to purchase its own signs and pay all costs for installation and any electrical service connections (to **Tenant's** individually metered service) as required.

C. **Landlord** reserves the right to review and approve or disapprove all proposed signs and/or graphic treatments governed by these criteria per **Landlord's** interpretation of these criteria, and to require revisions of any sign design which **Landlord** judges not in compliance.

D. The criteria described below shall be followed and maintained during the life of the Lease.

1. All signs must be fabricated as described below by a licensed sign contractor.
2. Each **tenant** shall supply three (3) copies of scaled drawings to **Landlord** or its designated consultant or agent for review.
3. One sign for each **tenant** is permitted on the brick fascia.
4. The one (1) permitted sign is limited to the trading name of **Tenant** or may be a descriptive phrase or word, such as, "Law Office" or "Dry Cleaners". No advertising copy or slogans are permitted, i.e., "Shoes for the Whole Family".
5. Signs shall consist of individual channel letters, numbers, or symbols with 5" returns fabricated using .040 gauge aluminum with 1/8" Rohm and Haas or equal plexiglass faces trimmed with 1" black jewelite trim.
6. Exterior returns of letters, numbers, or symbols shall be finished in black.
7. All letters, numbers, or symbols shall be illuminated using 13mm white neon installed on 1-1/2" tube supports, fabricated using Brilite glass. There will be no exceptions because of the variations in colors and intensity.
8. All individual letters, numbers, or symbols shall be mounted on 6" deep x 8" high aluminum raceway (or larger if required) centered behind copy. All wiring and transformers must be concealed in raceway. Raceways shall be finished with a color that matches to blend with brick is required.
9. Maximum height of single line of copy (letters, numbers, or symbols): 36".
10. Maximum length of sign: 75% of length of leased storefront or thirty feet, whichever is less.
11. Maximum area of sign: 1-1/2 square feet per linear foot of leased storefront, or ninety (90) square feet whichever is less. Area is figured as if a box enclosed all letters, numbers, symbols, and logos of sign design, including all spaces separating letters, numbers, symbols, and logos.
12. **Tenant** may choose any copy style, subject to approval by **Landlord**.
13. Sign fabrication shall comply with any applicable building codes and the National Electric Code, and all internal and external wiring, lighting, and other electrical devices shall bear the UL label. It is **Tenant's** responsibility to verify that his sign and its installation are in accordance with these requirements.
14. Electrical service connections and controls shall be the responsibility of **Tenant**. Electrical service for all **Tenant** signs shall connect to **Tenant's** individually metered electrical service.
15. All signs shall be mounted on the front fascia and centered top to bottom (below the brick band and above the precast concrete) and centered left to right. All fasteners shall be on non-corrosive material and concealed.
16. **Tenant** shall be permitted lettering on glass of front main entrance doors and on rear service doors as follows:
 - 1-1/2" vinyl computer generated die cut letters noting name of business and suite number and/or address.

17. **Tenant** shall be responsible for the removal of its signs upon termination of the Lease. Fascia and other building elements shall be returned to the original condition and all penetrations appurtenant to **Tenant's** sign installation shall be repaired by **Tenant** to the satisfaction of **Landlord**.
18. **Tenant** shall not erect, install, paint, or fix any signs, posters, cards, or other advertising medium to, upon, or above the exterior of the premises of the building, nor on the interior or exterior of the glass surface of the windows and doors, except as stated herein. **Tenant** shall be held liable and shall bear all costs for the removal and/or correction of sign installation and damage to building by signs that do not conform to the above sign criteria or those signs required to be removed by termination of lease. **Landlord** reserves the right to have all non-conforming signs removed regardless of state of erection.

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

E-Mail: patrickboone@bellsouth.net

September 20, 2022

By Electronic Mail

City Manager Jeffrey D. Downes
Vestavia Hills Municipal Center
P. O. Box 660854
Vestavia Hills, Alabama 35266-0854

In Re: Lease By and Between Longford, LLC, as "Landlord," and
The City of Vestavia Hills, Alabama, as "Tenant"

Dear Mr. Downes:

You have recommended that the City of Vestavia Hills, Alabama ("City") move its Public Works Department to the Acton Center at 3218 Cahaba Heights Road, Vestavia Hills, Alabama. Hydinger Stewart & Chew, as agent for G. Fred Acton and Marsha F. Acton (Longford, LLC), has prepared and submitted a proposed Lease of that property ("premises") by and between Longford, LLC, as "Landlord," and the City, as "Tenant." You have requested that I review the proposed Lease and provide you with my written legal opinion. The purpose of this letter is to comply with your request.

I. TRANSACTING BUSINESS WITH A MUNICIPALITY

Alabama law dictates how municipalities may transact business and establishes certain limitations and restrictions. Some of these limitations and restrictions are set forth below.

A. GENERAL POWERS OF MUNICIPALITIES: Municipalities and counties may exercise only the authority given to them by the Legislature. A municipality derives all of its power from the state and no municipality can legislate beyond what the state has either expressly or impliedly authorized. *Jefferson County v. Johnson*, 333 So.2d 143, 145 (Ala.1976) and *Arrington v. Associated General Contractors*, 403 So.2d 893, 902 (Ala.1981).

B. IN DEALING WITH MUNICIPAL CORPORATIONS OR ITS OFFICERS, ALL PERSONS ARE BOUND TO TAKE NOTICE OF THE EXTENT AND LIMITATIONS OF ITS CHARTER POWERS:

1. In 1911, the Supreme Court of Alabama decided the case of *General Electric Company v. Town of Fort Deposit*, 157 Ala. 179, 56 So. 802 (1911), and held that all persons are bound to take notice of the extent and limitations of charter powers in dealing with municipal corporations or their officers.

2. In *City of Enterprise v. Rawls*, 204 Ala. 528, 86 So. 374 (1920), the Court stated:

“Persons dealing with municipal governments or their officers or agents are bound to take notice of the powers and their limits conferred upon or exercisable by such governmental agencies and their administrators.”

3. *City of Leeds v. Town of Moody*, 319 So.2d 242 (1975).

C. MUNICIPAL REAL ESTATE TRANSACTIONS:

1. **Municipality May Enter Into Contracts:** Title 11-40-1, *Code of Alabama, 1975*, authorizes municipalities to contract and be contracted with.

2. **A Lease is a Contract:** *Ballentine Law Dictionary* defines the term “lease” as:

“lease (lē). A **contract** (*emphasis added*) for the possession and profits of lands and tenements on the one side, and a recompense of rent or other income on the other.”

3. **Municipalities May Acquire Real Estate:** Title 11-40-1, *Code of Alabama, 1975*, authorizes municipalities to acquire property by gift, devise or appropriation for any authorized municipal purpose.

4. **Municipalities May Sell Public Property:** Alabama law at Title 11-47-20, *Code of Alabama, 1975*, authorizes municipalities to sell property (real estate) not needed for public purposes.

5. **Municipalities May Lease Real Property:** Title 11-47-21, *Code of Alabama, 1975*, authorizes municipalities to lease, as a landlord, any of its real property not needed for public purpose.

6. **A Lease is an Interest in Land** A lease is an interest in land, within statute conferring power on city or town councils to acquire, by purchase, lands, or rights, easements or interests therein; and city could take tunnel by lease. Code 19409, Tit.37, §507. *King v. City of Mobile, et al*, 273 Ala. 109 (1961). This simply means that a municipality may be a tenant in a lease.

D. MUNICIPALITIES CANNOT SPEND PUBLIC FUNDS TO INDEMNIFY THIRD PARTIES:

1. **Constitution of Alabama of 1901:** Section 94, as amended by Amendments 112 and 558, of the Constitution of Alabama provides as follows:

“The Legislature shall not have power to authorize any county, city, town or other subdivision of this state to lend its credit or to grant public money or thing of value in aid of or to any individual, association or corporation whatsoever.”

In my opinion, it would be a violation of Article IV, Section 94(a) of the *Constitution of Alabama* for the City to indemnify a third party for actions, costs, expenses, damages and liabilities.

2. **Limits of Liability of Municipalities:** Section 11-93-2, *Code of Alabama, 1975*, establishes the maximum amount of damages recoverable against governmental entities. The recovery of damages under any judgment against a city shall be limited to \$100,000.00 for bodily injury or death for one person in any single occurrence and to \$300,000.00 in the aggregate where more than two persons have claims or judgments on account of bodily injury or death arising out of any single occurrence. This statute also provides in pertinent part that recovery of damages under any judgment against a city shall be limited to \$100,000.00 for damage or loss of property arising out of any single occurrence.

It is my opinion that if the City agreed to indemnify a third party, then in such event said indemnity agreement could waive the statutory maximum limits of liability set forth in Title 11-93-2, *Code of Alabama, 1975*. It is my further legal opinion that cities may not waive the caps of liability as set forth in the above statute.

3. **Public Officers Are Entitled to Discretionary Function Immunity:** Public officials and employees who act within the scope of their authority in performing functions involving discretion are entitled to discretionary function immunity. *Woods v. Wilson*, 539 So.2d 224 and *Hillard v. Huntsville*, 585 So.2d 889.

It is my opinion that if the City agreed to indemnify a third party, then in such event such indemnity agreement could waive the discretionary function immunity for its public employees.

4. **Joint Liability:** Title 11-47-191(b), *Code of Alabama, 1975*, provides as follows:

“(b) When a judgment shall be obtained against a municipality and the other party liable as provided in subsection (a) of this section, execution shall issue against the other defendant or defendants in the ordinary form and shall not be demandable of the city or town unless the other defendants are insolvent and the same cannot be made out of their property, and the city or town shall pay only so much of the said judgment as cannot be collected from the other defendants.”

If the City indemnified a third party, then in such event it would violate the above statute.

5. **Municipalities in Alabama May Spend Public Funds Only for Public Purposes:** Municipalities in Alabama may spend public funds only for public purposes. The Supreme Court of Alabama has interpreted the language of Sections 93 and 94 of the *Constitution of Alabama* to allow appropriations of public funds when the appropriation is used for public purposes. *Alabama Constitution* amend. 93; *Alabama Constitution* amend. 94; *Slawson v. Alabama Forestry Comm’n*, 631 So.2d 953 (Ala.1994). *Opinion of the Justices No. 269*, 384 So.2d 1051 (1980); *Stone v. State*, 251 Ala. 240 (1948).

It is my legal opinion that spending public funds to indemnify a private entity is “not for a public purpose.”

6. **Maximum Damages Recoverable Against a Municipality:** Title 11-93-2, *Code of Alabama, 1975*, provides as follows:

“§11-93-2. **Maximum damages recoverable.** The recovery of damages under any judgment against a governmental entity shall be limited to \$100,000.00 for bodily injury or death for one person in any single occurrence. Recovery of damages under any judgment or judgments against a governmental entity shall be limited to \$300,000.00 in the aggregate where more than two persons have claims or judgments on account of bodily injury or death arising out of any single occurrence. Recovery of damages under any judgment against a governmental entity shall be limited to \$100,000.00 for damage or loss of property arising out of any single occurrence. **No governmental entity shall settle or compromise any claim for bodily injury, death or property damage in excess of the amounts hereinabove set forth (emphasis added).**”

It is my legal opinion that an agreement to indemnify and hold harmless a third party would be in direct violation of the above statute.

E. MUNICIPALITIES MAY BE LIABLE FOR THE NEGLIGENT ACTS OF ITS EMPLOYEES ACTING IN THE LINE AND SCOPE OF THEIR EMPLOYMENT:

1. Title 11-47-190, *Code of Alabama, 1975*, reads as follows:

“No city or town shall be liable for damages for injury done to or wrong suffered by any person or corporation, unless such injury or wrong was done or suffered through the neglect, carelessness or unskillfulness of some agent, officer or employee of the municipality engaged in work therefor and while acting in the line of his or her duty, or unless the said injury or wrong was done or suffered through the neglect or carelessness or failure to remedy some defect in the streets, alleys, public ways or buildings after the same had been called to the attention of the council or other governing body or after the same had existed for such an unreasonable length of time as to raise a presumption of knowledge of such defect on the part of the council or other governing body and whenever the city or town shall be made liable for damages by reason of the unauthorized or wrongful acts or negligence, carelessness or unskillfulness of any person or corporation, then such person or corporation shall be liable to an action on the same account by the party so injured. However, no recovery may be had under any judgment or combination of judgments, whether direct or by way of indemnity under Section 11-47-24, or otherwise, arising out of a single occurrence, against a municipality, and/or any officer or officers, or employee or employees, or agents thereof, in excess of a total of \$100,000 per injured person up to a maximum of \$300,000 per single occurrence, the limits set out in the provisions of Section 11-93-2 notwithstanding.”

2. **Joint Liability:** Title 11-47-191(b), *Code of Alabama, 1975*, provides as follows:

“(b) When a judgment shall be obtained against a municipality and the other party liable as provided in subsection (a) of this section, execution shall issue against the other defendant or defendants in the ordinary form and shall not be demandable of the city or town unless the other defendants are insolvent and the same cannot be made out of their property, and the city or town shall pay only so much of the said judgment as cannot be collected from the other defendants.”

3. **Maximum Damages Recoverable Against a Municipality:** Title 11-93-2, *Code of Alabama, 1975*, provides as follows:

“§11-93-2. **Maximum damages recoverable.** The recovery of damages under any judgment against a governmental entity shall be limited to \$100,000.00 for bodily injury or death for one person in any single occurrence. Recovery of damages under any judgment or judgments against a governmental entity shall be limited to \$300,000.00 in the aggregate where more than two persons have claims or judgments on account of bodily injury or death arising out of any single occurrence. Recovery of damages under any judgment against a governmental entity shall be limited to \$100,000.00 for damage or loss of property arising out of any single occurrence. **No governmental entity shall settle or compromise any claim for bodily injury, death or property damage in excess of the amounts hereinabove set forth** (*emphasis added*).”

4. **Defense of Municipal Employees Sued for Damages:** Title 11-47-24(a), *Code of Alabama, 1975*, provides as follows:

“(a) Whenever any employee of a municipal corporation of the State of Alabama shall be sued for damages arising out of the performance of his official duties, and while operating a motor vehicle or equipment engaged in the course of his employment, such government agency shall be authorized and required to provide defense counsel for such employees in such suit and to indemnify him from any judgment rendered against him in such suit. In no event shall a municipal corporation of the state be required to provide defense and indemnity for employees who may be sued for damages arising out of actions which were either intentional or willful or wanton.”

5. **Liability Insurance:** Title 11-47-24(b), *Code of Alabama, 1975*, provides as follows:

“(b) All municipal corporations of the State of Alabama are hereby authorized to contract at governmental expense for policies of liability insurance to protect employees in the course of their employment.”

6. **The City has Liability Insurance Coverage for Employees:** At the present time, the City has general comprehensive liability insurance issued by States Self-Insurers Risk Retention Group written by Berkly Risk Administrators Company, LLC.

7. **Prejudice the Rights of the City General Comprehensive Insurance Carrier and Jeopardize Coverage:** Based upon Title 11-47-191(b), *Code of Alabama, 1975*, it is my legal opinion that if the City agreed to the indemnity language, that it would prejudice the rights of the City general comprehensive liability insurance carrier and jeopardize coverage under the policy.

F. **ALABAMA PUBLIC RECORDS ACT:** The Alabama Open Records Act (“ORA”) provides that citizens have a right to inspect and copy “public writings” of this state:

1. **The Alabama Open Records Act:** Citizens have a right to inspect and copy any public writing of this state:

(a) **Inspection of Public Records:** Alabama has an Open Records Act. Title 36-12-40, *Code of Alabama, 1975*, provides as follows:

“§36-12-40. Every citizen has the right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute.”

(b) **Copies of Public Records:** Title 36-12-41, *Code of Alabama, 1975*, provides as follows:

“§36-12-41. Every public officer having the custody of a public writing, which a citizen has a right to inspect, is bound to give him, on demand, a certified copy of it, on payment of the legal fees therefor.”

“Public writings” are those documents that evidence “the transaction of public business” (Title 41-13-1, *Code of Alabama, 1975*, and those documents that record “the business activities” (Title 36-12-40, *Code of Alabama, 1975*) of governmental bodies.

The lease by and between Longford, LLC and the City is a “public writing” that citizens are entitled to inspect and obtain a copy thereof.

G. **MUNICIPALITIES ARE TAX EXEMPT:**

1. **Section 6(i). The City is a Political Subdivision or Agency or Department of a State.** The City of Vestavia Hills, Alabama is a municipal corporation incorporated under the *Constitution* and laws of the State of Alabama. The City was incorporated as a municipality on November 8, 1950 pursuant to the authority of Chapter 2, Article 1, Title 37 of the 1940 *Code of Alabama* by virtue of Order of Incorporation rendered on November 8, 1950 by Jefferson County Probate Judge Tom Garner in Jefferson County Probate Court case number 25507. The Order of Incorporation is filed for recorded in the office of the Judge of Probate of Jefferson County, Alabama in Probate Minute Book 49 on page 183.

Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such government powers of state as may be entrusted to them. *City of Birmingham v. Norton*, 255 Ala. 262.

2. Section 2(d). The Interest Portion of the Lease Payments Shall Be Excluded From Gross Income for Federal Income Tax Purposes: Section 103 of the *Internal Revenue Code* (26 USC §103(a) and (c)), read as follows:

“§103. Interest on State and Local Bonds

(a) Exclusion.—Except as provided in subsection (b), gross income does not include interest on any State or local bond.

(c) Definitions.—For purposes of this section and part IV—

(1) State or local bond.—The term “State or local bond” means an obligation of a State or political subdivision thereof.”

3. Municipalities are Exempt From Paying Ad Valorem Taxes on Real Estate Owned by the City: In Alabama, municipalities are not required to pay ad valorem taxes on real property owned by the City by virtue of the following legal authorities:

(a) Article IV, Section 91, of the *Constitution of Alabama*.

(b) Title 40-9-1, *Code of Alabama, 1975*.

(c) Article XI, Section 217(k), of the *Constitution of Alabama*.

4. Municipalities are Exempt From Paying Sales Taxes: Municipalities in Alabama are exempt from the payment of sales tax by virtue of Title 40-23-4(a), *Code of Alabama, 1975*.

It is my legal opinion that municipalities cannot legally pay tax liabilities for a third party.

II. MY RECOMMENDATIONS

A. INDEMNITY PROVISIONS: Based upon the Alabama legal authorities cited in Section I-D on (pages 3-5) and Section I-E (pages 5 and 6) of this legal opinion, I recommend that any and all indemnity language including specifically the language in Section 24-A be deleted in its entirety.

I recommend that the following language be inserted:

“Tenant shall, during the entire term of this Lease at Tenant’s own expense, keep in force by advance payment of premiums, public liability insurance in an amount of not less than \$1,000,000.00 for injury to or death of one person or as a result of one occurrence and not less than \$3,000,000.00 for injury to or death of more than one person as a result of one occurrence and for damage to property in the amount of \$100,000.00, or single limit of \$3,000,000.00, insuring Tenant, Landlord and Landlord’s employees (as additional assured) against any liability that may accrue against them or either of them on account of any occurrences in or about the demised premises during the term or in consequence of Tenant’s occupancy thereof and resulting in personal injury or death or property damage. Tenant shall on request furnish to Landlord certificates of all insurance required under this paragraph.”

B. CONFIDENTIALITY: Based upon the Alabama legal authorities cited in Section I-F on page 7 of this legal opinion, I recommend that any and all language in the LOI and Lease requiring matters relative to this Lease to be confidential be deleted in its entirety.

C. NUMBER OF SQUARE FEET IN THE LEASED PREMISES: There seems to be an inconsistency in the number of square feet for the leased premises. Section 1-b on page 4 of the Lease states that the square feet is 15,280, while Section 1-d on the same page states that it is 24,454 square feet. To me, that needs to be clarified.

D. PURPOSES: Section 14 on page 7 of the Lease states that the City will use the leased premises for the purpose of “City offices and maintenance and storage facilities.” I recommend that the language be amended to read, “for the operation of the City Public Works Department, City offices, storage facilities, maintenance and any other purposes related to the City shop.”

E. TAX EXEMPT STATUS: Based upon the Alabama legal authorities cited in Section I-G on pages 7 and 8 of this legal opinion, I recommend that any and all language requiring the City to pay sales tax and state and federal income tax that might be owed by the Landlord be deleted in their entirety.

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G. IMMIGRATION: Alabama law at Title 31-13-9(k), *Code of Alabama, 1975*, requires immigration language to be included in every contract in which the City may be a party. Therefore, I recommend that the following language be added to the contract:

“IMMIGRATION: By signing this Lease, the contracting parties affirm, for the duration of the Lease, that they will not violate federal immigration law or knowingly employ, hire for employment or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the Lease and shall be responsible for all damages resulting therefrom.”

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

Sincerely,

A handwritten signature in blue ink that reads "Patrick H. Boone". The signature is written in a cursive style with a long horizontal line extending to the right.

Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp