

**Vestavia Hills  
City Council Agenda  
October 27, 2014  
5:00 PM**

1. Call to Order
2. Roll Call
3. Invocation – Brad Blount
4. Pledge Of Allegiance
5. Announcements, Candidate and Guest Recognition
6. City Manager’s Report
7. Councilors’ Reports
8. Approval of Minutes – October 13, 2014 (Work Session), October 13, 2014 (Regular Meeting), and October 16, 2014 (Work Session)

**Old Business**

9. Resolution Number 4652 - A Resolution Reappointing Tommy Spina As Municipal Court Judge For The City Of Vestavia Hills Municipal Court

**New Business**

**New Business (Requesting Unanimous Consent)**

10. Ordinance Number 2538 – An Ordinance Amending Ordinance Number 2530 – Authorizing And Directing The Mayor And City Manager To Execute And Deliver The First Amendment To The Purchase And Sale Agreement By And Between The City Of Vestavia Hills And Daniel Realty Company For Property Located In The Patchwork Farms PUD, Vestavia Hills Alabama

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

11. Resolution Number 4647 – A Resolution Vacating Right-Of-Way Known as Eastwood Circle
12. Citizens Comments
13. Motion For Adjournment

**CITY OF VESTAVIA HILLS**  
**CITY COUNCIL**  
**WORK SESSION**  
**MINUTES**  
**OCTOBER 13, 2014**

The City Council of Vestavia Hills met in a work session on this date at 4:00 PM following posting/publishing pursuant to Alabama law. The Mayor called the work session to order and the City Clerk called the roll with the following:

**MEMBERS PRESENT:**

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

**OTHER OFFICIALS PRESENT:**

Jeff Downes, City Manager  
Patrick H. Boone, City Attorney  
Rebecca Leavings, City Clerk  
Melvin Turner, Finance Director  
George Sawaya, Asst. Finance Director  
Dan Rary, Police Chief  
Christopher Brady, City Engineer

The Mayor welcomed the persons in attendance.

The Mayor indicated that they have been meeting with a local merchant concerning some drainage problems in and around his property.

Mr. Brady explained the situation which was a large drainage pipe running through a commercial property in a non-designated easement.

Discussion ensued and Mr. Boone was advised to meet with the owner's attorney and return with a suggested settlement to the issue.

There being no further business, the meeting adjourned at 4:55 PM.

Alberto C. Zaragoza, Jr.  
Mayor

Attested by:

Rebecca Leavings  
City Clerk

## **CITY OF VESTAVIA HILLS**

### **CITY COUNCIL**

### **MINUTES**

### **OCTOBER 13, 2014**

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

**MEMBERS PRESENT:**

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

**OTHER OFFICIALS PRESENT:**

Jeff Downes, City Manager  
Rebecca Leavings, City Clerk  
Melvin Turner, Finance Director  
George Sawaya, Deputy Treasurer  
Dan Rary, Police Chief  
Jim St. John, Fire Chief  
Brian Davis, Public Services Director  
Christopher Brady, City Engineer

Invocation was written by Kevin Turner and presented by Craig Sanderson of the Kevin Turner Foundation, followed by the Pledge of Allegiance.

### **ANNOUNCEMENTS, GUEST RECOGNITION, CANDIDATES**

- Steve Ammons stated that he is running for Jefferson County Tax Collector and asked for support in the November general election.

### **CITY MANAGER REPORT**

- Mr. Downes announced that Fire Chief Jim St. John received his certificate for Certified Public Manager I recently from Auburn University. He congratulated Chief St. John for the achievement.
- The City has received a \$5,000 grant to help in offsetting some of the design costs for the proposed park at Meadowlawn.

- Stakeholders with the City's Parks and Recreation Department will meet in a half-day retreat to determine the needs of the Department and key areas for improvement of the facilities and the fields.
- Mr. Downes stated that last Thursday the incentive agreements for Patchwork Farms were validated by the Jefferson County Probate Court.
- As of October 1, the City's Public Works Department was divided into 4 zones to concentrate on particular "zones" within the City. Each zone area will have a crew dedicated to that particular area for maintenance.
- Paving of about 12 or 13 miles of roadway has officially kicked off the City's annual paving contract.
- The United Way campaign for this year garnered in excess of \$7,000 which is the largest gift the employees of the City have ever given.

### **COUNCILOR REPORTS**

- Mr. Pierce welcomed Gina Henley, one of the Chamber's Board of Directors to the meeting.
- Mr. Pierce stated that there was a recent incident at the Liberty Park Middle School and he thanked the Police Department for the professionalism shown in handling it.
- Mr. Ammons thanked Public Safety on another successful National Night Out. He stated that the Sunrise Rotary Club donated more drop boxes for disposal of prescription drugs which serve as a gateway to other drugs. He named several sponsors that assisted with the event.
- Mayor Zaragoza thanked Mr. Ammons, Mr. Henley, the Police Department and the sponsors that helped in making this year's National Night Out a tremendous success.
- Mayor Zaragoza welcomed Robin Morgan, Chamber member and local business owner, to the meeting.
- Mayor Zaragoza announced that an additional Resolution was added to the agenda at the last moment and, because of the timing of the sequence of events for this transaction, stated that he will ask for unanimous consent of Resolution Number 4653.

### **APPROVAL OF MINUTES**

The minutes of September 22, 2014 (Work Session) and September 22, 2014 (Regular Meeting) were presented for approval.

**MOTION** Motion to dispense with the reading of the minutes of the meeting of September 22, 2014 (Work Session) and September 22, 2014 (Regular Meeting) and approve them as presented was by Mr. Pierce and second by Mr. Henley. Roll call vote as follows:

Mr. Pierce – yes  
Mr. Sharp – yes  
Mayor Zaragoza – yes

Mr. Henley – yes  
Mr. Ammons – yes  
motion carried.

**OLD BUSINESS**

**RESOLUTION NUMBER 4619**

**Resolution Number 4619 – A Resolution Vacating A Portion Of Mayland Lane; City Of Vestavia Hills, Owner (public hearing)**

**MOTION** Motion to approve Resolution Number 4619 was by Mr. Henley and second was by Mr. Sharp.

Mr. Downes stated that the ROW adjacent to the new City Hall is variable and this vacation along with a pending dedication will even out the ROW to 40' along Mayland Lane and allow for buffering between the City's parking and the residences across the street. The vacation is on the City's side of the street and doesn't change the drainage or the paving portions of the street. All utilities have released the portion for vacation.

Mr. Boone stated that he sees no problem with the request.

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

Roll call vote as follows:

Mr. Pierce – yes  
Mr. Sharp – yes  
Mayor Zaragoza – yes

Mr. Henley – yes  
Mr. Ammons – yes  
motion carried.

**RESOLUTION NUMBER 4643**

**Resolution Number 4643 – A Resolution Authorizing The City Manager To Execute And Deliver An Agreement With Alabama Department Of Transportation For Project No. TAPAA-TA14(931) Sicard Hollow Road Tunnel Safe Routes For Non-Drivers, City Of Vestavia Hills (public hearing)**

**MOTION** Motion to approve Resolution Number 4643 was by Mr. Sharp and second was by Mr. Ammons.

Mr. Downes stated that this Resolution authorizes the City to enter into an agreement with ALDOT for construction of a tunnel to link the City's two parks together.

Mr. Boone stated that he has reviewed the agreement and finds no problems with it.

The Mayor opened the floor for a public hearing. There being no one present to speak on this issue, the Mayor closed the public hearing and called for the question.

Roll call vote as follows:

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

### **RESOLUTION NUMBER 4646**

**Resolution Number 4646 – A Resolution Accepting A Bid For Gateway Improvements At Interstate 65 And Montgomery Highway And Authorizing CM To Execute Documents To Secure Said Improvement Construction (*public hearing*)**

**MOTION** Motion to approve Resolution Number 4646 was by Mr. Ammons and second was by Mr. Pierce.

Mr. Downes stated that this Resolution accepts the low bid for construction of intersection improvements at I-65 and Montgomery Highway and authorizes him to execute and deliver the agreements needed to secure said construction subject to City Attorney approval. He presented a spreadsheet of detail and explained the funding for the project.

Discussion ensued regarding construction timeline and whether or not ALDOT will continue staging materials at the site. Mr. Brady stated that he believes the completion would occur within approximately three months and that ALDOT promised to have the site ready for construction.

The Mayor opened the floor for a public hearing. There being no one present to speak on this issue, he closed the public hearing and called for the question.

Roll call vote as follows:

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

**NEW BUSINESS**

**RESOLUTION NUMBER 4648**

**Resolution Number 4648 – Alcohol License – Jacquelines Inc. d/b/a Cajun Seafood House; 2531 Rocky Ridge Road, Suite 107; 020 – Restaurant Retail Liquor (On-Premise); Maria Esperanza Adan, Executive(s) (*public hearing*)**

**MOTION** Motion to approve Resolution Number 4648 was by Mr. Pierce and second was by Mr. Henley.

Mr. Downes stated that this Resolution approves a liquor license for a new restaurant in the Rocky Ridge area. He stated that the Police Department has reviewed the background and found no problems.

Maria Adan was present in regard to the request. She explained that her new Cajun cuisine restaurant was set to open soon and presented printed copies of her proposed menu. She explained her years of experience as a restaurateur, her hours of operation and training of her employees.

The Mayor opened the floor for a public hearing. There being no one present to speak on this issue, the Mayor closed the public hearing and called for the question.

Roll call vote as follows:

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

**RESOLUTION NUMBER 4649**

**Resolution Number 4649 – Alcohol License – Sree Consulting LLC d/b/a Beverage City; 3374 Morgan Drive; 011 – Lounge Retail Liquor – Class II (Package) (Off-Premise); Ramachary Athan, Executive(s) (*public hearing*)**

**MOTION** Motion to approve Resolution Number 4649 was by Mr. Henley and second was by Mr. Ammons.

Mr. Downes stated that this Resolution approves a liquor license for an existing package store located in the Rocky Ridge area that is changing LLC names. He stated that the Police Department has reviewed the background and found no problems.

Ramachary Athan was present in regard to the request. He explained his years of experience, hours of operation and training of his employees.

The Mayor opened the floor for a public hearing. There being no one present to speak on this issue, the Mayor closed the public hearing and called for the question.

Roll call vote as follows:

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

**RESOLUTION NUMBER 4650**

**Resolution Number 4650 – A Resolution Authorizing The City Manager To Execute And Deliver An Agreement With Alabama Power For Relocation And Installation Of Electrical Improvements For Parking Adjacent To The Vestavia Hills Library In The Forest**

**MOTION** Motion to approve Resolution Number 4650 was by Mr. Henley and second was by Mr. Pierce.

Mr. Downes stated that this Resolution allows an easement for Alabama Power to use for a guy wire and electrical service to the new parking adjacent to the library.

Mr. Brady updated the Council on the progress of the construction as well as the anticipated November completion.

Roll call vote as follows:

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

**RESOLUTION NUMBER 4651**

**Resolution Number 4651 – A Resolution Authorizing The City Manager To Execute And Deliver A Permit Agreement With Alabama Department Of Transportation For Traffic Signal Improvements At US Highway 31 And Old Montgomery Highway/Vestavia Hills Plaza Intersection**

**MOTION** Motion to approve Resolution Number 4651 was by Mr. Pierce and second was by Mr. Ammons.

Mr. Downes stated that this Resolution authorizes him to execute an agreement with ALDOT to resume maintenance on a traffic signal following improvements to be installed by a new development off Montgomery Highway across from the new City Hall.

Roll call vote as follows:

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

**NEW BUSINESS (REQUESTING UNANIMOUS CONSENT)**

**MOTION** Motion for unanimous consent for the immediate consideration and action on Ordinance Number 2536 and Ordinance Number 2537 was by Mr. Henley. Second was by Mr. Pierce. Roll call vote as follows:

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

**ORDINANCE NUMBER 2536**

**Ordinance Number 2536 – An Ordinance Authorizing And Directing The Mayor And City Manager To Execute And Deliver The Third Addendum To Purchase And Sale Agreement, As Amended, By And Between The City Of Vestavia Hills, Alabama, As “Seller”, And America’s First Federal Credit Union, As “Purchaser”, For The Property Located At 1112 Montgomery Highway, Vestavia Hills, Alabama (*public hearing*)**

**MOTION** Motion to approve Ordinance Number 2536 was by Mr. Pierce and second was by Mr. Henley.

Mr. Downes stated that this Ordinance amends a previously approved Ordinance for the sale of property by the City to America’s First for construction of a new credit union. He explained that during the due diligence phase of the original agreement, it was found that certain site improvements, along with required ALDOT improvements, exceed their original budget by \$500,000. This request reduces the sale price by \$100,000 to assist in covering those unexpected costs.

Mr. Boone stated that he has reviewed the agreement and finds no problems.

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

Roll call vote as follows:

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

**ORDINANCE NUMBER 2537**

**Ordinance Number 2537 – An Ordinance Authorizing And Directing The Mayor And City Manager To Execute And Deliver The Fifth Amendment To Purchase And Sale Agreement, As Amended, By And Between The City Of Vestavia Hills, Alabama, As “Seller”, And Chick-Fil-A, Inc., A Georgia Corporation, As “Purchaser”, For The Property Located At 513 Montgomery Highway, Vestavia Hills, Alabama (public hearing)**

**MOTION** Motion to approve Ordinance Number 2537 was by Mr. Henley and second was by Mr. Sharp.

Mr. Downes stated that this Ordinance amends a previously approved Ordinance for the sale of property by the City to Chick-Fil-A for construction of a new restaurant. He explained that during the due diligence phase of the original agreement, it was found that certain site improvements along with required ALDOT improvements exceed their original budget. This request reduces the sale price to \$1.37 million to assist in covering those unexpected costs.

Mr. Boone stated that he has reviewed the agreement and finds no problems.

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

Roll call vote as follows:

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

**RESOLUTION NUMBER 4653**

**Resolution Number 4653 – A Resolution authorizing the City Manager to Obtain ALTA Surveys for the New Medical Parcel and the New Independent Living Parcel at Patchwork Farms**

**MOTION** Motion to approve Resolution Number 4653 was by Mr. Henley and second was by Mr. Ammons.

Mr. Downes stated that this Resolution authorizes him to obtain two ALTA surveys for property located at Patchwork Farms. He stated that the previously approved development agreements anticipated these surveys but the cost was unknown and now need to be completed at a cost of \$6,000.

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

Roll call vote as follows:

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

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

The Mayor stated that the following Resolutions and/or Ordinances will be presented at a public hearing at the Council's next regularly scheduled meeting on October 27, 2014 at 5 PM.

- Resolution Number 4652 - A Resolution Reappointing Tommy Spina As Municipal Court Judge For The City Of Vestavia Hills Municipal Court

**CITIZENS COMMENTS**

None.

**MOTION** Motion to adjourn was by Mr. Pierce and second was by Mr. Henley. Meeting adjourned at 5:57 PM.

Alberto C. Zaragoza, Jr.  
Mayor

Attested by:

Rebecca Leavings  
City Clerk

**CITY OF VESTAVIA HILLS**  
**CITY COUNCIL**  
**MEETING WITH THE MAYOR**  
**MINUTES**  
**OCTOBER 16, 2014**

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

**MEMBERS PRESENT:** Mayor Alberto C. Zaragoza, Jr.  
George Pierce  
John Henley

**MEMBERS ABSENT:** Steve Ammons, Mayor Pro-Tem  
Jim Sharp

**OTHER OFFICIALS PRESENT:** Jeff Downes, City Manager  
Wendy Appling, Acting Clerk  
Jim St. John, Fire Chief

The Mayor called the Meeting with the Mayor to order.

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

- Rebranding of the City

There being no further business, the meeting adjourned at 6:30 PM.

Alberto C. Zaragoza, Jr.  
Mayor

Attested by:

Wendy Appling  
Acting Clerk

**RESOLUTION NUMBER 4652**

**A RESOLUTION REAPPOINTING A MUNICIPAL COURT JUDGE  
FOR THE CITY OF VESTAVIA HILLS, ALABAMA**

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

1. Thomas Spina is hereby reappointed as the Municipal Court Judge for the City of Vestavia Hills Municipal Court; and
2. Said reappointment shall become effective immediately and shall continue until November 2, 2016; and
3. This Resolution shall become effective immediately upon adoption and approval.

**ADOPTED and APPROVED** this the 27<sup>th</sup> day of October, 2014.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**ORDINANCE NUMBER 2538**

**AN ORDINANCE AMENDING ORDINANCE NUMBER 2530 - AUTHORIZING AND DIRECTING THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER THE FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT, BY AND BETWEEN THE CITY OF VESTAVIA HILLS, ALABAMA, AS “SELLER” AND DANIEL REALTY COMPANY, LLC, AN ALABAMA LIMITED LIABILITY COMPANY AS “PURCHASER”, FOR THE PROPERTY LOCATED IN THE PATCHWORK FARMS PUD, VESTAVIA HILLS, ALABAMA.**

**THIS ORDINANCE NUMBER 2538** is approved and adopted by the City Council of the City of Vestavia Hills, Alabama on this the 27<sup>th</sup> day of October, 2014.

**WITNESSETH THESE RECITALS:**

**WHEREAS**, the City of Vestavia Hills, Alabama (“Seller”) owns the real estate situated within the Patchwork Farms Planned Unit Development which is currently vacant; (the “Property”); and

**WHEREAS**, on August 25, 2014, the City Council approved and adopted Ordinance Number 2530 authorizing and directing the Mayor and City Manager to execute and deliver a Purchase and Sale Agreement (the “Agreement”) by and between the City of Vestavia Hills (“Seller”) and Daniel Realty Corporation, (“Purchaser”); and

**WHEREAS**, the Seller and Purchaser wish to amend the Agreement, by the execution and delivery of this First Amendment. A copy of said First Amendment to Agreement is attached hereto, marked as “Exhibit A” and is incorporated into this Ordinance by reference as though set out fully herein.

**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 and directed to execute and deliver the written First Amendment to Purchase and Sale Agreement, marked as “Exhibit A” and attached hereto.

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

3. The provision of the ordinance shall become effective immediately upon the passage and approval thereof by the City Council of the City of Vestavia Hills, Alabama and the publication and/or posting thereof as required by Alabama law.

**DONE, ORDERED, APPROVED and ADOPTED**, on this the 27<sup>th</sup> day of October, 2014.

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Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

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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 # 2538 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 27<sup>th</sup> day of October 2014 as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills Library in the Forest, and Vestavia Hills Recreational Center this the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

Rebecca Leavings  
City Clerk

**FIRST AMENDMENT TO  
PURCHASE AND SALE AGREEMENT**

THIS FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT (this "Amendment") is made and entered into as of the \_\_\_\_ day of October, 2014 by and between **CITY OF VESTAVIA HILLS, ALABAMA**, an Alabama municipal corporation ("Seller"), and **DANIEL REALTY COMPANY, LLC**, an Alabama limited liability company ("Purchaser").

**RECITALS:**

Seller and Purchaser have heretofore entered into a Purchase and Sale Agreement dated as of September 9, 2014 (the "Agreement"), pursuant to which Seller has agreed to sell, and Purchaser has agreed to purchase, certain real property owned by Seller situated in Jefferson County, Alabama. *Capitalized terms not otherwise expressly defined herein shall have the same meanings given to them in the Agreement.*

Seller and Purchaser desire to amend the Agreement in the manner hereinafter provided.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser do hereby agree as follows:

1. **Purchase Price.** Paragraph 3 of the Agreement is deleted in its entirety and the following is substituted in lieu thereof:

“3. **Purchase Price.**

(a) Subject to the provisions of Paragraphs 3(b) and 3(c) below, the purchase price (the "Purchase Price") for the Property to be paid by Purchaser to Seller on the Closing Date, as hereinafter defined, shall be an amount equal to Four Million Three Hundred Forty Thousand One Hundred Eighty-Three and 82/100 Dollars (\$4,340,183.82). The Purchase Price shall be paid by Purchaser to Seller on the Closing Date by wire transfer of immediately available federal funds to an account (or accounts) designated by Seller, subject to such credits, prorations and adjustments as provided in this Agreement.

(b) Pursuant to the terms and provisions of the Exchange Agreement and the CGC Agreement (collectively, the "Existing Agreements"), Seller is obligated to perform the "Infrastructure Work", as defined in each of the Existing Agreements (the "Infrastructure Work"), as additional consideration to Northport and CGC to consummate the transactions contemplated by the Exchange Agreement and the CGC Agreement, respectively. On or before the Closing Date, Seller and Purchaser shall mutually agree upon the estimated costs of the Infrastructure Work (the "Estimated Cost") To the extent the Closing hereunder occurs, then (i) Purchaser shall assume all of Seller's obligations under the Existing Agreements to perform the

Infrastructure Work in accordance with the terms and provisions of Paragraph 13 below, (ii) the Purchase Price shall be reduced by the Estimated Cost, and (iii) the provisions of Paragraph 13(c) below shall be applicable and binding on Seller and Purchaser.

(c) Pursuant to the Economic Development Agreement, Seller has agreed to provide to Northport as an incentive to consummate the transactions contemplated by the Exchange Agreement the sum of \$1,550,000.00 (collectively, the “Project Costs Amount”). Seller shall be solely obligated to pay to Northport the first \$500,000.00 of the Project Costs Amount to the extent the closing under the Exchange Agreement occurs. To the extent the Closing under this Agreement occurs, Purchaser agrees to pay to Seller the sum of \$1,050,000.00 representing the balance due to Northport with respect to the Project Costs Amount (the “Balance Due Northport”), in cash, by wire transfer of immediately available federal funds to an account or accounts designated by Seller, in accordance with the following:

- (i) On March 31, 2015, the sum of \$500,000; and
- (ii) On September 30, 2015, the sum \$550,000.

At the Closing hereunder, (1) Daniel Realty Company, LLC shall execute and deliver to the City a guaranty in form reasonably acceptable to the parties pursuant to which Daniel Realty Company, LLC shall guarantee the full and faithful payment and performance by Purchaser of its obligations to timely pay to Seller the Balance Due Northport, (2) Purchaser shall deliver to Seller an irrevocable, unconditional letter of credit in the amount of the Balance Due Northport, naming Seller as payee therein, in such form as may be reasonably required by Seller, and (3) the Purchase Price shall be credited by the full amount of the Balance Due Northport.”

2. **Infrastructure Work and Other Improvements.** Paragraph 13 of the Agreement is deleted in its entirety and the following is substituted in lieu thereof:

“13. **Infrastructure Work and Other Improvements.**

(a) Pursuant to the terms and provisions of the Master Development Agreement, Seller and Purchaser have previously determined what will constitute the Infrastructure Work under the Existing Agreements and do hereby agree to continue to work to produce the Preliminary Plans, as defined in the Existing Agreements, for review by Northport and CGC.

(b) To the extent the Closing hereunder occurs, Purchaser shall assume all of Seller’s obligations under the Existing Agreements to undertake and complete the Infrastructure Work required to be performed by Seller under the Existing Agreements. Purchaser’s obligations with respect to the Infrastructure Work shall include the following:

- (i) Purchaser covenants and agrees to cause all of the Infrastructure Work to achieve Substantial Completion, as herein defined, no later than 200 days following the Closing Date (the “Substantial Completion Date”), subject to extensions thereof as a result of any matters of Force Majeure,

as hereinafter defined; provided, however, that Purchaser may elect to postpone application of the final seal coat to the Roads, as defined in the Existing Agreements, to a date after the Substantial Completion Date, subject to any requirements of the Existing Agreements as to when such seal coat must be completed. Substantial completion of the Infrastructure Work (“Substantial Completion”) shall be conclusively presumed to have occurred upon the issuance of a certificate or letter of substantial completion for all of the Infrastructure Work by GMC;

(ii) To the extent the Infrastructure Work has not achieved Substantial Completion by the Closing Date, Purchaser agrees to be bound by all of terms and provisions of the Existing Agreements regarding (1) the grant of temporary construction easements to CGC over and upon Lot B and the Road, as defined in the CGC Agreement, in accordance with the terms and provisions of the CGC Agreement and (2) the right of Northport and/or CGC to undertake and complete the Infrastructure Work to the extent the same is not completed by the Substantial Completion Date; and

(iii) Purchaser shall and does hereby indemnify, agree to defend and hold Seller harmless from and against any and all claims, costs, demands, actions, losses, liabilities, damages and expenses, including reasonable attorney’s fees and expenses, suffered, paid or incurred by Seller arising out of or by virtue of Purchaser’s failure to timely complete all of the Infrastructure Work in strict accordance with the terms and provisions of the Existing Agreements.

(c) On or before 45 days following Substantial Completion of the Infrastructure Work, Purchaser shall submit to Seller for review and approval an itemized accounting of the actual third party costs and expenses paid by Purchaser in connection with the construction and completion of the Infrastructure Work, excluding any fees or overhead to Purchaser. Upon mutual approval by Seller and Purchaser of such third party costs and expenses paid by Purchaser in connection with the construction and completion of the Infrastructure Work, excluding any fees or overhead to Purchaser (the “Final Cost”), then:

(i) If the Final Cost exceeds the Estimated Cost, Seller shall pay to Purchaser within 30 days the difference between the Final Cost and the Estimated Cost; or

(ii) If the Final Cost is less than the Estimated Cost, Purchaser shall pay to Seller within 30 days the difference between the Estimated Cost and the Final Cost.

(d) As used in this Agreement, the term “Force Majeure” means any delay caused, notwithstanding good faith efforts to avoid such delay, by acts of God, war, terrorism, casualty, shortages of material or labor, strikes, governmental approvals or moratorium, material default under this Agreement by either party or any other cause beyond the reasonable control of either party but specifically excluding as any matter of Force Majeure the unavailability of or

inability to obtain financing or funding; provided, however, that no period of Force Majeure shall be deemed to occur unless a party has, within ten (10) days after the commencement of such period, given written notice to the other party of such commencement of such period; provided, further, that in no event shall a party be entitled to claim, in the aggregate, periods of Force Majeure in excess of three (3) months.

(e) To the extent the Closing hereunder occurs, Seller and Purchaser agree to coordinate efforts in developing a plan for the improvement of the Nature Park Parcel and Acreage Parcel with walkways, paths, landscaping and other improvements (subject to the limitations set forth in the PUD Plan concerning the extent of such improvements) as well as determining funding sources for such improvements to the Nature Park Parcel and Acreage Parcel. Following the Closing, Seller agrees to grant to Purchaser access easements (subject to the limitations set forth in the PUD Plan) providing pedestrian access easements through portions of the Nature Park Parcel in such locations as may be mutually acceptable to Seller and Purchaser and in accordance with easement agreements in form mutually acceptable to Seller and Purchaser. In addition, to the extent the Closing hereunder occurs, Seller agrees to grant to Purchaser a permanent signage easement over and upon portions of the Acreage Parcel for monument signage, utilities and landscaping (collectively, the “Acreage Parcel Signage Improvements”) and a temporary access and construction easement over and upon the Acreage Parcel in order to construct and install the Acreage Parcel Signage Improvements at such time as Seller has approved the plans and specifications for the Acreage Parcel Signage Improvements, which such easement agreement shall be in form mutually acceptable to Seller and Purchaser.

(f) Notwithstanding anything provided to the contrary in this Agreement or the Existing Agreements, to the extent any governmental agencies or authorities require any improvements of any nature be made to Caldwell Mill Road or Acton Road in connection with the development of the School Property or the completion of the Infrastructure Work, then the City covenants and agrees that it will, at its sole cost and expense, cause all such improvements to be timely undertaken and completed in accordance with all requirements of such governmental agencies or authorities. In no event shall Purchaser have any obligation to undertake or complete any such required improvements.

(g) In the event either Seller or Purchaser breaches or defaults in the performance of any of their respective covenants and agreements set forth in this Paragraph 13, the non-defaulting party shall have the right to enforce the obligations of such defaulting party by any action or remedy available to such party, either at law or in equity, and the non-defaulting party shall also be entitled to recover from the defaulting party reasonable attorneys’ fees and expenses incurred by the non-defaulting party in enforcing the terms and provisions of this Paragraph 13.”

3. **Full Force and Effect.** Except as expressly modified and amended herein, all of the terms and provisions of the Agreement shall remain in full force and effect and are hereby ratified, confirmed and approved by the parties hereto.

IN WITNESS WHEREOF, Seller and Purchaser have executed this Amendment as of the day and year first above written.

**SELLER:**

**CITY OF VESTAVIA HILLS, ALABAMA**, an  
Alabama municipal corporation

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**PURCHASER:**

**DANIEL REALTY COMPANY, LLC**, an  
Alabama limited liability company

By: Daniel Realty Corporation, an Alabama  
corporation, Its Manager

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**RESOLUTION NUMBER 4647**

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

**WITNESSETH THESE RECITALS**

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

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

**WHEREAS**, said vacation will not deprive other property owners of any right they may have to convenient and reasonable means of ingress and egress to and from their property; and

**WHEREAS**, the Eastwood Circle right-of-way above referred to is commonly referred to as “Eastwood Circle right-of-way” and is more particularly described as follows:

A parcel of land situated in the Southwest one-quarter of Section 19, Township 18 South, Range 2 West Jefferson County, Alabama, said parcel being all of the Public right of way known as Eastwood Circle as shown on the Fourth Addition to Beacon Hill as recorded in Plat Book 38, Page 3 in the Office of the judge of Probate Jefferson County, Alabama, and being more particularly described as follows:

Begin at the Northern-most corner of Lot 12 according to the Fourth Addition to Beacon Hill as recorded in Map Book 38, Page 3 in the Office of the Judge of Probate Jefferson County, Alabama, said point being the intersection of the Southern-most right of way of Eastwood Circle with the Eastern-most right of way of U.S. Highway 31 (Montgomery Highway); thence leaving said Highway 31 right of way run South 66 degrees 32 minutes 44 seconds East along said Eastwood Circle right of way and

along the Northeast line of Lots 11 and 12 in said subdivision for a distance of 91.21 feet to the point of beginning of a curve turning to the left, said curve having a radius of 539.21 feet, a central angle of 09 degrees 33 minutes 00 seconds, a chord bearing of South 71 degrees 19 minutes 14 seconds East, and a chord length of 89.77 feet; thence run along the arc of said curve, along said right of way, and along the Northeast line of Lots 10, and 11 in said subdivision for a distance of 89.87 feet to the point of beginning of a reverse curve turning to the right, said curve having a radius of 15.00 feet, a central angle of 45 degrees 34 minutes 09 seconds, a chord bearing of South 53 degrees 18 minutes 39 seconds East, and a chord length of 11.62 feet; thence run along the arc of said curve, along said right of way, and along the Northeast line of said Lot 10 for a distance of 11.93 feet to the point of beginning of a reverse curve turning to the left, said curve having a radius of 35.00 feet, a central angle of 271 degrees 08 minutes 46 seconds, a chord bearing of North 13 degrees 54 minutes 03 seconds East, a chord length of 49.00 feet; thence run along the arc of said curve, along said right of way, and along Lots 8, 9, and 10 in said Subdivision for a distance of 165.63 feet to the point of beginning of a reverse curve turning to the right, said curve having a radius of 15.00 feet, a central angle of 45 degrees 34 minutes 39 seconds, a chord bearing of South 81 degrees 06 minutes 59 seconds West, and a chord length of 11.62 feet; thence run along the arc of said curve, along said right of way, and along the Southeast line of Lot 8 in said Subdivision for a distance of 11.93 feet to the point of beginning of a compound curve turning to the right, said curve having a radius of 499.21 feet, a central angle of 09 degrees 32 minutes 58 seconds, a chord bearing of North 71 degrees 19 minutes 13 seconds West, a chord length of 83.11 feet; thence run along the arc of said curve, along said right of way, and along the Southeast line of said Lot 8 for a distance of 83.20 feet; thence run North 66 degrees 32 minutes 44 seconds West along said right of way, and along the Southwest line of Lots 4 and 8 in said Subdivision for a distance of 91.21 feet, said point being the intersection of said Eastwood Circle right of way with the afore mentioned Eastern-most right of way of U.S. Highway 31; thence run South 23 degrees 27 minutes 16 seconds West along said Highway 31 right of way for a distance of 40.00 feet to the point of beginning. Said right of way contains 11,079 square feet or 0.25 acres more or less.

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

**RESOLVED, DONE AND ORDERED,** on this the 10<sup>th</sup> day of  
December, 2014.

Alberto C. Zaragoza, Jr.  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**CERTIFICATION**

I, the undersigned qualified acting Clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true copy of a Resolution lawfully passed and adopted by the City Council of the City named therein, at a regular meeting of such Council held on the 10<sup>th</sup> day of December, 2014, and that such Resolution is of record in the Minute Book of the City at page \_\_\_\_\_ thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on this the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

Rebecca Leavings  
City Clerk

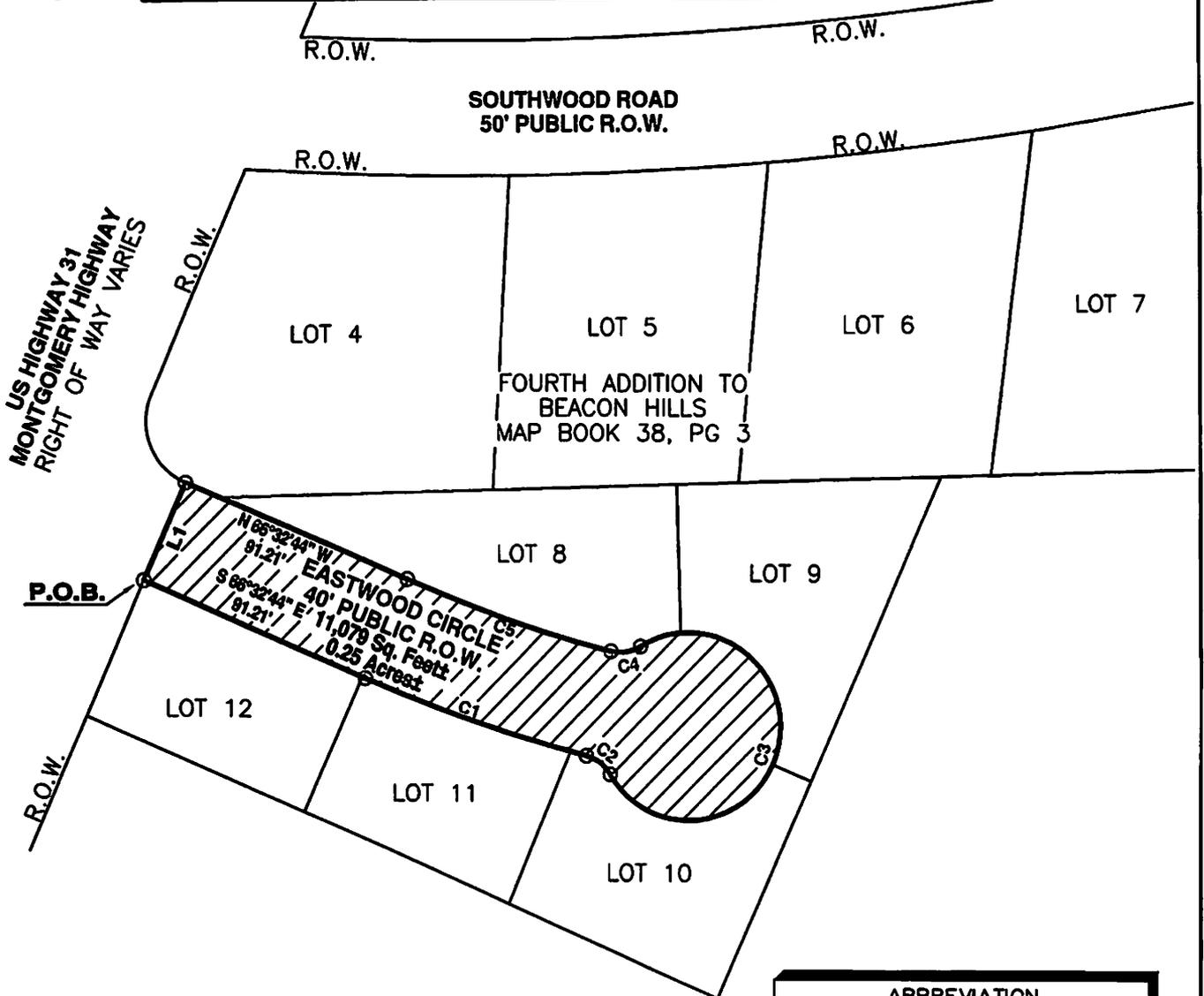
# EXHIBIT MAP RIGHT OF WAY VACATION

SW 1/4 OF SECTION 19, TOWNSHIP 18 SOUTH, RANGE 2 WEST  
JEFFERSON COUNTY, ALABAMA



## CURVE TABLE

CURVE	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	89.87'	539.21'	9°33'00"	S 71°19'14" E	89.77'
C2	11.93'	15.00'	45°34'09"	S 53°18'39" E	11.62'
C3	165.63'	35.00'	271°08'46"	N 13°54'03" E	49.00'
C4	11.93'	15.00'	45°34'39"	S 81°06'59" W	11.62'
C5	83.20'	499.21'	9°32'58"	N 71°19'13" W	83.11'



**SOUTHWOOD ROAD**  
50' PUBLIC R.O.W.

FOURTH ADDITION TO  
BEACON HILLS  
MAP BOOK 38, PG 3

**EASTWOOD CIRCLE**  
40' PUBLIC R.O.W.  
11,079 Sq. Feet  
0.25 Acres

ABBREVIATION	
P.O.C.	POINT OF COMMENCEMENT
P.O.B.	POINT OF BEGINNING

## LINE TABLE

LINE	BEARING	DISTANCE
L1	S 23°27'16" W	40.00'

**GONZALEZ - STRENGTH & ASSOCIATES, INC.**  
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