



**Vestavia Hills
City Council Agenda
November 25, 2024
6:00 PM**

1. Call to Order
2. Roll Call
3. Invocation - Tom Bryson, Vestavia Hills Chaplain
4. Pledge Of Allegiance
5. Approval Of The Agenda
6. Announcements, Candidates and Guest Recognition
7. City Manager's Report
8. Councilors' Reports
9. Approval Of Minutes of the October 21, 2024, work session; November 4, 2024, regular meeting; and November 6, 2024, work session
10. Financial Reports - Melvin Turner III, Finance Director

Old Business (Public Hearing)

11. Public Hearing - Ordinance Number 3249 - Rezoning - 3128 Blue Lake Drive; Lot 9A, Resurvey of Lots 8 & 9, Topfield Subdivision; Rezone from Vestavia Hills R-1 to Vestavia Hills B-2 for a plant nursery; Robert Fuqua, owner
12. Public Hearing - Ordinance Number 3250 - Rezoning - a 25' wide strip traversing Lot 1, The Bray at Liberty Park, First Addition; Rezone from Birmingham holding to Vestavia Hills PUD PB, planned business; Liberty Park Joint Venture, owners

New Business

13. Resolution Number, 5537 - A Resolution Authorizing the City Manager to Execute a Facility Use Agreement with Hub in the Hills for Supplemental Gymnasium Space During the 2024-2025 Basketball Season

New Business Requesting Unanimous Consent (Public Hearing)

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

14. Public Hearing - Ordinance Number 3253 - An Ordinance to Authorize the City Manager and Mayor to Execute Any and All Agreements and Expend Funds to Lease Space to Accommodate the Human Resource Department of the City of Vestavia Hills
15. Citizens Comments
16. Time Of Adjournment

PUBLIC HEARING PROCEDURES

The following procedures shall be followed for every public hearing of the City Council:

- All comments shall be limited to **3 minutes**. A countdown clock will be provided on the video screens.
- Do not duplicate comments made by previous speakers. For example, if traffic is mentioned as an issue, do not readdress that issue.
- All comments shall be directed to the Mayor and/or presiding officer. Do not address the audience or the applicant.
- Each speaker shall identify himself, including full name and address.

SPECIAL NOTICE CONCERNING CITY COUNCIL MEETINGS

If you prefer not to attend a City Council meeting or work session in person, you may participate remotely:

- **Videoconference:** To participate by videoconference, you may access the meeting via Zoom at <https://us02web.zoom.us/j/5539517181>. When the Zoom.us window opens in your browser, click "Allow" to be placed in a virtual "waiting room." The host will open the meeting and allow all participants to join the meeting 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 "video" 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. Some useful Zoom functions include: microphone Mute/Unmute; Start/Stop Video; and View Participants – opens a pop-out screen that includes the "Raise Hand" icon that you may use to raise a virtual hand.
- **Teleconference:** To participate by telephone, dial 312.626.6799 and enter the meeting ID: 5539517181. All participants will be automatically muted upon entrance to the meeting. If you wish to speak during time(s) identified for public input, unmute yourself by pressing *6 on your keypad. 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.

Meetings may be recorded. By participating in the meeting, you are consenting to be recorded.

"Zoom-bombing." 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 terminated 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.



**Vestavia Hills
City Council Work Session Minutes
October 21, 2024
2:00 PM**

1. Call to Order

The City Council of Vestavia Hills met in special work session on this date at 2:00 PM, following publication and posting pursuant to Alabama law. A number of staff and members of the general public also attended following publication pursuant to Alabama law. The Mayor called the work session to order and the City Clerk checked the roll with the following:

2. Roll Call

Roll call was as follows:

MEMBERS PRESENT: Mayor Ashley Curry, City Councilor Kimberly Cook, City Council George Pierce,

MEMBERS ABSENT: Mayor Pro-Tem Rusty Weaver, City Councilor Paul Head

OTHER OFFICIALS PRESENT: None.

3. Interviews for an upcoming vacancy of the Board of Zoning Adjustment.

The City Council interviewed the following applicants for the Board of Zoning Adjustment:

- Taylor Burton
- Vinay Patel

16. Time Of Adjournment

There being no further business, the Mayor adjourned the meeting at 3:45 PM.

Ashley C. Curry, Mayor

ATTESTED BY:

Rebecca Leavings, City Clerk



**Vestavia Hills
City Council Minutes
November 4, 2024
6:00 PM**

1. Call to Order

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 and the Acting City Clerk called the roll with the following:

2. Roll Call

Roll call was as follows:

MEMBERS PRESENT: Mayor Ashley Curry, Mayor Pro-Tem Rusty Weaver, City Councilor George Pierce

MEMBERS ABSENT: City Councilor Kimberly Cook, City Councilor Paul Head

OTHER OFFICIALS PRESENT: Jeff Downes, City Manager; Patrick H. Boone, City Attorney; Umang Patel (Acting City Clerk), Court Director; Shane Ware, Police Chief; Marvin Green, Fire Chief; Ethan Fisher, City Engineer; Melvin Turner, Finance Director; Zachary Clifton, Asst. Finance Director

3. Invocation - Tom Bryson, Vestavia Hills Chaplain

4. Pledge Of Allegiance

5. Approval Of The Agenda

6. Proclamation - November 2024 Small Business November

The Mayor presented a Proclamation designating November 23rd 2024 as "Small Business Saturday" and the month of November 2024 as "Small Business Month." Mr. Downes read the Proclamation aloud and the Mayor presented it to Clabe Dobbs, Tracy Thornton, Katherine McRee, Michelle Hawkins, and Drew Carter of the Vestavia Hills Chamber of Commerce.

7. Proclamation - November 2024 as National Epilepsy Awareness Month

The Mayor presented a Proclamation designating November 2024 as "Epilepsy Awareness Month." Mr. Downes read the Proclamation aloud and the Mayor presented it to Jeremiah Stone, Executive Director for the Epilepsy Foundation of Alabama, and Phillip Wiedmeyer and Ballard Jones.

8. Announcements, Candidates and Guest Recognition

- Mr. Pierce welcomed Mark Macoy to the meeting representing the Chamber of Commerce. He stated Mr. Macoy has served as the legal advisor for the Vestavia Hills Chamber of Commerce.

Special Recognition - Members of the Vestavia Hills Public Works Department

Mayor Curry presented special recognition and certificates to Robby Eaton, Mark Mayes, Brandon Rylant and Daniel Sieg, members of the Vestavia Hills Public Works Department, for their efforts in recovering and safe delivery of a lost suitcase.

9. City Manager's Report

Mr. Downes invited Katherine Gorham and Leigh Belcher, members of the Vestavia Hills Parks and Recreation Foundation Board, to provide an update on the Veterans Memorial project. Ms. Gorham and Ms. Belcher discussed the launch of a capital campaign to raise funds for the new Veterans Memorial, which will be located at Altadena Valley Park. The Vestavia Hills Parks and Recreation Foundation has pledged \$100,000 toward the memorial's construction. The official campaign will kick off on Thursday, November 7, 2024, during the Vestavia Hills Veterans Memorial Celebration, with additional details to be shared at that time.

Mr. Downes commended the ongoing efforts of the Vestavia Hills Parks and Recreation Foundation, highlighting their significant contributions to the City. Their philanthropy has had a lasting and positive impact on the community.

Mr. Downes also acknowledged the success of the Vestavia Hills United Way campaign, which raised a total of \$40,466. He noted that the City of Vestavia Hills is a leader in contributions among municipalities in the greater Birmingham area.

10. Councilors' Reports

- None.

11. Approval Of Minutes - October 28, 2024 work session and October 28, 2024 regular meeting minutes

The Mayor announced that the minutes of the October 28, 2024, regular meeting are being presented for approval. He opened the floor for a motion.

MOTION: Approve the minutes of the regular meeting of October 28, 2004, as presented.
Motion By: Rusty Weaver. Seconded By: George Pierce.

Roll call vote as follows: Yes: Ashley Curry, Rusty Weaver, George Pierce.

No: None. Abstain: None. Motion passed.

Old Business (Public Hearing)

- 12. Public Hearing - Ordinance Number 3251 - An Ordinance authorizing the Mayor and City Manager to execute and deliver a License Agreement with TDG Vestavia, LLC, granting non-exclusive and permissive use of City property to provide tenants of AVIA Apartments access to and from the Apartments and the Vestavia Hills Civic Center.**

MOTION: Approve Ordinance Number 3251 as presented. Motion by: Rusty Weaver. Seconded by: George Pierce.

Mr. Downes discussed the proposal to construct a short segment of sidewalk connecting the Avia Apartment Complex to the Vestavia Hills Civic Center. The Dobbins Group "TDG", which owns the Avia Apartments, would cover the cost of the sidewalk's construction. A license agreement with TDG would be required for this project, though the agreement would not involve the vacation of any property rights. The Avia Apartment Complex also features a network of sidewalks that would provide residents with safer access off Highway 31.

Mr. Pierce inquired whether the building plans would first need approval from the City.

Mr. Downes confirmed that all work would need to go through the standard building approval process, which includes review and approval from the appropriate city departments.

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

VOTE: Roll call vote as follows: Yes: Ashley Curry, Rusty Weaver, George Pierce.
No: None. Abstain: None. Motion passed.

New Business

New Business Requesting Unanimous Consent (Public Hearing)

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

- 13. Public Hearing - Ordinance Number 3249 - Rezoning - 3128 Blue Lake Drive; Lot 9A, Resurvey of Lots 8 & 9, Topfield Subdivision; Rezone from Vestavia Hills R-1 to Vestavia Hills B-2 for a plant nursery; Robert Fuqua, owner**
- 14. Public Hearing - Ordinance Number 3250 - Rezoning - a 25' wide strip**

traversing Lot 1, The Bray at Liberty Park, First Addition; Rezone from Birmingham holding to Vestavia Hills PUD PB, planned business; Liberty Park Joint Venture, owners

15. Citizens Comments

16. Time Of Adjournment

There being no further business, Mr. Weaver made a motion to adjourn. The Mayor adjourned the meeting at 6:25.

Ashley C. Curry, Mayor

ATTESTED BY:

Umang Patel, Acting City Clerk



Vestavia Hills
City Council Work Session Minutes
November 6, 2024
8:00 AM

1. Call to Order

The City Council of Vestavia Hills met in special work session on this date at 8:00 AM, following publication and posting pursuant to Alabama law. A number of staff and members of the general public also attended following publication pursuant to Alabama law. The Mayor called the work session to order and the City Clerk checked the roll with the following:

2. Roll Call

Roll call was as follows:

MEMBERS PRESENT: Mayor Ashley Curry, City Councilor Kimberly Cook, City Councilor Paul Head, City Councilor George Pierce,

MEMBERS ABSENT: Mayor Pro-Tem Rusty Weaver,

OTHER OFFICIALS PRESENT: Rebecca Leavings, City Clerk; Jamie Lee, Parks and Recreation Director; Taneisha Tucker, Library Director

3. Interviews for upcoming vacancies of the Parks and Recreation Board and the Library Board.

The City Council interviewed the following applicants for the Parks and Recreation Board:

- Emily Byrd
- Kyle Conrad
- Julie Palmer

The City Council interviewed the following applicants for the Library Board:

- Kevin Archer
- Erica Barnes

16. Time Of Adjournment

There being no further business, the Mayor adjourned the meeting at 12:24 PM.

Ashley C. Curry, Mayor

ATTESTED BY:

Rebecca Leavings, City Clerk

1.) Reconciled Cash Balance

The overall reconciled cash balance for the month of September was \$47,338,477 which is comprised of the following funds:

General Funds	\$36,297,458
Restricted Funds	\$11,037,939
Petty Cash	\$3,080
Total	<u>\$47,338,477</u>

2.) The "Financial Overview" for the month and YTD through September is as follows:

Monthly Revenues	\$3,636,279	YTD Revenues	\$71,400,306
Monthly Expenses	<u>\$4,988,174</u>	YTD Expenses	<u>\$68,072,381</u>
Monthly Fund Balance	<u>(\$1,351,895)</u>	YTD Fund Balance	<u>\$3,327,925</u>

3.) Comparative Fund Balances:

	<u>YTD</u>	<u>Variance</u>
Actual - 2023-2024	\$3,327,925	
Budget - 2023-2024	(\$1,400,001)	\$4,727,926
Last Year - 2022-2023	\$4,329,969	(\$1,002,044)

Note:
The "Actual Fund Balance" is \$4,727,926 greater than the "Budgeted Fund Balance" and \$1,002,044 less than "Last Year Fund Balance".

MTD						YTD			Variance	
		Actual	Budget	Last Year		Actual	Budget	Last Year	Act vs. Bdgt	Act vs LY
REVENUES		3,636,279	3,440,614	3,710,908		71,400,306	65,018,485	65,947,279	6,381,821	5,453,027
EXPENSES		4,988,174	5,027,142	4,853,689		68,072,381	66,418,486	61,617,310	(1,653,895)	(6,455,072)
FUND BALANCE		(1,351,895)	(1,586,528)	(1,142,780)		3,327,925	(1,400,001)	4,329,969	4,727,926	(1,002,044)
Advalorem - Real		20,916	3,262	0		20,974,628	18,855,007	18,955,296	2,119,621	2,019,331
Sales Tax		2,538,038	2,363,190	2,260,563		28,321,620	28,351,365	28,519,717	(29,745)	(198,097)
Utility Franchise Fees		0	0	0		2,613,737	2,466,893	2,467,092	146,844	146,645
Business License		40,930	109,493	124,612		4,515,410	3,975,640	3,974,654	539,770	540,756
Advalorem - Personal		216,295	189,592	260,449		2,403,841	2,016,972	2,375,244	386,869	28,596
October thru September 2024 (12 months)						2023-2024				
		Actual	Budget Total	Outstanding Bal		% Received	% Outstanding	Verification		
Advalorem - Real		20,974,628	18,855,007	2,119,621		111.24%	-11.24%	100.00%		
Sales Taxes		28,321,620	28,351,365	(29,745)		99.90%	0.10%	100.00%		
Utility Franchise Fees		2,613,737	2,466,893	146,844		105.95%	-5.95%	100.00%		
Business License		4,515,410	3,975,640	539,770		113.58%	-13.58%	100.00%		
Advalorem - Personal		2,403,841	2,016,972	386,869		119.18%	-19.18%	100.00%		
SEPTEMBER		MTD				MTD				
				Variance		Last Year	Act vs LY			
Advalorem - Real		20,916	3,262	17,654		0	20,916			
Sales Taxes		2,538,038	2,363,190	174,848		2,260,563	277,476			
Utility Franchise Fees		0	0	0		0	0			
Business License		40,930	109,493	(68,563)		124,612	(83,683)			
Advalorem - Personal		216,295	189,592	26,703		260,449	(44,154)			

**CITY OF VESTAVIA HILLS
MONTHLY CASH REPORT
"RECONCILED BALANCES"**

General Funds	Banking Institutions	APR	Sep 2023	Oct 2023	Nov 2023	Dec 2023	Jan 2024	Feb 2024	Mar 2024	Apr 2024	May 2024	Jun 2024	Jul 2024	Aug 2024	Sep 2024
General / Operational Funds	Region Bank	5.04%	4,111,462.41	6,779,150.23	8,408,494.76	8,678,758.65	11,671,643.22	20,516,193.77	18,608,623.16	15,387,719.81	14,436,292.53	12,801,155.18	9,516,369.01	4,077,735.30	2,844,714.72
Enhanced Cash Strategy	Region Bank	5.11%	10,311,308.65	9,936,408.24	10,004,361.97	10,076,629.06	10,119,135.13	10,121,913.63	10,160,280.52	10,166,247.60	10,223,363.54	10,270,541.52	10,351,509.61	10,418,980.96	10,489,627.78
Payroll Fund	Region Bank	0.25%	6,082.04	6,159.15	0.00	0.00	0.00	0.00	308.91	0.00	0.00	0.00	0.00	0.00	0.00
Emergency Reserve Fund	PNC Bank	5.37%	17,865,878.82	17,941,009.73	18,040,220.13	18,136,383.13	18,214,276.83	18,278,166.12	18,358,801.14	20,590,395.90	20,551,408.03	20,661,720.70	20,855,623.62	20,947,224.55	21,071,036.31
Court & Corrections Fund	Region Bank	0.25%	84,101.83	137,357.88	74,624.60	73,402.60	97,819.67	117,012.38	281,008.88	140,557.86	89,815.80	113,043.20	132,868.20	114,716.50	112,200.50
American Rescue Plan (COVID-19)	SouthPoint	4.40%	2,811,084.36	2,822,068.50	2,742,762.58	2,753,063.24	2,763,369.93	2,773,046.62	2,783,428.13	2,793,511.80	2,803,969.87	2,814,127.93	2,824,663.25	1,773,884.08	1,779,878.81
Total - Balance			\$35,189,918.11	\$37,622,153.73	\$39,270,464.04	\$39,718,236.68	\$42,866,244.78	\$51,806,332.52	\$50,192,450.74	\$49,078,432.97	\$48,104,849.77	\$46,660,588.53	\$43,681,033.69	\$37,332,541.39	\$36,297,458.12
Restricted Funds															
Court Cash Bonds	Regions Bank	0.25%	155,927.20	158,135.20	147,320.20	145,886.00	144,166.00	138,606.00	133,766.00	129,371.00	119,416.00	113,621.00	111,646.00	104,646.00	101,421.00
Contractors' Bonds & CDs on Hand	City Clerk's Office	n/a	4,474,038.42	4,474,038.42	4,474,038.42	4,474,038.42	4,474,038.42	4,187,938.42	4,187,938.42	4,187,938.42	4,187,938.42	4,187,938.42	4,187,938.42	4,187,938.42	4,187,938.42
Contractors' Cash Bonds	SouthPoint	0.25%	696,630.28	698,351.23	687,946.13	686,595.00	673,211.91	675,347.73	647,538.10	659,736.91	630,929.54	601,364.94	609,197.10	585,375.54	594,199.62
Confiscated Funds	SouthPoint	1.25%	289,469.82	289,777.13	290,074.85	290,382.81	290,690.25	58,999.32	59,061.79	59,122.30	59,184.90	59,245.54	59,308.27	59,371.06	59,431.89
Community Spaces	SouthPoint	1.65%	458.72	0.04	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
2013 GOW - QEBC Sinking Fund	Bank of New York		1,891,162.76	1,911,964.89	1,911,964.89	1,911,964.89	1,911,964.89	1,911,964.89	1,911,964.89	1,911,964.89	1,911,964.89	1,911,964.89	1,911,964.89	1,911,964.89	2,127,191.68
Library Campaign Fund/Donations	Pinnacle	earnings offset fees	433,701.36	438,732.28	458,022.23	461,230.31	464,421.95	0.00	309.20	303.20	0.00	0.00	0.00	0.00	0.00
Lease Escrow Funds	Truist & Robertson		1,412,477.26	703,500.95	704,554.69	705,645.36	706,734.88	707,755.76	708,848.82	709,908.37	654,497.10	655,560.15	656,660.45	657,763.60	3,967,756.36
Total Balance			\$9,353,865.82	\$8,674,500.14	\$8,673,921.41	\$8,675,742.79	\$8,665,228.30	\$7,680,612.12	\$7,649,427.22	\$7,658,345.09	\$7,563,930.85	\$7,529,694.94	\$7,536,715.13	\$7,507,059.51	\$11,037,938.97
Cash on Hand															
Petty Cash - City Depts.			880.00	880.00	880.00	880.00	880.00	880.00	880.00	880.00	880.00	880.00	880.00	880.00	880.00
Petty Cash - Courts/Jail			500.00	500.00	500.00	500.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00
Petty Cash - Library			600.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00
Petty Cash - Vehicle Tags			1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00
Total - Petty Cash			\$2,980.00	\$2,980.00	\$2,980.00	\$2,980.00	\$3,080.00	\$3,080.00	\$3,080.00	\$3,080.00	\$3,080.00	\$3,080.00	\$3,080.00	\$3,080.00	\$3,080.00
Grand Total - All Funds			\$44,546,763.93	\$46,299,633.87	\$47,947,365.45	\$48,396,959.47	\$51,534,553.08	\$59,490,024.64	\$57,844,957.96	\$56,739,858.06	\$55,671,860.62	\$54,193,363.47	\$51,220,828.82	\$44,842,680.90	\$47,338,477.09
Petty Cash Itemization															
City Clerk Dept.	none														
Court Dept.	\$600.00														
Finance Dept. & Vehicle Tags	\$1,050.00	Tags & City Depts													
Fire Dept.	\$100.00	City Depts													
Inspection Dept.	\$30.00	City Depts													
Library	\$600.00														
Mayor's Office	\$200.00	City Depts													
Parks & Leisure Services	\$300.00	City Depts													
Police Dept.	\$200.00	City Depts													
Public Services	none														
Total	\$3,080.00														

1	MONTH OF SEPTEMBER 2024							YEAR-TO- DATE THROUGH SEPTEMBER 2024						
	2	3	4	5	6	7	8	9	10	11	12	13	14	15
	2023-2024	2023-2024	2022-2023	Actual to	Budget	Actual to	Last Year	2023-2024	2023-2024	2022-2023	Actual to	Budget	Actual to	Last Year
REVENUE SUMMARY	Actual	Budget	Actual	Amount	Percentage	Amount	Percentage	Actual	Budget	Actual	Amount	Percentage	Amount	Percentage
STATE REVENUE	33,549	24,452	47,921	9,097	37.20%	(14,372)	-29.99%	261,826	205,891	324,902	55,935	27.17%	(63,076)	-19.41%
COUNTY REVENUE	259,122	213,848	277,561	45,274	21.17%	(18,439)	-6.64%	23,776,482	21,262,965	21,727,385	2,513,517	11.82%	2,049,097	9.43%
CITY REVENUE	3,243,941	3,126,991	3,296,867	116,950	3.74%	(52,926)	-1.61%	45,761,441	42,238,129	42,589,682	3,523,312	8.34%	3,171,758	7.45%
PARK & RECREATION	99,666	75,323	88,558	24,343	32.32%	11,108	12.54%	1,600,557	1,311,500	1,305,309	289,057	22.04%	295,248	22.62%
TOTAL REVENUES	3,636,279	3,440,614	3,710,908	195,665		(74,629)		71,400,306	65,018,485	65,947,279	6,381,821		5,453,027	
EXPENDITURE SUMMARY														
NON DEPARTMENTAL	932,973	1,027,685	1,209,674	94,712	9.22%	276,702	22.87%	22,559,302	20,600,283	20,418,072	(1,959,019)	-9.51%	(2,141,230)	-10.49%
CITY COUNCIL	4,025	6,463	4,774	2,438	37.73%	750	15.70%	78,540	89,393	81,274	10,853	12.14%	2,733	3.36%
MAYOR & ADMINISTRATION	199,804	172,850	161,548	(26,954)	-15.59%	(38,256)	-23.68%	2,107,510	2,117,606	1,881,034	10,096	0.48%	(226,476)	-12.04%
CITY CLERK	76,570	53,774	39,645	(22,796)	-42.39%	(36,924)	-93.14%	581,527	600,158	493,645	18,631	3.10%	(87,882)	-17.80%
MUNICIPAL COMPLEX	49,540	37,489	34,714	(12,051)	-32.15%	(14,826)	-42.71%	418,774	395,674	349,052	(23,100)	-5.84%	(69,722)	-19.97%
INFORMATION SERVICES	93,365	96,479	103,011	3,114	3.23%	9,646	9.36%	880,076	904,086	763,882	24,010	2.66%	(116,194)	-15.21%
POLICE	1,230,475	1,207,188	1,024,476	(23,287)	-1.93%	(205,999)	-20.11%	13,867,643	14,375,875	12,331,158	508,232	3.54%	(1,536,485)	-12.46%
FIRE	1,165,449	1,196,092	1,084,026	30,643	2.56%	(81,422)	-7.51%	13,320,845	13,352,154	12,038,126	31,309	0.23%	(1,282,719)	-10.66%
INSPECTION	69,076	77,038	65,250	7,962	10.34%	(3,826)	-5.86%	842,256	873,444	720,766	31,188	3.57%	(121,490)	-16.86%
PUBLIC SERVICES	473,004	512,853	460,869	39,849	7.77%	(12,136)	-2.63%	5,467,153	5,627,944	5,327,063	160,791	2.86%	(140,090)	-2.63%
PUBLIC LIBRARY	212,994	238,740	200,046	25,746	10.78%	(12,948)	-6.47%	2,876,064	3,014,519	2,774,430	138,455	4.59%	(101,634)	-3.66%
PARKS & LEISURE SERVICES	480,899	400,491	465,655	(80,408)	-20.08%	(15,244)	-3.27%	5,072,691	4,467,350	4,438,810	(605,341)	-13.55%	(633,881)	-14.28%
TOTAL EXPENDITURES	4,988,174	5,027,142	4,853,689	38,968		(134,485)		68,072,381	66,418,486	61,617,310	(1,653,895)		(6,455,071)	
SURPLUS / (DEFICIT)	(1,351,895)	(1,586,528)	(1,142,780)	234,634		(209,114)		3,327,925	(1,400,001)	4,329,969	4,727,926		(1,002,044)	



**CITY OF VESTAVIA HILLS
CITY CLERK
INTER-DEPARTMENT MEMO**

November 25, 2024

To: Jeff Downes, City Manager

From: Rebecca Leavings, City Clerk

Cc:

RE: Public Hearing - Ordinance Number 3249 - Rezoning - 3128 Blue Lake Drive; Lot 9A, Resurvey of Lots 8 & 9, Topfield Subdivision; Rezone from Vestavia Hills R-1 to Vestavia Hills B-2 for a plant nursery; Robert Fuqua, owner

Background:

Property requesting rezoning in order to construct a plant nursery with both indoor and outdoor plantings; Owner pledged to certain prohibited uses that might be detrimental to the area since much of the area is composed of office buildings.

Recommendation:

P&Z Commission recommended approval with certain uses prohibited which are set out in the ordinance.

Fiscal Impact:

na

Attachments:

1. Ordinance 3249

ORDINANCE NUMBER 3249

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 VESTAVIA HILLS R-1 TO VESTAVIA HILLS B-2

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 Vestavia Hills R-1 (low density residential district) to Vestavia Hills B-2 (general business district):

3128 Blue Lake Drive; Lot 9A, Resurvey of Lots 8 & 9, Topfield Subd.
Robert Fuqua, Owner(s)

BE IT FURTHER ORDAINED, that said rezoning be effective with the following uses as prohibited: gas stations, automotive repair, automotive sales, car wash, convenience stores, laundromat/dry-cleaning establishments and fast-food restaurants.

APPROVED and ADOPTED this the 25th of November, 2024.

Ashley C. Curry
Mayor

ATTESTED BY:

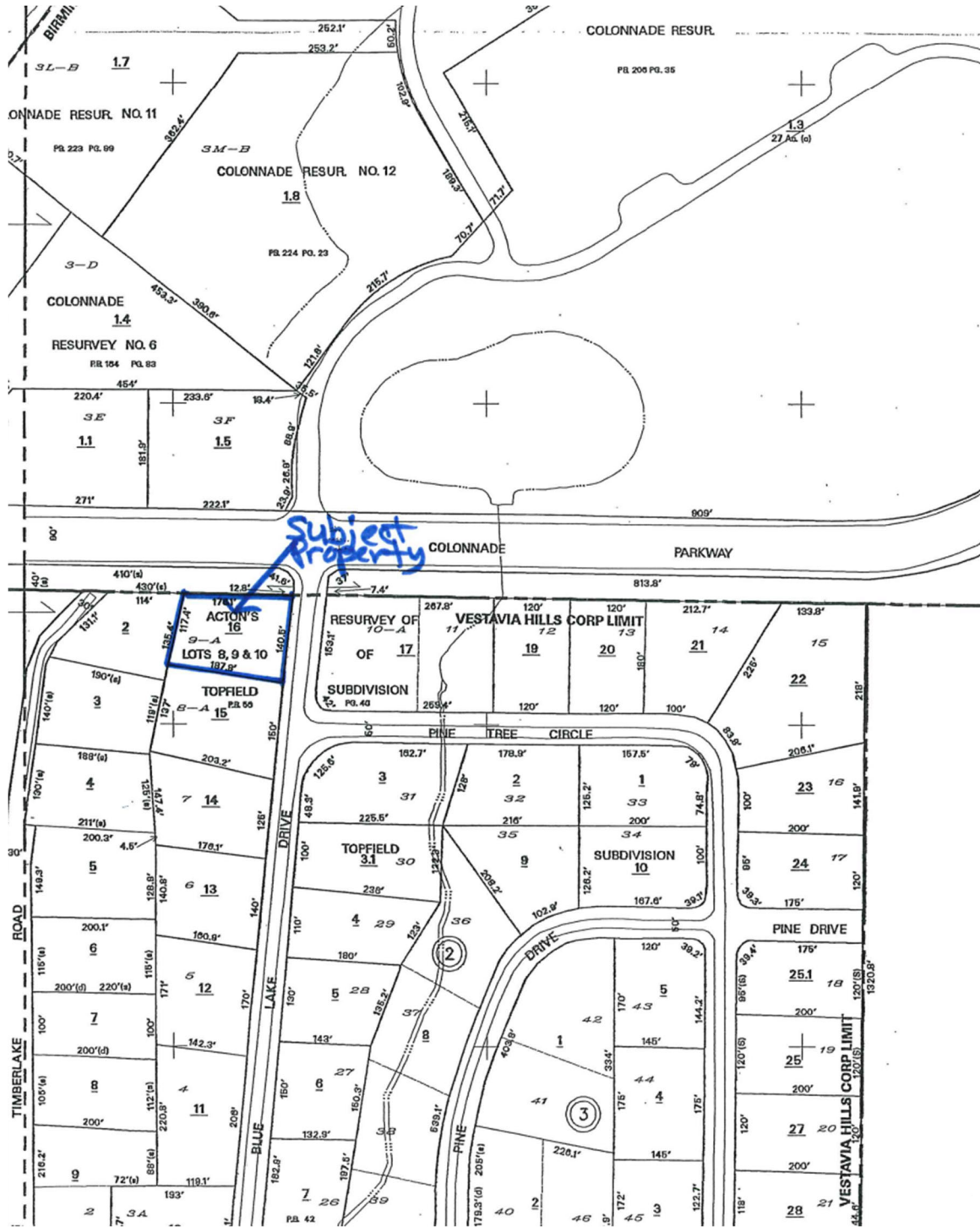
Rebecca Leavings
City Clerk

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 3249 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 25th day of November, 2024 as same appears in the official records of said City.

Posted at Vestavia Hills City Hall, Vestavia Hills Library in the Forest, Vestavia Hills Civic Center and Vestavia Hills New Merkel House this the _____ day of _____, 2024.

Rebecca Leavings
City Clerk





City of Vestavia Hills

Planning and Zoning Commission Review and Recommendation



Case Number: RZ-24-11

Owner Name: Robert Fuqua

Owner Address: 2712 Ossa Wintha Dr, Vestavia Hills, AL
35243

Representative: Wade Lowery

Rep. 120 Bishop Circle, Suite 300, Pelham,
Address: AL 35124

Project Address: 3128 Blue Lake Drive, Vestavia Hills, AL 35243

Legal Description: Lot 9-A, according to Acton's Resurvey of Lots 8-9 and 10 of Topfield Subdivision, as recorded in Map Book 56, page 40, in the Probate Office of Jefferson County, Alabama.

Parcel ID Number: 28-00-27-4-001-016.000

Current Zoning: R-1

Requested Zoning: B-2

Intended Purpose: A new plant nursery and retail store

MOTION Mr. Blackenburg made a motion to recommend Rezoning for 3128 Blue Lake Dr. from Vestavia Hills R-1 to Vestavia Hills B-2 with the following conditions:

1. Gas stations, automotive repair, automotive sales, car wash, convenience stores, laundromat/dry cleaning, and fast food restaurants are prohibited.

2. Second was by Mr. Sykes. Motion was carried on a roll call; vote as follows:

P&Z

Recommendation: Mr. Sykes – yes Ms. Cochran – yes
Mr. Romeo – yes Mr. Honeycutt – yes
Mr. Maloof – yes Mr. Blakenburg – yes
Mr. Vercher – yes
Motion carried.

Date of P&Z Meeting: October 10, 2024

Authorized by:

Issued by:

Vestavia Hills Planning and Zoning Commission,
Michael Vercher, Chair

Conrad Garrison, City Planner

Rezoning Application

RZ-24-11

Submitted On: Sep 3, 2024

Applicant

 Conner Stewart
 205-403-9158
 conner@edgalabama.com

Primary Location

3128 BLUE LAKE DR
VESTAVIA HILLS, AL 35243

Property Information

Subject Property Address

3128 Blue Lake Drive, Vestavia Hills, AL 35243

Tax Parcel ID Number

28-00-27-4-001-016.000

Legal Description

Lot 9-A, according to Acton's Resurvey of Lots 8-9 and 10 of Topfield Subdivision, as recorded in Map Book 56, page 40, in the Probate Office of Jefferson County, Alabama.

Existing Parking Spaces

0

Proposed Parking Spaces

9

Submission Date

09/03/2024

Type of Project

New Non-Residential Development/use

Action Requested:

From Existing Zoning Classification

R-1

To Requested Zoning Classification

B-2

For the Intended Purpose of:

A new plant nursery and retail store

Acreage of Subject Property

0.54

Acreage of Property to be Disturbed

.5

Setbacks

Front

30

Back

30

Side

10

Open Space

0.3

Lot Coverage Percentage

44

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).

true

Owner Information

Applications must be either submitted by the owner of the property or a representative duly appointed by the owner by

Property Owner Name

Robert Fuqua

way of a notarized letter and/or power of attorney.

Company Name

Epilogue I, LLC

Owner Address City State Zip

2712 Ossa Wintha Dr, Vestavia Hills, AL 35243

Owner's Phone Number

(205) 266-5368

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.

true

Email Address of Owner

Robert.Fuqua@ArenaAdvising.com

Owner Representative/Responsible Party

Wade Lowery

Company Name

Engineering Design Group, LLC

Contact Email of Responsible Party

wade@edgalabama.com

Mailing Address of Responsible Party

120 Bishop Circle, Suite 300, Pelham, AL 35124

Phone No. of Responsible Party

(205) 403-9158

Email Address of Responsible Party

wade@edgalabama.com

Project Engineer Information (if applicable)

Name

Conner Stewart

Company

Engineering Design Group, LLC

Mailing Address

120 Bishop Circle, Suite 300, Pelham, AL 35124

Phone Number

(205) 403-9158

Email

conner@edgalabama.com

ASI - NO. 1

ASI No. 1 attached to the contract documents and city portal message for zoning approval:

Trellis Nursery

24042.00

Date: 09.03.24

To: City of Vestavia Hills

From: Hendon + Huckestein Architects, PC

Marci Hollingsworth, Owner of the property in question: 3128 Blue Lake Drive, Vestavia Hills, Alabama Agrees to limit the use of the property to prohibit the following: Gas Station; Automotive repair; Automotive Sales; Car Wash; Convenience Store; Laundromat or dry cleaning; Restaurant.

Ms. Hollingsworth has agreed to allow our firm to write this letter on her behalf.

Thank you,



Scott Boomhover, AIA, NCIDQ, NCARB



Future Land Use

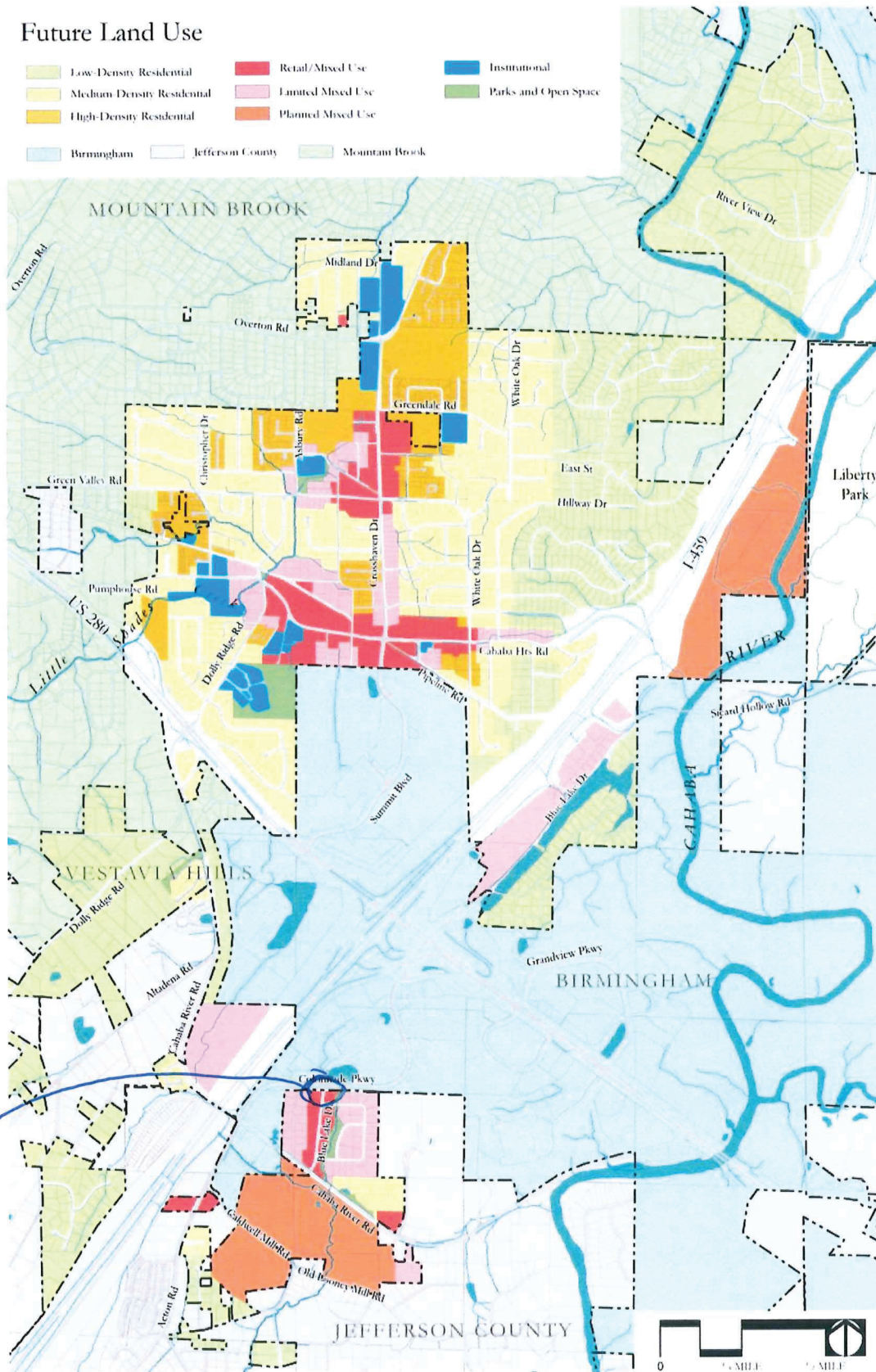


Figure 4: Future Land Use Map



**CITY OF VESTAVIA HILLS
CITY CLERK
INTER-DEPARTMENT MEMO**

November 25, 2024

To: Jeff Downes, City Manager

From: Rebecca Leavings, City Clerk

Cc:

RE: Public Hearing - Ordinance Number 3250 - Rezoning - a 25' wide strip traversing Lot 1, The Bray at Liberty Park, First Addition; Rezone from Birmingham holding to Vestavia Hills PUD PB, planned business; Liberty Park Joint Venture, owners

Background:

Liberty Park owns Lot 1, The Bray at Liberty Park and wishes to construct an office building on the property. However, there was an old 25' strip of property located in the City of Birmingham. Both Councils of Birmingham and Liberty Park did a series of annexation/de-annexation in order to relocate that Bham strip to run along I-459 and Vestavia annexed the 25' strip that traversed the center of the lot. This is to make the zoning consistent with the remainder of the property.

Recommendation:

Planning and Zoning Commission recommended approval.

Fiscal Impact:

na

Attachments:

1. Ordinance 3250

ORDINANCE NUMBER 3250

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 BIRMINGHAM HOLDING TO VESTAVIA HILLS PLANNED UNIT DEVELOPMENT, PLANNED BUSINESS

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 Birmingham Holding (temporary Birmingham) to Vestavia Hills Planned Unit Development PB (planned business):

A 25' wide strip traversing Lot 1, The Bray at Liberty Park First Addition
Liberty Park Joint Venture, Owner(s)

More particularly described as follows:

A part of Lot 1, The Bray at Liberty Park First Addition as recorded in Map Book 260, Page 22 in the Probate Office of Jefferson County, Alabama, and acreage situated in the N.E. 1/4 of the N.W. 1/4 of Section 13, Township 18 South, Range 2 West, Jefferson County, Alabama, being more particularly described as follows:

Commence at the Northwest corner of the N.E. 1/4 of the N.W. 1/4 of Section 13, Township 18 South, Range 2 West, Jefferson County, Alabama and run in an Easterly direction along the North line of said 1/4-1/4 section a distance of 10.00 feet to the Point of Beginning of the property herein described: thence continue along the last described course in a, Easterly direction a distance of 25.01 feet to a point; thence 88°22'17" to the right in a Southerly direction a distance of 1115.10 feet to a point; thence 82° 31 '24" to the right in a Southwesterly direction a distance of 25 .21 feet to a point; thence 97°28'36" to the right in a Northerly direction a distance of 1119.09 feet to the Point of Beginning. Containing 27,927 square feet or 0.641 acre

APPROVED and ADOPTED this the 25th of November, 2024.

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 3250 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 25th day of November, 2024 as same appears in the official records of said City.

Posted at Vestavia Hills City Hall, Vestavia Hills Library in the Forest, Vestavia Hills Civic Center and Vestavia Hills New Merkel House this the _____ day of _____, 2024.

Rebecca Leavings
City Clerk





City of Vestavia Hills

Planning and Zoning Commission Review and Recommendation



Case Number: RZ-24-9

Owner Name: Reed Williams

Owner Address: 1000 Urban Center Drive, Suite 235,
Vestavia, AL 35242

Representative: Reed Williams

Rep. Address: 1000 Urban Center Drive, Suite 235,
Vestavia, AL 35242

Project Address: 10001 Liberty Parkway

Legal Description: Part of Lot 1, The Bray at Liberty Park First Addition, Map Book 260, Page 22 (spite strip)

Parcel ID Number: 28 00 13 2 000 001.007

Current Zoning: Holding Zone

Requested Zoning: PUD-PB

Intended Purpose: Spite strip previously deannexed by BHM, re-establishing zoning consistent with the remainder of the lot.

MOTION Mr. Honeycutt made a motion to recommend Rezoning for 10001 Liberty Pkwy. from Birmingham Holding to Vestavia Hills PUD-PB. Second was by Mr. Blakenburg. Motion was carried on a roll call; vote as follows:

P&Z	Mr. Sykes – yes	Ms. Cochran – abstained
Recommendation:	Mr. Romeo – yes	Mr. Honeycutt– yes
	Mr. Maloof – yes	Mr. Blakenburg– yes
	Mr. Vercher– yes	
	Motion carried.	

Date of P&Z Meeting: October 10, 2024

Authorized by:

Issued by:

Vestavia Hills Planning and Zoning Commission,
Michael Vercher, Chair
Conrad Garrison, City Planner

Rezoning Application

Applicant

Primary Location

RZ-24-9

 Jennifer Yates
 (205) 945-6428
 jyates@libertypark.com

10001 LIBERTY PKWY
BIRMINGHAM, AL 35242

Submitted On: Aug 16, 2024

Property Information

Subject Property Address

10001 Liberty Parkway

Tax Parcel ID Number

28 00 13 2 000 001.007

Legal Description

Part of Lot 1, The Bray at Liberty Park First Addition, Map Book 260, Page 22 (spite strip)

Existing Parking Spaces

--

Proposed Parking Spaces

--

Submission Date

08/16/2024

Type of Project

New Commercial Development

Action Requested:

From Existing Zoning Classification

Holding Zone

To Requested Zoning Classification

PUD-PB

For the Intended Purpose of:

Spite strip previously deannexed by BHM, re-establishing zoning consistent with the remainder of the lot.

Acreage of Subject Property

?

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).

true

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

Reed Williams

Company Name

Liberty Park Joint Venture, LLP

Owner Address City State Zip

1000 Urban Center Drive, Suite 235, Vestavia, AL 35242

Owner's Phone Number

(205) 945-6529

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.

true

Email Address of Owner

rwilliams@drummondco.com

Owner Representative/Responsible Party

Reed Williams

Company Name

Liberty Park Joint Venture, LLP

Contact Email of Responsible Party

rwilliams@drummondco.com

Mailing Address of Responsible Party

1000 Urban Center Drive, Suite 235, Vestavia, AL 35242

Phone No. of Responsible Party

(205) 945-6529

Email Address of Responsible Party

rwilliams@drummondco.com

Project Engineer Information (if applicable)

Name

--

Company

--

Mailing Address

--

Phone Number

--

Email

--

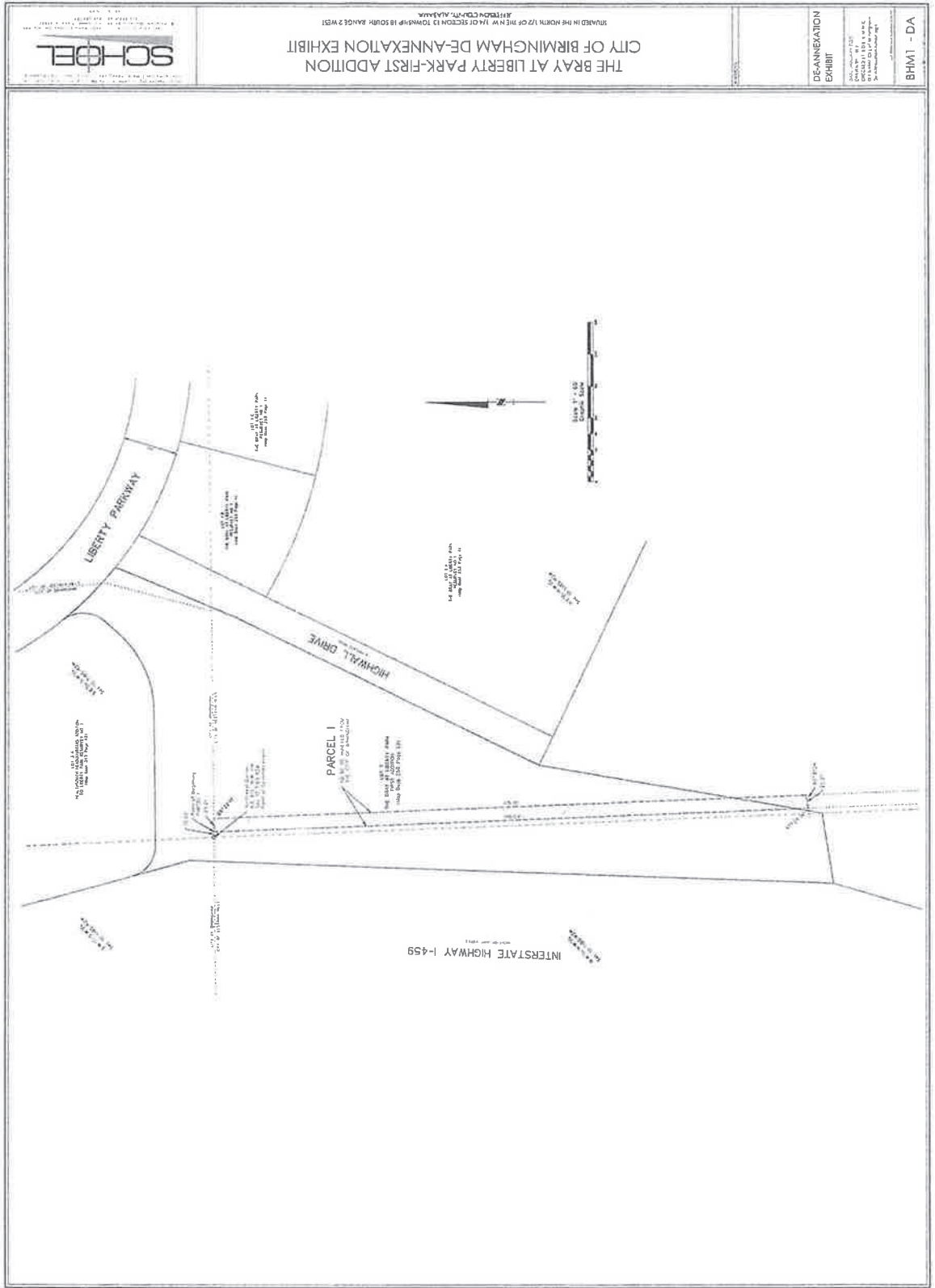
LEGAL DESCRIPTION
THE BRAY AT LIBERTY PARK FIRST ADDITION
BIRMINGHAM DE-ANNEXATION PARCEL I

A part of Lot 1, The Bray at Liberty Park First Addition as recorded in Map Book 260, Page 22 in the Probate Office of Jefferson County, Alabama, and acreage situated in the N.E. 1/4 of the N.W. 1/4 of Section 13, Township 18 South, Range 2 West, Jefferson County, Alabama, being more particularly described as follows:

Commence at the Northwest corner of the N.E. 1/4 of the N.W. 1/4 of Section 13, Township 18 South, Range 2 West, Jefferson County, Alabama and run in an Easterly direction along the North line of said 1/4-1/4 section a distance of 10.00 feet to the Point of Beginning of the property herein described; thence continue along the last described course in a, Easterly direction a distance of 25.01 feet to a point; thence 88°22'17" to the right in a Southerly direction a distance of 1115.10 feet to a point; thence 82°31'24" to the right in a Southwesterly direction a distance of 25.21 feet to a point; thence 97°28'36" to the right in a Northerly direction a distance of 1119.09 feet to the Point of Beginning.

Containing 27,927 square feet or 0.641 acre.

BHM1 - DA





**CITY OF VESTAVIA HILLS
OFFICE OF THE CITY MANAGER
INTER-DEPARTMENT MEMO**

November 25, 2024

To: Mayor and City Council

From: Jeff Downes, City Manager

Cc: Jamie Lee, Parks and Leisure Services Director

RE: Resolution Number, 5537 - A Resolution Authorizing the City Manager to Execute a Facility Use Agreement with Hub in the Hills for Supplemental Gymnasium Space During the 2024-2025 Basketball Season

Background:

Financial Agreement with Hub in the Hills (Will Akin) for Central School Use

- The Vestavia Hills Board of Education intends to sell the old Central School campus to Hub in the Hills on or around December 3, 2024. The City has a limited need for the Central basketball court/gym for scheduled activities this winter. Hub in the Hills has agreed for continued use of the property by the City until its new program commences under terms of an agreement that would require City Council approval.

-

Basic Agreement Terms

- All revenue collected for the "recreational season" from OTM/North-Shelby teams will be paid to Hub in the Hills (or whomever the designee is) as

rental for practice space. The season runs November 4 – March 1. All OTM teams who are provided space in the city will use Central for their practices.

Rosters of each team will be provided so that the fee is reconciled correctly.

- Beginning the week of December 2, the city will pay \$30/hour for any practices or games played at Central school for recreational basketball teams. This agreement will last until approximately February 15.
- The city will pay for Gym Monitors while any of the teams are onsite. This would be done regardless of the rental agreement if the facility were being used.

Recommendation:

It is recommended to authorize the agreement so as to minimally disrupt the current year basketball practice and game schedule.

Fiscal Impact:

None. Expenses have been accounted for within the FY 25 budget.

Attachments:

1. Resolution 5537
2. 4864-8843-1604 v.2 Facilities Use Agreement - Hub in the Hills
3. CM Financial Agreement with Central School v2
4. PH Boone Legal Opinion to City Manager November 4 2024

RESOLUTION NUMBER 5537

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A FACILITY USE AGREEMENT WITH HUB IN THE HILLS FOR SUPPLEMENTAL GYMNASIUM SPACE DURING THE 2024-2025 BASKETBALL SEASON

WHEREAS, the City of Vestavia Hills Board of Education intends to sell the old Central School campus to Hub in the Hills, Inc., (“Hub in the Hills”) on or around November 27, 2024; and

WHEREAS, the city has a limited need for the Central basketball court/gym for scheduled activities this winter; and

WHEREAS, Hub in the Hills has agreed for continued use of the property by the city until its new program commences under terms of a Gym Use Agreement (the Agreement) that would require City Council approval. A copy of the agreement is attached to this Resolution Number 5537, marked as Exhibit A and incorporated into said Resolution as if written fully therein; and

WHEREAS, a financial agreement is marked as Exhibit B, attached to and incorporated into this Resolution Number 5537 as if written fully therein whereby All revenue collected for the “recreational season” from OTM/North-Shelby teams will be paid to Hub in the Hills (or whomever the designee is) as rental for practice space. The season runs November 4 – March 1. All OTM teams who are provided space in the city will use Central for their practices. Further, rosters of each team will be provided so that the fee is reconciled correctly.

WHEREAS, the Mayor and City Council feel it is in the best public interest to authorize the City Manager to execute and deliver the Agreement as presented.

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

1. The City Manager is hereby authorized to execute and deliver the Agreement as presented in Exhibit A; and
2. This Resolution Number 5537 shall become effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 25th day of November, 2024.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

GYM USE AGREEMENT

This Gym Use Agreement (“**Agreement**”) is made and entered into as of the ____ day of _____, 2024, by and between **HUB IN THE HILLS, INC.**, an Alabama nonprofit corporation (“**Owner**”), and **THE CITY OF VESTAVIA HILLS, ALABAMA** (“**User**”).

Recitals

NOW THEREFORE, in consideration of the above premises, the mutual covenants and agreements hereinafter set forth and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, Owner and User hereby agree as follows:

1. **GYM.** Owner grants User the temporary use of the gym facility located at 1289 Montgomery Highway, Vestavia, AL 35216 (the “Gym”) on the terms set forth below.
2. **AS-IS CONDITION.** Owner provides the Gym in its “AS-IS, WHERE-IS” condition, without any representations or warranties, express or implied, regarding its condition, fitness for a particular purpose, or suitability for use. User expressly acknowledges and agrees to accept the Gym in its “AS-IS, WHERE-IS” condition. User hereby waives any and all claims, demands, and causes of action against the Owner arising out of or related to the use of the Gym. This waiver includes, but is not limited to, claims for personal injury, property damage, or any other loss or damage arising out of or related to the use of the Gym.
3. **USE OF GYM.** User shall use the Gym solely for the purpose of practices, games, and other ancillary gym uses for Over the Mountain and North Shelby League Teams.
4. **TERM.** The term of this Agreement shall commence upon Owner closing on the property and shall expire on February 23, 2025, unless the basketball season and its playoffs end earlier.
5. **FEES.** In consideration of the rights granted under this Agreement, User agrees to pay Owner the following amounts:
 - a. User shall pay to Owner all revenues collected for Over the Mountain and North Shelby League Teams for practices, games, or any other ancillary Gym use for those leagues/players, with backup documentation. This payment will be a minimum of \$35 per player per season.
 - b. When the Gym is used for games, User shall pay to Owner \$30 per hour for such use.
6. **MONITORING.** User shall be responsible for hiring a monitor to oversee practice times, game times, provide access, ensure the building is secure upon completion, and ensure the Gym and remainder of the facility is clean and returned to the condition as it existed upon their arrival.
7. **CLEANING.** If the bathrooms or any other areas visited by User’s licensees or invitees are not cleaned properly, Owner shall provide notice to User. If not remedied within 48 hours,

Owner shall have the right to clean such areas and charge User for such cost, which shall be paid by User to Owner within ten (10) days after request.

8. **INSURANCE.** User shall obtain and maintain, at its own expense, a policy of commercial general liability insurance on an occurrence basis, with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in aggregate, covering claims for bodily injury, death, personal injury, advertising injury, and property damage arising out of or in connection with this Agreement and User's exercise of the rights granted hereunder. The policy shall include coverage for contractual liability and shall name the Owner as a certificate holder and additional insured. User shall provide the Owner with a certificate of insurance evidencing the required coverage prior to the commencement of any activities under this Agreement. The certificate of insurance shall state that the insurance policy cannot be canceled or materially altered without thirty (30) days' prior written notice to the Owner.

9. **SCHEDULE.** Before the beginning of each week during the term of this Agreement, User shall provide Owner with a proposed schedule for gym use that week. The schedule shall be subject to Owner's review and approval, which shall not be unreasonably withheld, conditioned, or delayed.

10. **ROUTINE MAINTENANCE AND REPAIRS.** Owner shall not be obligated to perform any maintenance or repairs of the Gym. To the extent User determines that any maintenance or repairs are needed, User shall perform such maintenance and repairs itself in a good, workmanlike, and lien-free manner.

11. **DAMAGE.** User shall be responsible for any damage to the Gym or its facilities caused by User or its invitees or licensees. User agrees to promptly repair or replace any damaged property to the reasonable satisfaction of Owner. If User fails to make the necessary repairs or replacements within a reasonable time, Owner may undertake such repairs and charge User for the cost incurred. The User shall reimburse the Owner for any such costs within ten (10) days after request.

12. **ALTERATIONS.** User shall not make any alterations or additions to the Gym.

13. **DEFAULT.** In the event of a default by User, Owner shall have the right to terminate this Agreement and pursue any other remedies available at law or in equity.

14. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama.

15. **NO LEASEHOLD INTEREST.** This Agreement grants User a license to use the Gym and does not grant User any leasehold interest or other interest in real property.

16. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, representations, or agreements, whether written or oral.

17. **NOTICES.** All notices and demands relative to this Agreement shall be in writing and sent to the following:

To Owner at: Hub in the Hills, Inc.
 2848 Five Oaks Lane
 Birmingham, AL 35243

With a copy to its counsel:

Scott Frederick
Baker Donelson Bearman Caldwell & Berkowitz, PC
1901 Sixth Avenue N., Suite 2600
Birmingham, AL 35203

To User at: The City of Vestavia Hills
 1204 Montgomery Highway
 Vestavia, AL 35216

18. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, all such counterparts shall be deemed to constitute one and the same instrument, and each of the executed counterparts shall be deemed an original of this Agreement; provided, however, that this Agreement shall not be effective or enforceable unless and until it is executed by each Party.

19. **AMENDMENTS.** This Agreement may be amended or modified only in writing, signed by the Parties in interest at the time of the modification.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

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

OWNER:

HUB IN THE HILLS, INC.,
an Alabama nonprofit corporation

By: _____
Name: _____
Title: _____

USER:

THE CITY OF VESTAVIA HILLS,
ALABAMA

By: _____
Name: _____
Title: _____



Financial Agreement with Hub in the Hills (Will Akin) for Central School Use

- The VHCS intends to sell the old Central School campus to Hub in the Hills on or around November 27, 2024. The City has a limited need for the Central basketball court/gym for scheduled activities this winter. Hub in the Hills has agreed for continued use of the property by the City until its new program commences under terms of an agreement that would require City Council approval.

Basic Lease Terms

- All revenue collected for the “recreational season” from OTM/North-Shelby teams will be paid to Hub in the Hills (or whomever the designee is) as rental for practice space. The season runs November 4 – March 1. All OTM teams who are provided space in the city will use Central for their practices.

Rosters of each team will be provided so that the fee is reconciled correctly.

- Beginning the week of December 2, the city will pay \$30/hour for any practices or games played at Central school for recreational basketball teams. This agreement will last until approximately February 15.
- The city will pay for Gym Monitors while any of the teams are onsite. This would be done regardless of the rental agreement if the facility were being used.

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

November 4, 2024

By Electronic Mail

City Manager Jeffrey D. Downes
Vestavia Hills Municipal Center
1032 Montgomery Highway
Vestavia Hills, Alabama 35216

In Re: Gym Use Agreement

Dear Mr. Downes:

On October 31, 2024, you sent to me via electronic mail a Gym Use Agreement by and between Hub In The Hills, Inc., as "Owner," and the City of Vestavia Hills, Alabama, as "User," with a request that I review the Agreement and provide you with my written legal opinion. I have reviewed the Agreement and approve it from a legal standpoint. Please call me if you have any questions regarding any of the matters set forth in this matter.

Sincerely,



Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp

cc: City Clerk Rebecca Leavings (by e-mail)
Administrative Assistant Melissa Hipp (by e-mail)



**CITY OF VESTAVIA HILLS
OFFICE OF THE CITY MANAGER
INTER-DEPARTMENT MEMO**

November 25, 2024

To: Mayor and City Council

From: Jeff Downes, City Manager

Cc: Cinnamon McCulley, Assistant City Manager

RE: Public Hearing - Ordinance Number 3253 - An Ordinance to Authorize the City Manager and Mayor to Execute Any and All Agreements and Expend Funds to Lease Space to Accommodate the Human Resource Department of the City of Vestavia Hills

Background:

Opportunity to Lease Space for the New HR Department of the City of Vestavia Hills

Location: 1056 Montgomery Hwy/The Shoppes at City Hall – Suite 1062 (1,200 sq ft)



Negotiated Terms

- Ten-year lease with two, five-year options
- Proposed delivery date: January 1, 2025
- Tenant improvement allowance from landlord = \$21,000 and total replacement of HVAC system
- Proposed fixed rent commencement date: May 1, 2025
- FY 25 City budget impact: \$2,200 (\$22/sf) fixed monthly rent (\$11,000 expense for FY 25) plus CAM and utilities
- Initial annual fixed rent: \$26,400 w/ a 3% escalation clause annually
- Utilities and CAM charges: approximately \$8,220 annually (\$685.00 per mo.)
- Mark Gibbs, Chief of Building Maintenance, has inspected the property and approves its condition upon replacement of the HVAC system.

Use Case

The new HR Department has two employees. They are currently housed in the Finance Department work space. They have one enclosed office and a cubicle space. **This condition offers no space for confidential employee consultations and no dedicated training space for employee onboarding or exit interviews. Collaborative space is non-existent due to the separation of work spaces.** The proposed leasable space allows work space for two employees along with growth allowance up to four employees. It can be configured to provide an ample group meeting area. The proximity to City Hall is ideal.

Recommendation:

It is recommended that the City Council approve the amended lease agreement as provided.

Fiscal Impact:

The unbudgeted expenses will be encumbered within the City of Vestavia Hills' General Fund

Attachments:

1. Ordinance 3253
2. City of Vestavia -- Retail Lease RL 4 v. 3
3. CM Summary of Proposed Lease Terms
4. PH Boone Legal Opinion to City Manager November 1 2024

ORDINANCE NUMBER 3253

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER A LEASE AGREEMENT WITH SHANNON WALTCHACK LLC FOR OFFICE SPACE FOR THE NEW HUMAN RESOURCES DEPARTMENT

WHEREAS, the City of Vestavia Hills has created a new department for Human Resources to handle personnel and payroll needs of the city; and

WHEREAS, the new HR Department has two employees and are currently housed in the Finance Department work space. They have one enclosed office and a cubicle space. **This condition offers no space for confidential employee consultations and no dedicated training space for employee onboarding or exit interviews. Collaborative space is non-existent due to the separation of work spaces;** and

WHEREAS, the City Manager has negotiated approximately 1200 square feet of leasable space in the adjacent shopping center. The proposed leasable space allows work space for two employees along with growth allowance up to four employees. It can be configured to provide an ample group meeting area. The proximity to City Hall is ideal; and

WHEREAS, the City Manager has worked with Shannon Waltchack LLC, the owner of the shopping center, to draft a lease. A copy of said lease is marked as Exhibit A, attached to and incorporated into this Ordinance Number 3253 as if written fully therein; and

WHEREAS, the City Manager has prepared a synopsis of the terms of the agreement which is marked as Exhibit B, attached to and incorporated into this Ordinance Number 3253 as if written fully therein; and

WHEREAS, the Mayor and the City Council feel it is in the best public interest to lease said space for Human Resources Department.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND 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 as detailed in Exhibit A; and
2. This Ordinance Number 3253 shall become effective immediately upon adoption and approval following posting/publishing as required by Alabama law.

ADOPTED and APPROVED this the 9th day of December, 2024.

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 3252 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 9th day of December, 2024 as same appears in the official records of said City.

Posted at Vestavia Hills City Hall, Vestavia Hills Library in the Forest, Vestavia Hills New Merkel House and Vestavia Hills Civic Center this the _____ day of _____, 2024.

Rebecca Leavings
City Clerk

COMMERCIAL LEASE AGREEMENT

This Commercial Lease Agreement (this “**Lease**”) is made to be effective as of the ____ day of October, 2024 (the “**Effective Date**”), which is the date last executed by the parties, by and between **SWNC-VESTAVIA, LLC**, a Delaware limited liability company (“**Landlord**”) and **THE CITY OF VESTAVIA HILLS, ALABAMA**, a municipal corporation (“**Tenant**”).

Section 1. SUMMARY OF LEASE TERMS

- A. Landlord:** Name: SWNC-Vestavia, LLC
Address: c/o Shannon Waltchack, LLC
3800 Colonnade Parkway, Suite 250
Birmingham, AL 35243
Attn: Andrew Patterson
ap@shanwalt.com
- Landlord’s Agent:** Shannon Waltchack Management, LLC
3800 Colonnade Parkway, Suite 250
Birmingham, AL 35243
- B. Tenant:** Name: The City of Vestavia Hills, Alabama
Address: 1032 Montgomery Highway
Vestavia Hills, AL 35216
- C. Shopping Center:** The shopping center known as Shoppes at City Hall located at 1056 Montgomery Highway, Vestavia Hills, Jefferson County, AL, as shown on Exhibit A, attached hereto and made a part hereof (the “**Shopping Center**”).
- D. Premises:** A space located in the Shopping Center known as Suite 1062 (the “**Premises**”). The location and boundaries of the Premises are identified on Exhibit A.
- E. Premises Square Footage:** Approximately 1,200 square feet.
- F. Delivery Date:** Effective Date.
- G. Term:** One hundred twenty-four (124) calendar months (the “**Term**”), commencing on the Commencement Date and ending on the last day of the 124th full calendar month following the Commencement Date (the “**Expiration Date**”). If the Commencement Date occurs on a date other than the first day of a calendar month, then the period from the Commencement Date to the first day of the next calendar month shall be added to the Term.
- H. Commencement Date:** The Delivery Date (the “**Commencement Date**”).
- I. Rent Commencement Date:** The date which is 120 days after the Delivery Date (the “**Rent Commencement Date**”).
- J. Fixed Minimum Rent:** “**Fixed Minimum Rent**” shall mean the following:

Lease Year	Monthly Rent	Annual Rent	Rent/SF
1	\$2,200.00	\$26,400.00	\$22.00
2	\$2,266.00	\$27,192.00	\$22.66
3	\$2,333.98	\$28,007.76	\$23.34
4	\$2,404.00	\$28,847.99	\$24.04
5	\$2,476.12	\$29,713.43	\$24.76
6	\$2,550.40	\$30,604.84	\$25.50
7	\$2,626.92	\$31,522.98	\$26.27
8	\$2,705.72	\$32,468.67	\$27.06
9	\$2,786.89	\$33,442.73	\$27.87
10	\$2,870.50	\$34,446.01	\$28.71

Fixed Minimum Rent shall be abated for the 120-day period from the Commencement Date to the Rent Commencement Date. Notwithstanding the foregoing, Tenant shall pay Additional Rent during such abatement period, including but not limited to Tenant’s Pro Rata Share of Operating Costs and Taxes.

The above Fixed Minimum Rent does not include Operating Costs or Taxes.

- J. Other Sums Payable:** The initial estimated charge for Operating Costs shall be \$3.93 per square foot per annum.
The initial estimated charge for Taxes shall be \$2.92 per square foot per annum.
- K. Permitted Use:** City offices and no other use or purpose (the “Permitted Use”).
- L. Security Deposit:** \$2,200.00 (the “Security Deposit”).
- M. Brokers:** Landlord’s Broker: Shannon Waltchack, LLC

Section 2. PREMISES:

(a) Landlord hereby leases to Tenant and Tenant hereby rents from Landlord the Premises, as described in Section 1 above. Notwithstanding Exhibit A, Landlord shall not be deemed to, and does not, represent or warrant to Tenant that the Shopping Center has or will have any specified tenant or tenants, tenant mix, or type or types of businesses therein or that the locations or dimensions of the premises of any other tenants of the Shopping Center or the design or layout of the Shopping Center are exactly as indicated on Exhibit A. 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 building in which the Premises are contained and to add buildings adjoining the same or elsewhere in the Shopping Center.

(b) For all purposes under this Lease, the term “floor area” of the Premises and each such building in the Shopping Center, shall be the number of square feet at each level or story and shall be measured from center line to center line of the common walls, from the outside of exterior uncommon walls, and from the front of the Tenant’s lease line. In computing the leasable area of the Shopping Center or the Premises no deductions shall be made for columns, partitions, stairs or other structures or equipment.

(c) Landlord shall have the right to relocate the Premises to another location within the Shopping Center; provided, however, that the substituted area shall be similar in size to the Premises and shall have approximately the same store frontage as the Premises. Landlord shall give Tenant sixty (60) days’ notice of its intention to relocate the Tenant. Any and all direct costs incurred in such relocation shall be borne by Landlord.

Section 3. COMPLETED DOCUMENT AND WAIVER: The submission of this Lease for examination by Tenant does not constitute an offer or option to lease the Premises and it is not intended as a reservation of the Premises for the benefit of Tenant. On the contrary it is expressly understood that this Lease shall not be effective or binding upon the parties until it is fully and properly executed by Tenant and Landlord.

Section 4. COMMENCEMENT AND EXPIRATION OF TERM: The Term shall be for the period set forth in Section 1 above, commencing on the Commencement Date and terminating on the Expiration Date, as such terms are defined in Section 1.

Section 5. SECURITY DEPOSIT: Tenant agrees to pay the Security Deposit set forth in Section 1 above as security for the faithful performance of all the terms and conditions of this Lease. In no event shall Landlord be obligated to apply the Security Deposit to rents, to other charges in arrears, or to damages for failure to perform the terms and conditions of this Lease by Tenant. Application of the Security Deposit to the arrears of rental payments or damages shall be at the sole option of the Landlord, and the right to possession of the Premises by Landlord for nonpayment of Rent or other charges or for any other charges or for any other reason shall not be affected by the Security Deposit. The Security Deposit is to be returned to the Tenant when this Lease is terminated or expires and the Premises delivered to Landlord, according to the terms of this Lease, and to the extent the Security Deposit is not applied toward the payment of Rent, 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 this Lease by Tenant. The Security Deposit will draw no interest for the credit of Tenant.

In the event the 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 this Lease, Landlord may apply the Security Deposit against all damages suffered through the date of repossession and may retain the balance of the Security Deposit and apply such balance against 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. STATEMENT AS TO LEASE TERM: When the commencement and the termination date of the Term have been determined, upon request of either party or Landlord’s mortgagee, Landlord and Tenant shall execute and deliver a commencement date certificate in the form attached as Exhibit B.

Section 7. RENT: Tenant covenants and agrees that it will pay Landlord the Fixed Minimum Rent set forth in Section 1 above for the Premises during the Term.

(a) The obligation to pay the Fixed Minimum Rent hereunder shall begin on the Rent Commencement Date. Tenant shall pay the pro rata monthly portion of the Fixed Minimum Rent for any fractional period of a month included in the term of this 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. The Fixed Minimum Rent shall be paid in equal monthly installments in advance on the first day of each month during the Term, without deduction or setoff.

(b) In the event Tenant fails to pay Rent or any charge or charges of any nature specified under this Lease when such charge or charges become due and payable, Tenant shall pay to Landlord a late fee totaling ten percent (10%) of all such delinquent charges. Additionally, should Tenant issue a check to Landlord that is not honored by its bank for whatever reason, Tenant shall pay a returned check charge of Fifty Dollars (\$50) *plus* any applicable late fee. The late fee is in and is in addition to, not in lieu of, interest on late payments as provided herein and any other remedies that Landlord may have by virtue of Tenant's failure to make payments when due. Interest on any payment of sums not received by Landlord on or before the date when due shall accrue from the date when due to and including the date such payment is received by Landlord at the base or index rate established from time to time by *The Wall Street Journal*, plus four percent (4%), but in no event in excess of the maximum interest rate permitted under applicable law from time to time (the "**Default Rate**").

Section 8. DEFINITION OF LEASE YEAR: The term "**Lease Year**" as used herein shall mean each twelve (12) consecutive months following the Rent Commencement Date. If the Rent Commencement Date is any day other than the first day of a calendar month, the first Lease Year shall be the period of time from the Rent Commencement Date until the end of the month in which said Rent Commencement Date shall occur, plus twelve (12) calendar months. The first Lease Year shall include the period of time from the Commencement Date to the Rent Commencement Date.

Section 9. RELATIONSHIP OF PARTIES. Nothing contained in this Lease shall be deemed or construed as making the parties partners or co-venturers or as making the Landlord an associate of Tenant in the conduct of its business or as making either of the parties in any way responsible for the debts, losses or obligations of the other; it being understood and agreed that the relationship between the parties is, and is limited to, that of landlord and tenant.

Section 10. ADDITIONAL RENT: In addition to the foregoing Fixed Minimum Rent, all other payments hereunder to be made by Tenant either to Landlord or the Merchants Association, if applicable shall be deemed to be and shall become additional rent ("**Additional Rent**", and together with Fixed Minimum Rent, the "**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 occur first. Landlord shall have the same remedies for failure to pay Additional Rent as for a nonpayment of Fixed Minimum Rent.

Section 11. PLACE OF PAYMENTS AND DELIVERY OF REPORTS: All Rent shall be paid via ACH or wire transfer in immediately available funds as outlined in Exhibit F. All other payments payable hereunder by Tenant to Landlord shall be paid in lawful money of the United States to Landlord's Agent as set forth in the Section 1 above, and all reports required to be rendered to Landlord by Tenant shall be delivered to Landlord's Agent unless Landlord shall otherwise designate by notice to Tenant.

Section 12. DELIVERY OF POSSESSION: The Premises are leased to Tenant subject to all zoning regulations, restrictions, rules, ordinances, building restrictions and other laws and regulations now in effect or hereafter adopted by any governmental authority having jurisdiction over the Premises (the "**Laws**"). Those improvements that are a part of the Premises are leased to Tenant according to their present condition as of the commencement of the Term without any further work required of Landlord. By taking possession of the Premises, Tenant acknowledges that Tenant has inspected the Premises and has found them to be in a safe and satisfactory condition ready for occupancy and the installation of Tenant's trade fixtures, equipment and signage. **EXCEPT AS EXPRESSLY SET FORTH IN THIS LEASE, ALL WARRANTIES AS TO CONDITION OF THE PREMISES OR ITS FITNESS FOR USE, EITHER EXPRESSED OR IMPLIED ARE EXPRESSLY WAIVED BY TENANT. TENANT ACCEPTS THE PREMISES "AS IS" AND "WITH ALL FAULTS".** For all purposes of this Lease the delivery date of possession of the Premises to Tenant shall be the Delivery Date as set forth in the Lease. All terms and conditions of this Lease, other than the payment of rent as provided herein, shall be in full force and effect upon the Effective Date.

Section 13. TENANT'S INSTALLATIONS AND ALTERATIONS: Tenant shall not make any change in, alteration of, or addition to, any part of the Premises or remove any building or fixture without, in each instance, obtaining the prior written consent of Landlord and complying with all Laws. Tenant shall not in any case impair the structural safety of the building in which the Premises are located. Tenant shall, at Tenant's cost and expense, at all times during the Term keep the Premises equipped with all trade equipment, furniture, operating equipment, furnishings fixtures, floor coverings, exterior signs and any other equipment necessary for the proper operation of Tenant's business. All fixtures installed by Tenant shall be new or completely reconditioned. Tenant shall not do any construction work or alterations, or install any equipment, other than unattached movable trade fixtures, without obtaining Landlord's prior written approval. 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 Premises, other than unattached movable trade fixtures, furniture and decorations, shall, upon the expiration or earlier termination of this Lease, become the property of Landlord. Within thirty (30) days before the expiration or earlier termination of this Lease, Tenant shall ascertain from Landlord whether Landlord desires to have the Premises or any portion thereof restored to the same condition as when the Premises were delivered to the Tenant. If Landlord shall so desire Landlord shall give Tenant written notice and Tenant shall, at its sole cost and expense, restore the Premises in accordance with Landlord's instructions prior to the expiration or earlier termination of the Lease. Unattached movable trade fixtures shall not include, among other things, store fronts 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 no Default then exists, Tenant may, upon the expiration or termination of this Lease, remove unattached movable trade fixtures, furniture and decorations installed by Tenant; provided Tenant shall completely and satisfactorily repair any and all damage to the 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, be deemed abandoned, and Landlord may dispose of the same without liability to Tenant and at Tenant's expense.

Section 14. USE OF PREMISES: Tenant covenants to use the Premises solely for the Permitted Use set forth in the Section 1 above. Tenant shall not use, permit or suffer the use of Premises for any other business or purpose without the prior written consent of Landlord, which consent shall be within Landlord's sole discretion. Tenant shall not stock, use, or sell any article or do anything in or about the Premises which may be prohibited

by Landlord's insurance policies or which may increase any insurance rates and premiums on the Shopping Center or the Premises or the building of which it is 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 occupancy of the Premises.

Section 15. OPERATION OF BUSINESS: Tenant covenants at all times during the Term, except when and to the extent the Premises are untenable by reason of fire or other casualty or condemnation, to: (a) conduct its business in the entire Premises in a high grade and reputable manner so as to produce the maximum amount of sales and to help establish and maintain a good reputation for the Shopping Center; (b) open and remain open for business during the business hours of the Shopping Center with said business hours to be set forth from time to time by the Landlord; (c) adequately staff its store with sufficient and properly trained employees to efficiently service customers; (d) carry a full and complete stock of seasonable merchandise offered for sale at competitive prices; (e) maintain attractive displays of merchandise windows; (f) keep the display windows and signs, if any, well lighted during the business hours of the Shopping Center or when any enclosed common areas are open to the public; and (g) keep the Premises, 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 NUISANCE AND HAZARDOUS SUBSTANCES:

(a) Tenant shall at its own cost and expense; (i) comply with all Laws affecting the Premises now in force or which hereafter may be in force; (ii) comply with and execute all rules requirements and regulations of Landlord's insurance carriers and other organizations establishing insurance rates; (iii) not suffer, permit or commit any waste or nuisance; (iv) keep the Premises equipped with all safety appliances required by Tenant's use of the Premises; and, (v) procure all licenses and permits required for Tenant's use of the Premises.

(b) Tenant hereby covenants with Landlord that it shall not deposit, bury, store, or otherwise maintain within the Premises any Hazardous Materials. "Hazardous Materials" means any toxic or hazardous wastes, pollutants, or substances, including, without limitation, asbestos, PCBs, petroleum products and by-products, substances defined or listed as hazardous substances or toxic substances or similarly identified in or pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et seq.* (excepting only substances immaterial in nature or substance, such as litter), hazardous materials identified in or pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. § 1802 *et seq.*, hazardous wastes identified in or pursuant to The Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, any chemical substance or mixture regulated under the Toxic Substance Control Act of 1976, as amended, 15 U.S.C. § 2601 *et seq.*, any toxic pollutant under the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, as amended, and any hazardous material or substance regulated under any other applicable federal, state or local Laws.

~~(c) Tenant shall protect, defend, indemnify and save harmless Landlord and its partners, members, officers, agents and employees (collectively, the "Landlord Parties") from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including without limitation reasonable attorneys' fees and expenses), imposed upon or incurred by or asserted against Landlord, by reason of (i) any breach of this Section by Tenant, (ii) the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release, or threatened release of any Hazardous Materials on, from, or affecting the Premises; (iii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; (iv) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials; or (v) any violation of Laws based upon or in any way related to such Hazardous Materials including, without limitation, the costs and expenses of any remedial action, attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses. Tenant shall bear, pay and discharge when and as the same shall become due and payable, any and all such judgments or claims for damages, penalties or otherwise against Landlord described herein and shall hold Landlord harmless for those judgments or claims and shall assume the burden and expense of defending all suits, administrative proceedings and negotiations of any description with any and all persons, political subdivisions or government agencies arising out of the occurrences set forth above. The indemnity set forth in this Section shall survive the expiration or earlier termination of this Lease.~~

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 Tenant shall install, within thirty (30) days of the date of this Lease, and maintain such signs 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 Premises or in the Shopping Center.

Section 18. ASSIGNMENT AND SUBLETTING: Tenant shall not assign, mortgage or encumber this Lease, in whole or in part, or sublet all or any part of the Premises without the prior written consent of Landlord which may be withheld in Landlord's sole discretion. The Landlord's decision to withhold such consent for whatsoever reason, if any, shall be absolute and binding on Tenant. 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. A transfer of a majority of the ownership interest in Tenant (or a change in control of Tenant), whether by a single transfer or in the aggregate by several transfers, shall be considered an assignment subject to this Section, and if any such transfer shall occur, then Tenant shall so notify Landlord and Landlord shall have the right, at its option, to terminate this Lease upon five (5) days' notice to Tenant. Landlord may consent to subsequent assignments of this Lease or sublettings or amendments or modifications to this Lease with assignees of Tenant without notifying Tenant, or any successor Tenant, and without obtaining its or their consent thereto, and any such actions shall not relieve Tenant of liability under this Lease. Any assignment or subletting without the consent of Landlord as required hereunder shall be void. Should Tenant sublease said space, for amounts in excess of said rental prescribed herein, Landlord shall receive sixty percent (60%) of the excess amount. If a Lease assignment is consummated for Tenant or subsequently for any assignee before expiration of this Lease, or should Tenant sublease all or any portion of the Premises, then the Tenant shall pay a Five Hundred and 00/100 Dollars (\$500.00) transfer fee to Landlord for each and every such assignment or sublease.

Section 19. REPAIRS:

(a) Landlord shall not be required to make any repairs or improvements of any kind to the Premises except that Landlord as part of Operating Costs shall keep the foundation and roof of the Premises and the structural soundness of the exterior walls thereof in good repair and condition unless any such necessary work is required because of 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, or any other paragraph of this Lease to the contrary, Landlord shall not be responsible or liable at any time for any loss or damage to merchandise, equipment, fixtures or other personal property of Tenant or Tenant's business. Tenant shall maintain insurance in accordance with this Lease to protect itself against such losses.

(b) Except for repairs required to be performed by Landlord pursuant to Paragraph (a) of this Section, Tenant shall, at its own cost and expense, keep in good order, repair and condition the Premises and the fixtures and equipment in, on, above or under and any appurtenances thereto, including, but not limited to, the exterior and interior windows, doors and entrances, store fronts, showcases, floor coverings, interior walls, columns, partitions, plumbing, sewerage facilities, lighting fixtures, electric wiring, conduits, water pipes and water closets, heating, ventilating and air conditioning equipment. In addition to the foregoing Tenant shall replace any glass that may be broken or damaged.

(c) If Tenant refuses or neglects to make repairs required hereunder, 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 not the obligation, 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 therefor.

(d) Tenant shall maintain, during the Term of this Lease a maintenance contract covering all heating, ventilation and air conditioning serving the Premises (the "HVAC System") on a quarterly basis with Landlord's preferred company or another company approved by Landlord; however if Landlord's preferred company is not used, Tenant shall first obtain Landlord's approval prior to any work being performed on the HVAC System. Tenant shall keep a copy of the current such maintenance contract on file with Landlord.

Section 20. MECHANICS', MATERIALMEN AND OTHER LIENS: Should any mechanic's, materialman's or other liens be filed against the 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: Tenant shall pay all charges for heat, water, electricity, gas, cable, telephone and other utility services used or consumed in the Premises including but not limited to sewer and sewer service charges. Landlord may contract with a private metering company to provide any such services, in which event Tenant shall be billed by such company and shall pay the same directly. Landlord shall not be under any responsibility or liability in any way whatsoever for the quality, quantity, impairment, interruption, stoppage or other interference with service involving water, heat, gas, electricity, telephone, or any other service. Landlord shall not be liable in damages or otherwise for any utility interruption.

Section 22. USE OF COMMON AREAS AND ACTIVITIES: Landlord shall make available from time to time such areas and facilities of common benefit to the tenants and occupants of the Shopping Center as Landlord shall deem appropriate. All common areas and other facilities in or about the Shopping Center provided by Landlord shall be subject to the exclusive control and management of Landlord. Landlord shall have the right at all times to: (a) construct, maintain and operate lighting and other facilities on all said areas and improvements; (b) police the same; (c) change the area level, location and arrangement of parking areas and other facilities; (d) build buildings and/or multi-story parking facilities; (e) restrict parking by Tenants, their officers, agents and employees; (f) close all or any portion of said areas and facilities to such extent as may be legally sufficient to prevent a dedication thereof or the accrual of any right to any person or the public therein; or (g) 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, spaces, equipment, signs and special facilities provided by Landlord for the common or joint use and benefit of the Tenants in the Shopping Center and their employees, agents, servants, customers and other invitees. Such areas and spaces shall include, but are not limited to, parking areas, access roads, driveways, retaining walls, landscaped areas, truck serviceways, tunnels, loading docks, pedestrian malls (enclosed or open), courts, stairs, ramps, on-site sewage treatment plants, sidewalks, security fire protection and parcel pick-up stations.

Section 23. OPERATING COSTS AND TAXES:

(a) Tenant shall pay to Landlord for each Lease Year (or a proportionate amount for any portion of a Lease Year) as Additional Rent, Tenant's Pro Rata Share (as hereinafter defined) of the Operating Costs (as hereafter defined) and Taxes (as hereafter defined) for such period. "Tenant's Pro Rata Share" shall be computed as a fraction, the numerator of which shall be the number of square feet of the Premises and the denominator of which shall be the total number of square feet of leasable retail floor area in the Shopping Center.

(b) The charges 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, with each such installment being due on the first day of each month; provided, however, that in the event Operating Costs or Taxes are increased, Landlord shall have the right to increase said monthly installments during any Lease Year. Within one hundred twenty (120) days after the end of each twelve-month period, Landlord shall furnish Tenant a statement, in reasonable detail, of the actual Operating Costs and Taxes and there shall 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 Pro Rata Share of Operating Costs and Taxes.

(c) "Operating Costs" shall mean the total costs and expenses incurred by Landlord and at Landlord's discretion in owning, operating, managing, maintaining, repairing and replacing the Shopping Center and facilities, including, but not limited to, costs and expenses of security and fire protection, annual planned unit development dues, pedestrian traffic direction and control; costs and expenses of cleaning and removal of rubbish, dirt, debris, snow and ice; costs and expenses of planting, replanting and replacing flowers and landscaping; any and all lawn care; repairs and repaving of parking areas; water and sewer service charges; insurance premiums including, but not limited to, premiums and deductibles for public liability, property damage, fire, extended coverage, malicious mischief, vandalism, workmen's compensation, employee's liability insurance and other insurance carried by Landlord; wages, unemployment, taxes, social security taxes, fees for audits, permits and licenses, costs and expenses for supplies; costs of any project or property management and any and all management fees (or a charge equal to fair market management fees if Landlord provides its own management services) and other personnel involved in the operation and maintenance of the Property, including any cost allocations; costs and expenses for the operating of loud speakers and any other equipment supplying music; 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 on-site water lines sanitary sewer lines and storm water lines serving the property; and administration costs equal to fifteen percent (15%) of the total Operating Costs. Capital expenses may be included in Operating Costs as long as the same are amortized over the useful life of the item, as determined by Landlord, and only the annual amortization is included in Operating Costs.

(d) **"Taxes"** shall mean all real estate taxes, assessments, and other taxes levied or assessed directly or indirectly against the land buildings or other improvements in the Shopping Center as the same may be enlarged or reduced from time to time. Taxes shall also include all of Landlord's expenses including, but not limited to, attorneys' fees incurred by Landlord in any effort to minimize the real estate taxes whether by protesting proposed increases in assessments or by any other means or procedures appropriate in the circumstances. In addition to Tenant's Pro Rata Share of Taxes, Tenant shall promptly pay when due or make reimbursement to Landlord for all taxes imposed upon the Rent, lease and business operation, including without limitation all sales taxes, value added taxes, documentary taxes and other taxes assessed upon the consideration to be received by Landlord for this Lease and all personal property of Tenant other than Landlord's federal and state income taxes thereon.

Section 24. INDEMNITY AND NON-LIABILITY:

~~(a) Tenant shall indemnify, defend and save Landlord and the Landlord Parties harmless from and against suits, actions, damages, liability, expense, court costs and attorney's fees 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 Premises or the occupancy or use by Tenant of the Premises or any part thereof or occasioned wholly or in part by act or omission of Tenant, Tenant's agents, contractors, employees, invitees or licensees, including any occurrence in or upon the sidewalks and common areas and facilities within the Shopping Center. The foregoing indemnity shall survive the expiration or earlier termination of this Lease.~~

~~(b)~~**Section 24.** Tenant shall store its property in and shall occupy the Premises at its own risk. Tenant releases Landlord, to the fullest extent permitted by law, from all claims of every kind resulting in loss of life, personal or bodily injury or property damage. Landlord shall not be responsible or liable at any time for any loss or damage to merchandise, equipment, fixtures or other personal property of Tenant or to Tenant's business. Landlord shall not be responsible or liable for any loss or damage to either the person or property, of Tenant that may be occasioned by or through the acts or omissions of other persons. Landlord shall not be responsible or liable for any defect, latent or otherwise, in any building in the Shopping Center or in any of the equipment, machinery, utilities, appliances or apparatus therein. Landlord shall not be responsible or liable for any injury, loss or damage to any person or to any property of Tenant or other person caused by or resulting from bursting, breaking or leaking of steam, snow or ice; or the 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 Shopping Center by any person or by or from acts of negligence of any other party.

Section 25. INSURANCE:

(a) Tenant covenants to provide, on or before the Commencement Date, and keep in force (at Tenant's cost and expense) during the Term the following insurance coverage with respect to the Premises:

(i) Commercial General Liability Insurance (including contractual liability) on an occurrence basis with a minimum single limit of One Million Dollars (\$1,000,000.00).

(ii) Causes of Loss – Special Form property insurance, together with earthquake and flood insurance (if required by Landlord any mortgagee or governmental authority) and Terrorism insurance (if obtainable) in an amount adequate to cover the replacement cost of (i) all tenant improvements and betterments, and (ii) all personal property, including decorations, trade fixtures, furnishings, finishes, equipment and other contents, owned or leased by Tenant (or for which Tenant is legally liable) and located in the Premises or Shopping Center. For purposes hereof, "tenant improvements and betterments" means any fixtures, alterations, installations or additions made to the Premises or Shopping Center by or on behalf of Tenant.

(iii) Boiler or Machinery Insurance covering all pressure vessels, boilers, air conditioning equipment or similar equipment if any in on adjoining above or beneath the Premises in an amount of One Million Dollars (\$1,000,000.00).

(iv) Business Income insurance covering those risks referred to in (ii) in an amount equal to all Rent payable under this Lease for a period of thirty-six (36) months commencing with the date of loss.

(v) Worker's Compensation Insurance covering all persons employed directly or indirectly in connection with any finish work performed by Tenant or any repair or alteration authorized by this Lease or consented to by Landlord and all employees or agents of Tenant with respect to whom death or bodily injury claims could be asserted against Landlord or Tenant as required by the law of the State where the Premises are located.

(vi) Plate Glass Insurance.

(vii) Commercial Automobile Liability – Hired and Non-Owned in the amount of \$1,000,000 combined single limit (property damage and liability).

(viii) Such other insurance as may be carried on the Premises and Tenant's operation thereof as may be determined by Landlord.

(b) The public liability insurance shall name Landlord and Landlord's agent as an additional insured party, and such parties shall be additional insureds to the extent of the greater of the limits required herein, or the actual limits of the liability insurance carried by Tenant. All of the aforesaid insurance shall be written by one or more responsible insurance companies satisfactory to Landlord and in a form satisfactory to Landlord. All such insurance may be carried under a blanket policy covering the Premises and any other of Tenant's stores; all such insurance shall contain endorsements that such insurance may not be canceled or amended with respect to Landlord (or its designees) except upon ten (10) days' prior written notice to Landlord (and any such designees) by the insurance company. Tenant shall be solely responsible for payment of premiums and Landlord (or its designee) shall not be required to pay any premium for such insurance. All insurance required of Tenant hereunder shall be primary to and non-contributory with any insurance carried by Landlord. In the event of payment of any loss covered by such policy Landlord (or its designees) shall be paid first by the insurance company for Landlord's loss. The minimum limits of the liability policies of insurance shall in no way limit or diminish Tenant's liability hereunder. Tenant shall deliver to Landlord at least fifteen (15) days prior to the time such insurance is first required to be carried by Tenant, and thereafter at least fifteen (15) days prior to the expiration of such policy, either a duplicate original or a certificate of insurance on all policies procured by Tenant in compliance with its obligations hereunder, together with evidence satisfactory to Landlord, of the payment of the

premiums therefor. If Tenant fails to obtain and provide any or all of the aforesaid insurance, then Landlord may, but shall not be required to, purchase such insurance on behalf of Tenant and add the cost of such insurance as Additional Rent payable with the next installment of Fixed Minimum Rent.

(c) The minimum limits of liability insurance shall be subject to increase at any time and from, time to time if Landlord shall deem same necessary for adequate protection. Within thirty (30) days after demand therefor by Landlord, Tenant shall furnish Landlord with evidence of Tenant's compliance with such demand.

(d) The parties hereto do hereby waive any and all right of recovery against each other for losses covered by their respective property insurance policies and neither party shall be liable for any injuries, loss, 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 property insurance, regardless of whether such loss or damage be occasioned by the negligence of such party its servants, agents, employees or otherwise.

Section 26. FIRE OR OTHER CASUALTY:

(a) If the Premises shall be damaged by fire or other casualty covered by Landlord's property insurance, but the Premises are not thereby rendered wholly untenable, this 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; provided, however, if (a) the Premises are rendered wholly untenable; (b) the Premises are damaged as a result of a risk not covered by Landlord's insurance; (c) the insurance proceeds payable in connection with such damage and destruction shall be insufficient to make such restoration; (d) the building of which the Premises are a part (whether or not the Premises are damaged) is damaged to the extent of fifty percent (50%) or more of the floor area of the building; (e) the Shopping Center (whether or not the Premises are damaged) is damaged to the extent of fifty percent (50%) or more of the floor area of the Shopping Center; or (f) the Premises are damaged during the last two (2) years of the Term and the same cannot be repaired within thirty (30) days, then and in any of such events, Landlord may either elect to repair the damage or may terminate this 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. If Landlord does not elect to terminate this Lease as provided above, Landlord shall proceed with reasonable diligence to rebuild and repair the Premises.

(b) Landlord's obligation to rebuild and repair the Premises under this Section shall in any event be limited to restoring the structure of the Premises to substantially the condition in which the same existed prior to the casualty, and Tenant agrees that promptly after the substantial completion of such work by Landlord, Tenant shall, at its sole cost and expense, restore the interior of the Premises, including Tenant's Work, any other alterations, additions and improvements done by Tenant within the Premises, and all trade fixtures, furniture, furnishings, equipment and other personal property owned or leased by Tenant (or for which Tenant is legally liable hereunder) in the Premises, all to substantially the condition in which the same existed prior to the 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 Premises shall have been repaired. Nothing hereinabove contained shall impose upon Landlord any liability to repair, rebuild or replace any property belonging to Tenant.

(c) Tenant agrees that during any period of reconstruction or repair of the Premises, it will continue the operation of its business within the Premises to the extent practicable. During the period from the occurrence of a casualty until Landlord's repairs are completed, Fixed Minimum Rent shall be reduced and abated in proportion to the amount of the Premises which is rendered untenable as a result of such casualty; provided, however, that if such damage or destruction is caused by the intentional or negligent acts or omissions of Tenant, its assignees, sublessees, agents, employees, invitees, or licensees, or the agents, employees, invitees, or licensees of Tenant's assignees or sublessees, then, and in that event, the Fixed Minimum shall not abate. Tenant shall not be entitled to and hereby waives, releases, and relinquishes any and all claims against Landlord for any compensation or damage for loss of use of all or any part of the Premises or for any inconvenience or annoyance occasioned by any such damage, destruction, repair, or restoration of the Premises.

Section 27. CONDEMNATION:

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

(b) Partial: If any part of the Premises shall be taken as aforesaid and such partial taking shall render that portion not so taken unsuitable for the business of Tenant then this Lease shall terminate as aforesaid. If such partial taking is not sufficiently extensive to render the Premises unsuitable for the business of Tenant then this Lease shall continue in effect except that the Fixed Minimum Rent shall be reduced in the same proportion that the floor area of the 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 Premises as 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 Premises so taken; provided, however, if such partial taking shall occur during the last twelve (12) months of the term of this Lease or any renewal term or if more than twenty percent (20%) of the floor area of the building of which the Premises are a part shall be taken as aforesaid (whether or not any portion of the Premises is taken), Landlord may terminate this 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 this 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 condemnor, 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 28. DEFAULT BY TENANT

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

(i) Failure by Tenant to pay any Rent or other payment or charge provided in this 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 notice to Tenant that such payment has not been received; provided that Landlord need not provide such notice and opportunity to cure more than two (2) times in any period of twelve (12) consecutive months, and the third (3rd) such failure shall be a Default without notice or cure rights.

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

(iii) The filing of a proceeding in bankruptcy or arrangement or reorganization with respect to Tenant or any other party liable for the obligations of Tenant under this Lease pursuant to the United States Bankruptcy Code or any similar law, federal or state, including but not limited to:

- (A) Tenant or any other party liable for the obligations of Tenant under this Lease shall voluntarily commence any debtor relief proceedings or shall be adjudicated as bankrupt or insolvent, or shall file any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state, or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Tenant or any such other party, or shall make any general assignment for the benefit of creditors, or shall admit in writing its inability to pay or shall fail to pay its debts generally as they become due.
- (B) Tenant or any other party liable for the obligations of Tenant under this Lease shall make an assignment for the benefit of creditors.
- (C) Tenant or any other party liable for the obligations of Tenant under this Lease shall have its property levied upon or attached under process that is not satisfied or dissolved within thirty (30) days after inception of such levy or attachment.
- (D) A court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against Tenant or any other party liable for the obligations of Tenant under this Lease seeking any reorganization, dissolution or similar relief under any present or future federal, state, or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors or Tenant or any such other party shall be the subject of an order for relief entered by such a court, and such order, judgment or decree shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the first date of entry thereof, or any trustee, receiver, custodian or liquidator of Tenant or any such other party shall be appointed without the consent or acquiescence of Tenant or any such other party and such appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive).

(iv) Vacation or abandonment of all or any portion of the Premises.

(v) The breach by any Guarantor of this lease of any obligations under the applicable guaranty agreement.

(b) Whenever any such Default shall have occurred or continues beyond the applicable period of time after any required notice has been received as provided in this Lease as the case may be, Landlord shall have the right, at Landlord's option, to immediately, or at any time thereafter, terminate this Lease. Tenant shall surrender possession and vacate the Premises immediately and deliver possession thereof to Landlord and shall remain liable hereunder as hereinafter provided. Landlord shall have the immediate right to re-enter the Premises with or without process of law using such force as may be necessary and remove all persons and property from the Premises and Landlord shall not be deemed guilty of trespass or become liable for any loss or damage which may be occasioned thereby.

(c) Should Landlord elect to re-enter, Landlord may make such alterations and repairs as may be necessary in order to relet the Premises and may relet the Premises or any part thereof (but shall be under no obligation to do so) for such term or terms (which may be for a term extending beyond the term of this Lease) and at such Rent and upon such other terms and conditions as Landlord may deem advisable. If Landlord relets the Premises for any period beyond the Term, then Tenant's liability shall not extend beyond the then current Term. Upon any such re-letting, all rental received by Landlord from such re-letting shall be applied, first, to the payment of any indebtedness other than Rent due hereunder from Tenant to Landlord; second, to the payment of any costs and expenses of such re-letting and of any necessary alterations and repairs; third, to the payment of Rent due and unpaid hereunder; and the residue, if any, shall be held by Landlord and applied in payment of future Rent as the same become due and payable hereunder. If such rent received from such reletting shall be less than that due to be paid hereunder, Tenant shall pay any such deficiencies to Landlord on demand. In no event shall Tenant be entitled to receive the excess, if any, of such net rent collected over the sums payable by Tenant to Landlord. Landlord shall in no event be liable in any way whatsoever for failure to relet the Premises or, if the Premises are relet, for failure to collect the rent under such reletting, and in no event shall Tenant be entitled to receive the excess, if any, of such net rent collected over the sums payable by Tenant to Landlord.

(d) In the event Landlord elects to terminate this 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, the costs of repossessing the Premises, attorneys' fees and court costs and, in addition thereto, Landlord at its election may recover from Tenant either (i) 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 this Lease over the then reasonable rental value of the Premises for the remainder of the then current Term, all of which amounts shall be immediately due and payable by Tenant to Landlord, or (ii) the Rent that Landlord would be entitled to receive from Tenant pursuant to this Lease that would have come due if this Lease were not so terminated. 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 purposes 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 and ending with the date of re-entry or for the three (3) full Lease Years next preceding the date of re-entry, whichever of the two periods is shorter.

(e) In addition to the rights and remedies of Landlord specified in this Section, Landlord shall, in the event of a Default, 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 others.

(f) 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 to any of the rights or remedies provided for herein.

(g) Landlord may, but shall not be obligated to, cure at any time, without notice, any Default by Tenant under this 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 the Default Rate shall be paid by Tenant to Landlord on demand.

(h) Except as expressly set forth herein, Landlord is not required to give notice of default and/or termination or re-enter the Premises prior to the institution of any lawsuit against Tenant for breach of the terms or conditions of this Lease.

(i) Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being evicted or dispossessed for any cause, or in the event of Landlord obtaining possession of the Premises by reason of the violation by Tenant of any of the terms, covenants or obligations of this Lease, or otherwise.

(j) If any Rent is collected by or through an attorney at law or upon advise therefrom, or if Landlord retains an attorney at law in connection with enforcement by Landlord of any covenant or obligation of Tenant or of any right or remedy of Landlord hereunder, Tenant agrees to pay the reasonable attorney's fees and all costs of collection, including but not limited to court costs, costs of depositions and expert witnesses.

Section 29. 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 the Tenant's interest in the 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 this Lease. Such lien shall be prior or superior to any and all other liens whatsoever. Tenant agrees to execute any and all documents necessary for perfecting such security interest at the sole discretion of Landlord, and Landlord shall have the right to record a Uniform Commercial Code Financing Statement reflecting the foregoing.

Section 30. ACCESS TO PREMISES: Landlord shall have the right to place, maintain and repair all utility equipment of any kind in, upon and under the Premises as may be necessary for the servicing of the Premises or other portions of the Shopping Center. Landlord shall also have the right to enter the 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 or that Landlord may be required to make under applicable Law. Landlord shall be allowed to take all material in, to and upon the Premises that may be required therefor without the same constituting an eviction of Tenant, in whole or in part, and the Rents 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 construed to impose upon Landlord any obligation whatsoever for the maintenance or repair of the Premises or the building of which it is a part except as otherwise herein specifically provided. During the six (6) months prior to the expiration of this Lease, Landlord may place upon the Premises "For Rent" signs which Tenant shall permit to remain thereon.

Section 31. QUIET ENJOYMENT AND MORTGAGES:

(a) Landlord covenants that, subject to Tenant's complying with all the terms and conditions of this Lease on Tenant's part to be complied with and performed, Tenant shall have the peaceable and quiet possession of the Premises during the Term. Landlord and Tenant agree that this 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 Premises form the part, and all renewals, modifications, consolidations, participation, replacements and extensions thereof. The term "mortgages" as used herein shall be deemed to include trust indentures, mortgages, deeds of trust, security deeds and deeds to secure debt. Tenant agrees to attorn to any underlying ground lessor or mortgagee who shall succeed to Landlord's interest in this Lease upon request of such ground lessor or mortgagee provided that Tenant's rights under this Lease shall continue in full force and effect and Tenant's possession be undisturbed so long as Tenant shall not be in Default under this Lease.

(b) Tenant shall, within ten (10) business days after request therefor by Landlord or such mortgagee and without charge therefor, 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 mortgagee in such event, provided that Tenant's rights under this Lease shall continue in full force and effect and Tenant's possession be undisturbed so long as Tenant shall not be in Default under this Lease. If Tenant fails to execute and deliver such document within ten (10) business days after request, Tenant shall be deemed to have irrevocably appointed Landlord as Tenant's attorney-in-fact to execute and deliver such document in Tenant's name.

Section 32. 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 Premises or at any other location designated by Landlord and only at such times as may be designated for such purpose by Landlord; (b) store any trash and refuse in adequate containers within the Premises in a neat, clean condition, so as not to be noticeable 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 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 Shopping Center for business purposes and not distribute handbills or other 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 Shopping Center which is in any way audible or visible outside the Premises; (h) not burn trash or garbage in or about the Premises the Shopping Center or within one mile of the outside radius of the Shopping Center; (i) not place, suffer or permit displays, decorations or shopping carts on the sidewalk in front of the Premises or on or upon any of the common areas in the Shopping Center; (j) not conduct or permit any going-out-of-business, fire or auction sales on or about the Premises; (k) conform and cause Tenant's employees to conform to all rules and regulations Landlord may adopt from time to time for the use and care of the Premises, the building of which the Premises are a part, and the common areas and facilities of the Shopping Center; and (l) keep the Premises free of dirt, fumes, odors, debris, pests and vermin and if required by Landlord, Tenant will purchase extermination and pest control service from a company acceptable to the Landlord. The initial rules and regulations for the Shopping Center are set forth in Exhibit E.

Section 33. UNAVOIDABLE DELAYS: In the event that either party hereto is rendered unable to carry out any obligations of such party under this 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 34. SURRENDER AT END OF TERM: Upon the expiration of the term hereof, or sooner termination of this Lease, Tenant agrees to surrender and yield possession of the Premises to Landlord, peacefully and without notice, and in good order and condition, subject only to ordinary wear and reasonable use thereof, and subject to such damage or destruction or condition as Tenant is not required to restore or remedy under other terms and conditions of this Lease.

Section 35. HOLDING OVER:

(a) If Tenant shall remain in possession of all or any part of the Premises after the expiration or termination of the term of this Lease with the consent of Landlord then Tenant shall be deemed a Tenant of the Premises from month-to-month, cancelable upon thirty (30) days' notice at the same rental and, except with respect to the month-to-month term specified above, subject to all of the terms and provisions hereof; provided however, that the Rent during any such period that Tenant shall continue to hold the Premises after the expiration date of this Lease shall be at the highest annual rate of Rent herein provided, multiplied by two (2), plus such Additional Rent heretofore paid during the term of this Lease.

(b) If Tenant shall remain in possession of all or any part of the Premises after the expiration or termination of this Lease without the consent of Landlord, Tenant shall be liable to Landlord for all damages, direct and/or consequential, or as otherwise provided by law, which the Landlord, on account of Tenant's failure or refusal to so surrender possession of the Premises, incurs.

Section 36. ESTOPPEL CERTIFICATES: Within ten (10) business days after receipt of written request from Landlord, Tenant shall execute and deliver to any person designated by Landlord a certificate in recordable form: (a) ratifying this Lease; (b) stating the commencement and termination dates; and (c) certifying: (i) that this Lease is in full force and effect and has not been assigned, modified, supplemented or amended (except by such writings as shall be stated); (ii) that all conditions under this Lease to be performed by Landlord have been satisfied (stating exceptions, if any); (iii) that no defenses or offsets against the enforcement of this Lease by Landlord exist (or stating those claimed); (iv) as to advance rent, if any, paid by Tenant; (v) the date to which rent has been paid; (vi) the amount of security deposited with Landlord; and (vii) such other information as Landlord reasonably requires. Persons receiving such statements shall be entitled to rely on them. If Tenant fails to execute and deliver any such certificate within ten (10) business days after request, Tenant shall be deemed to have irrevocably appointed Landlord as Tenant's attorney-in-fact to execute and deliver such statement in Tenant's name.

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 this Lease.

Section 37. NO WAIVER: Failure of Landlord to insist upon the strict performance of any provision of this Lease or to exercise any option or any rules and regulations 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 this Lease shall not be deemed a waiver of such breach. No provision of this Lease shall be deemed to have been waived by Landlord 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 and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any remedy provided in this Lease, and no waiver by Landlord in respect to one Tenant shall constitute a waiver in favor of any other tenant in the Shopping Center.

Section 38. NOTICES: Any notice and demand which may be or is required to be given under this Lease shall be in writing and shall be deemed to have been given when personally delivered, delivered by email transmission with confirmation of completed transmission, deposited in the United States Mail by certified or registered mail, return receipt requested, postage prepaid or by Federal Express or other overnight courier and properly addressed to the respective party to which such notice relates at the addresses set forth in Section 1 above, or at such alternate addresses as shall be specified by notice given in the manner herein provided.

Section 39. LEASE BINDING, ETC.: Except as otherwise expressly provided herein this 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 in which the Shopping Center is located shall govern this Lease.

Section 40. MODIFICATION OF AGREEMENTS: There shall be no modification of this Lease except in writing and signed by the party to be charged.

Section 41. PROFESSIONAL FEES AND OTHER COSTS: Tenant agrees to pay Landlord or on Landlord's behalf reasonable attorney's or other professional fees 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, to protect the interest of Landlord if legal process is levied upon the goods, furniture, effects or personal property of the Tenant upon said premises or upon the interest of the Tenant in this Lease or in the Premises, to prevent the Tenant from violating or to rectify the violation of any of the terms, conditions or covenants on the part of

the 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 this 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 this Lease, or shall Landlord have to notify Tenant of default or move to terminate this Lease before Landlord is entitled to be reimbursed or have Tenant pay directly such reasonable professional fees and other costs.

Section 42. CAPTIONS AND HEADINGS: The captions and headings of the Sections of this Lease are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

Section 43. TIME IS OF THE ESSENCE: Time is of the essence with respect to the performance of each of these covenants and agreements under this Lease.

Section 44. CONSTRUCTION OF TERMS:

(a) Printed parts of this Lease shall be as binding upon the parties hereto as other parts hereof. Parts of this 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 this 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 this 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 remain in full force and effect.

Section 45. 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 an account stated between Landlord and Tenant.

Section 46. NO PERSONAL LIABILITY OF LANDLORD:

(a) The term "Landlord" as used in this Lease means only the owner or mortgagee in possession for the time being of the building in which the 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 this 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.

(b) It is specifically understood and agreed that there shall be no personal liability of Landlord (or Landlord's agents) in respect to any of the covenants, conditions or provisions of this Lease. In the event of a breach or default by Landlord of any of its obligations under this Lease, Tenant shall look solely to the equity of the Landlord in the Shopping Center for the satisfaction of Tenant's remedies.

Section 47. 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 this Lease sets forth the entire agreement between the parties. Any prior conversation, understandings, 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 this Lease based solely on the writing contained herein and the Tenant has not relied and is not relying on any representation whether written or oral not contained in writing in this 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 or had any understanding regarding the lease of the Premises not contained herein. Tenant represents that it has completely read and fully understands all the provisions of this Lease or that Tenant was represented by competent counsel who read and/or explained all provisions to Tenant.

Section 48. PROHIBITION AGAINST RECORDING: Neither this Lease, nor a memorandum thereof, shall be recorded in the public records without Landlord's prior written consent in its sole and absolute discretion.

Section 49. INTENTIONALLY OMMITED

Section 50. AGENCY DISCLOSURE: Tenant and Landlord each warrants to the other that all negotiations with respect to this Lease (including, without limitation, preliminary consideration of the Premises, economics and Lease provisions) were handled without the aid, intervention or employment of any broker other than Landlord's Broker, and Tenant's Broker as set forth in the Section 1 above (each a "**Broker**"). Landlord agrees to pay Broker pursuant to a separate agreement. ~~Each of Tenant and Landlord agrees to defend, indemnify, and protect the other party against any claims (the term "claims" as used herein is defined as any claim, demand, judgment, award, fine or dispute involving a brokers' fee, commission or finders' fee) made by any person or entity that represented or acted on behalf of Tenant (or claims to have represented or acted on behalf of the other party) with regard to this Lease, provided that in regard to the Broker, such indemnity shall solely run in favor of Tenant. In addition, it is expressly agreed and understood that the indemnification as provided in this Section shall include all costs of enforcing the indemnity against the other party. The provisions of this Section shall survive the expiration of this Lease.~~

~~**Section 51. CONFIDENTIALITY OF LEASE TERMS:** Tenant agrees to keep all terms and conditions of this Lease strictly confidential and not to copy, allow any third party (other than Tenant's legal counsel or other agents) to inspect or discuss this Lease with any third party. Breach of this confidentiality shall constitute a Default under this Lease and shall entitle the Landlord to all remedies available after an event of Default.~~

Section 51. INTENTIONALLY OMMITED

Section 52. INTENTIONALLY OMMITED

Section 53. UPDATED FINANCIALS: Upon ten (10) days request by Landlord, Tenant shall provide current updated financials on the Tenant and Guarantor.

Section 54. WAIVER OF JURY TRIAL. TO INDUCE LANDLORD AND TENANT TO ENTER INTO THIS LEASE, LANDLORD AND TENANT EACH HEREBY WAIVE ANY RIGHT TO A TRIAL BY JURY OF ANY OR ALL ISSUES CLAIMS, CAUSES OF ACTION AND/OR IN ANY ACTION OR PROCEEDING BETWEEN LANDLORD AND TENANT OR THEIR SUCCESSORS, ASSIGNS, PERSONAL OR LEGAL REPRESENTATIVES AND HEIRS UNDER OR IN CONNECTION WITH THIS LEASE, ANY OF THE PROVISIONS HEREOF, AND/OR TENANT'S USE AND/OR OCCUPANCY OF THE PREMISES. THIS WAIVER IS KNOWINGLY, INTENTIONALLY AND VOLUNTARILY MADE BY LANDLORD AND TENANT, AND LANDLORD AND TENANT EACH ACKNOWLEDGE THAT NEITHER LANDLORD NOR TENANT NOR ANY PERSON ACTING ON BEHALF OF LANDLORD OR TENANT HAS MADE ANY REPRESENTATIONS OF FACT OR LAW TO INDUCE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. LANDLORD AND TENANT EACH FURTHER ACKNOWLEDGE THAT HE, SHE OR IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS LEASE AND THIS WAIVER WITH LEGAL COUNSEL.

Section 55. OTHER TERMS:

(a) Provided Tenant is not then in Default and has paid all amounts then due, Tenant shall have two (2) options (each a “**Renewal Option**”) to renew this Lease for a period of five (5) years each (each a “**Renewal Term**”), to commence immediately upon the expiration of the original Term or first Renewal Term, as the case may be, and to be upon the same terms, covenants and conditions of this Lease effective during such original Term, except that Tenant shall pay Fixed Minimum Rent for the Renewal Term in the following amounts:

Option 1:

Lease Year	Monthly Rent	Annual Rent	Rent/SF
11	\$2,956.62	\$35,479.39	\$29.57
12	\$3,045.31	\$36,543.77	\$30.45
13	\$3,136.67	\$37,640.09	\$31.37
14	\$3,230.77	\$38,769.29	\$32.31
15	\$3,327.70	\$39,932.37	\$33.28

Option 2:

Lease Year	Monthly Rent	Annual Rent	Rent/SF
16	\$3,427.53	\$41,130.34	\$34.28
17	\$3,530.35	\$42,364.25	\$35.30
18	\$3,636.26	\$43,635.18	\$36.36
19	\$3,745.35	\$44,944.23	\$37.45
20	\$3,857.71	\$46,292.56	\$38.58

Each Renewal Option must be exercised, if at all, by written notice from Tenant delivered to Landlord not less than one hundred eighty (180) days prior to the expiration of the then-current Term. In the event this Lease is extended pursuant to this Section, all references to the “Term” herein shall include the Renewal Term.

(b) The Premises shall be delivered AS-IS, except that Landlord will, within sixty (60) days following the Effective Date, replace the HVAC System and the demising wall for the Premises, both at its sole cost and expense (“**Landlord’s Work**”). Landlord shall have the right to install said demising wall concurrently with Tenant’s build-out of the Premises.

(c) Tenant shall have the right to perform non-structural alterations within the Premises to prepare the Premises for the Permitted Use (“**Tenant’s Work**”), provided that Tenant shall not perform any work at the Premises until it obtains Landlord’s written approval of its plans and specifications for such work. Provided no Default has occurred, Landlord shall provide an amount up to \$21,000.00 (the “**Allowance**”) to be applied toward the actual cost of Tenant’s Work. The Allowance must be used within six (6) months following the Commencement Date or shall be deemed forfeited with no further obligation by Landlord with respect thereto. All Tenant’s Work shall be performed in a good and workmanlike manner, using a licensed and qualified general contractor, and subject to and in accordance with Landlord’s Rules and Regulations and all applicable federal, state, county and city building and/or fire department codes, ordinances, laws, and regulations, and all required alterations performed in connection with such work to meet said codes, ordinances, laws, and regulations shall be made at Tenant’s sole cost and expense (which may be reimbursed from the Allowance). All improvements for which the Allowance has been made available shall be deemed Landlord’s property. Tenant shall not be entitled to use any portion of the Allowance for anything other than Tenant’s Work. Landlord shall pay the Allowance to Tenant within thirty (30) days after the last to occur of the following: (a) receipt by Landlord of lien waivers and a final certificate of occupancy for the Premises; (b) Tenant’s opening for business and paying the first month’s rent due under this Lease; (c) Tenant’s Work has been fully completed; and (d) Tenant is not in default under this Lease and all sums payable by Tenant under this Lease are current. It shall be a condition to the obligation of Landlord to pay the Allowance that Tenant shall have provided Landlord with appropriate requests for payment, invoices, contractors’ affidavits and sworn statements, contractors’ and subcontractors’ lien waivers, and other documents as may be reasonably required by Landlord to demonstrate the correctness of the amount requested.

by Tenant. Notwithstanding the foregoing, upon notice to Tenant at any time prior to the Commencement Date, Landlord shall have the right to elect to replace the Allowance with a credit against the Rent due hereunder in an amount equal to the amount of the Allowance.

Section 56. REPRESENTATION BY TENANT:

(a) If Tenant is or will be a corporation, partnership or limited liability company, the persons executing this Lease on behalf of Tenant hereby covenant and warrant that Tenant is a duly qualified entity authorized to do business in the State where the Shopping Center is located, that all franchise and corporate taxes, if applicable, have been paid to date and all future forms, reports, fees and other documents necessary to comply with applicable laws will be filed when due.

(b) Tenant hereby represents and warrants that: (i) there are no proceedings pending or so far as Tenant knows threatened before any court or administrative agency that would materially adversely affect the financial condition of Tenant, the ability of Tenant to enter into this Lease or the validity or enforceability of this Lease; (ii) there is no provision of any existing mortgage, indenture, contract or agreement binding on Tenant which would conflict with or in any way prevent the execution, delivery or performance of the terms of this Lease; (iii) the financial statement of Tenant provided to Landlord in connection with this Lease is complete and correct and fairly presents the financial condition of Tenant as of the date and for the period referred to herein and has been prepared in accordance with generally accepted accounting principles consistently applied; and (iv) there have been no material adverse changes in the financial condition of Tenant since the date of such financial statement and to the knowledge of Tenant, no such material adverse changes are pending or threatened. Tenant acknowledges that Landlord is executing this Lease in reliance upon the foregoing representation and warranty and that such representation and warranty is a material element of the consideration inducing Landlord to enter into and execute this Lease.

Section 57. OFAC CERTIFICATION: Tenant hereby represents and certifies to Landlord as follows: (i) Tenant is not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order (including without limitation Executive Order 13224), the USA PATRIOT Act (including the antiterrorism provisions thereof), the International Emergency Economic Powers Act, the Trading with the Enemy Act, the United States Treasury Department, or any other legislation as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enacted, enforced or administered by the Office of Foreign Assets Control ("**Embargoed Person**"); and (ii) Tenant is not engaged in this transaction, directly or indirectly, for or on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such Embargoed Person. ~~Notwithstanding anything in this Lease to the contrary, Tenant hereby agrees to defend, indemnify and hold harmless Landlord and the Landlord Parties from and against any and all claims, damages, losses, risks, liabilities, fines, penalties, forfeitures and expenses (including without limitation costs and attorneys' fees) arising from or related to any breach of the foregoing certification.~~

[Signature page follows]

IN WITNESS WHEREOF, the parties have respectively executed this Lease as of the Effective Date.

LANDLORD:

LANDLORD:

SWNC-VESTAVIA, LLC

By: SW Neighborhood Centers II, LLC
Its: Sole Member and Manager

By: SWNC II Manager, LLC
Its: Manager

By: SWBP Investments, LLC
Its: Sole Member

By: SW Manager, LLC
Its: Manager

ATTEST/WITNESS:

Print Name: _____

By: _____
Name: Andrew Patterson
Its: Manager
Date: _____

TENANT:

THE CITY OF VESTAVIA HILLS, ALABAMA

ATTEST/WITNESS:

Print Name: _____

By: _____
Name: _____
Its: _____
Date: _____

EXHIBIT A
LOCATION AND BOUNDARIES OF PREMISES

[insert]

EXHIBIT B

COMMENCEMENT DATE CERTIFICATE

This Commencement Date Certificate is made as of this _____ day of _____, 20__ between _____
_____ (“**Landlord**”) and _____ (“**Tenant**”).

WHEREAS, the parties entered into a lease dated _____ (the “**Lease**”), in which Landlord leased to Tenant that certain property located at _____, containing approximately _____ square feet (the “**Premises**”).

WHEREAS, Landlord and Tenant desire to confirm the Commencement Date and certain other facts concerning the Lease.

NOW, THEREFORE in consideration of the mutual covenants herein contained and further good and valuable consideration, the parties hereto incorporate the following into the terms of their existing Lease:

1. The Delivery Date was _____, 20__ and the Tenant assumed possession of the Premises on such date.
2. Other key dates are as follows:
 - (a) The Commencement Date of the Lease is _____.
 - (b) The Rent Commencement Date of the Lease is _____.
 - (c) The Expiration Date is _____.
3. Tenant’s Pro Rata Share is ____%.
4. Except for the specific modifications to the Lease contained in this Commencement Date Certificate, all terms of the Lease shall remain unchanged, and are hereby ratified, republished and reaffirmed and are incorporated into this Agreement.

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Certificate as of the date and year first hereinabove written.

LANDLORD:

[LANDLORD]

By: _____
Name: _____
Its: _____
Date: _____

TENANT:

[TENANT]

By: _____
Name: _____
Its: _____
Date: _____

EXHIBIT C

SIGN CRITERIA

Tenant signage and graphics are a vital dynamic to any center. The use of colors, fonts, materials and lights create a theatrical effect to enhance the shopping experience. However, uncontrolled signage can result in clutter and ultimately have a negative impact on the final product. Tenants are encouraged to take full advantage of their store logos, specialty letter types and graphic images. Following are the Landlord's guidelines for Tenant signage.

SIGN REQUIREMENTS

1. Tenant is required to purchase its own signs and pay all costs for installation and any electrical service connections (to the Tenant's individually metered service) as required.
2. To verify compliance with the design intent of these Sign Criteria ("Criteria"), the Landlord reserves the right to review and approve or disapprove all proposed signs and/or graphic treatment governed by these Criteria per the Landlord's interpretation of these Criteria, and to require revisions of any signs which the Landlord judges not in compliance.
3. Tenant shall be responsible for removal of its signs upon termination of lease. Fascia and other building elements shall be returned to the original condition and all penetrations appurtenant to the Tenant's sign installation shall be repaired by the Tenant to the satisfaction of the Landlord.
4. Tenant shall not erect, install, paint or fix any signs, posters, cards/banners or other advertising medium to, upon or above the exterior of the premises of the building, nor on the interior or 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 removal and/or correction of sign installation and damage to building by signs that do not conform to these Criteria or those signs required to be removed by termination of lease. The Landlord reserves the right to have all non-conforming signs removed regardless of state of erection.
5. The Landlord reserves the right to make periodic changes to these Criteria as it sees fit for the benefit of the Shopping Center.
6. All signs must be fabricated as described below by a sign contractor approved by the Landlord.
7. Each Tenant shall supply three (3) copies of scaled drawings to the Landlord's tenant coordinator for review.
8. Tenant may choose any copy style, subject to approval by Landlord.
9. Sign fabrication and installation shall comply with any applicable building codes and National Electrical Code, and all internal and external wiring, lighting, and other electrical devices shall bear the U.L. symbol. It is the Tenant's responsibility to verify that its sign and installation are in accordance with these requirements and with local signage ordinances.
10. All Tenants shall run controls for signage through Tenants supplied junction box.
11. Tenant is responsible for maintaining its sign in a good state of repair including prompt replacement of burned out lighting or damaged pieces. Tenant has 24 hours to make repairs after being notified in writing by Landlord.
12. All signs shall be mounted according to Landlord approved drawings. All fasteners shall be by Landlord approved sign contractors only or Tenant's national signage contractor.
13. Sign company names or stamps shall be concealed if permitted by code.

Trade Name Signage: All tenant signage must be within the Tenant's demised space. Tenant is permitted one sign per inline storefront. Tenants occupying corner spaces may utilize one sign per elevation for a maximum of two signs total. All signs should display the Tenant's trade name. At the discretion of the landlord, additional insignias, crests, logos and/or emblems may be installed in conjunction with the Tenant's trade name. The Tenant's sign length and height must be proportional to the Tenant's storefront and integrated in its design. Maximum allowable wall sign area shall be one and one-half (1.5) square feet per one (1) lineal foot of building frontage. Total sign area shall be the sum of all sign areas excluding window signs or opening banners. No individual wall sign shall exceed one hundred square feet in size for a building with less than two hundred (200) linear feet of building frontage. For buildings with building frontage exceeding two hundred (200) linear feet, no individual sign shall exceed two hundred (200) square feet in size. All signs are subject to compliance with applicable municipal codes.

Illuminated Signage: All illuminated signs to be individual dimensional or metal back - lit letters. Dimensionally crafted, sand blasted, or carved signs must be lit by up lights or down lights without creating a harmful glare. Signs are to remain

illuminated during store hours and are to be on a 24 hour time clock. Landlord may request signs to remain illuminated after business hours. All illuminated signage must be constructed per applicable codes and indicate the proper UL certification. All backlit components must be contained wholly within the depth of the letter. Maximum brightness at the landlord's discretion. Construction of tenant signs must be of the highest quality; hums, flickers, light leaks; etc. will not be tolerated. All electrical and mechanical elements are to be concealed. Additionally, attachment elements, bolts, clips, threaded rods, fasteners, tubes, raceways, conduits etc. must be concealed from public view. The following types are suggested:

- o Individual dimensional metal back-lit (halo effect) letters or light by external light fixtures.
- o Illuminated back lighted letters where only the letters appear to be illuminated.

Blade and Hanging Signs: At the landlord's discretion, the Tenant may be permitted to install blade and/or hanging signs on the Tenant's storefront. Signs are to be metal or wood suspended from a metal bracket or chain per the landlord's requirements. Maximum allowable signage to be determined by the landlord.

- o Must extend perpendicular to storefront plane but no more than 4'-0" from the surface to which it is mounted nor more than 6'-0" total in front of the Tenant lease line.
- o May not extend below 8'-0" above finished floor.
- o Face area may not exceed 16 SF not
- o More than one blade sign may be permissible based upon the lineal SF of storefront or corner design, however, the total face area may not exceed 24 SF.
- o Must be attached to either the ceiling or wall surface depending the architects/landlords recommended location for the Premises by a bracket designed by Tenant with Landlord's approval. Bracket and mounting by Tenant with Landlord's approval.

Window Graphics: Tenant may be permitted to install window graphics (insignias, crests, logos, and/or emblems) on the glazing of their storefront. Graphics to be translucent, reversible and directly applied to the glass surface. Maximum allowable graphics to be determined by the Landlord.

Prohibited Signage: The following are signs not permitted on the storefront:

- o Flat panel signs and internally illuminated letters with plastic faces
- o Temporary or sales signs attached to the storefront
- o Free standing signs
- o Luminous vacuum formed plastic letters
- o Paper, cardboard, fabric, injected molded plastic and Styrofoam signs
- o Exposed lamps and neon.
- o Animated, moving, chaser, flashing, smoke, audible, or odor emitting signs
- o Cabinet, can or box signs
- o Credit card decals, stickers, and/or trademarks
- o Signs which are constructed of a material or deemed unsuitable by the landlord.

Service Entrance Signage indicating delivery area, suite number, etc must be submitted to Landlord for approval prior to installation. No signs on the rear exterior will be approved for direct application to the rear door or building. A plaque of the Landlord's design will be required to contain lettering in this location.

Technical Requirements: Sign permits from local building departments are required for all exterior signs. All signs, inside and outside of the shopping center, are subject to Landlord review and approval prior to submittal to the local building department. All signs to conform to all local applicable codes.

EXHIBIT D
INTENTIONALLY OMMITED

EXHIBIT E

RULES AND REGULATIONS

1. **Solicitation of Business:** Tenant and Tenant's employees and agents shall not solicit business in the parking areas or other common areas, nor distribute any handbills or other advertising matter in automobiles parked in the parking area or in other common areas, nor permit loud speakers, phonographs, radios, tape players or other audio devices to be used in a manner so as to be heard outside the Premises, nor display merchandise outside the confines of the Premises or in the common areas.
2. **Garbage:** All garbage shall be stored in proper containers within the Premises and prepared for collection in the manner and at the times and places specified by Landlord. Landlord shall provide or designate a service for picking up garbage and Tenant shall use same at Tenant's cost. Tenant will keep the Premises and the closely adjacent area in a state of reasonable cleanliness, all at its own expense. Tenant shall at all times prevent its garbage, trash, litter, paper and debris from spreading from the Premises to any other portions of the Shopping Center or public streets. Tenant's efforts in this behalf shall include (but not be limited to) the providing of an adequate number of properly designed refuse receptacles, emptying said refuse receptacles as needed, plastic bagging of refuse, providing sufficient employees to keep the area clean at all times, properly instructing its employees on the necessity of maintaining clean premises, and maintenance of an adequate number of supervisory personnel. Should the efforts of Tenant in this regard be inadequate to comply with the standards of cleanliness necessary to maintain a desirable public image and harmonious relationship with other tenants in the Shopping Center, Landlord is hereby authorized (with five days' prior written notice to Tenant) to hire such personnel and purchase such devices as necessary to achieve the desired state of cleanliness, and to collect the expense of same from Tenant as Additional Rent, over and above all other rentals provided by this Lease.
3. **Waste/Nuisance:** Tenant shall not commit or suffer to be committed any waste upon the Premises, or any nuisance, or any act of thing which may disturb the quiet enjoyment of any other tenant in the building in which the Premises may be located, or in the Shopping Center. Should the operation of Tenant's business be or become, or attract customers whose conduct is offensive, noxious, disruptive, abusive, obscene or threatening to the Landlord, the other tenants in the Shopping Center or the customers, invitees or employees of said other tenants, the Landlord, may, at Landlord's option, cancel and terminate this Lease, after thirty (30) days written notice thereof to Tenant, during which time Tenant may cure the same.
4. **Electrical, Plumbing, Heating and Air Conditioning:** The Tenant agrees to maintain, replace, and keep in good repair during the Term all the electrical, plumbing, heating, air conditioning and other mechanical equipment and systems within and serving the Premises. Landlord shall assign to Tenant any guarantees or warranties covering such equipment or systems. Landlord shall have the right at any time to execute service contract(s) for the maintenance and repair of the said equipment or systems or any portion thereof, and Tenant shall pay to Landlord Tenant's share of the same (equal to the number of equipment or systems used by Tenant divided by all equipment or systems covered by the contract).
5. **Signs, Awnings and Canopies:** Tenant will not place or suffer to be placed or maintained on any exterior door, wall or window of the Premises any lighting, sign, awning, canopy or other thing of any kind, without first obtaining Landlord's written approval and consent. Tenant will not place any sign, placard, banner, notice or other handwritten or printed material within the interior of the Premises, except as approved by Landlord, or such shall be subject to removal by Landlord without notice to Tenant at any time. Any sign, awning, canopy, or other thing shall conform in every way with the rules and regulations of the building department having jurisdiction and with any law or ordinance of the state, county and/or municipality in which the Premises is located; ~~and Tenant agrees to and does hereby to indemnify, defend and hold the Landlord and the Landlord Parties harmless from all claims by reason of the erection or maintenance of said sign, awnings, canopies or other thing.~~ Before erection of any such sign, awning, canopy or other thing, Tenant shall submit a drawing thereof to Landlord for approval, and Tenant shall pay in advance of erection the costs of any structural changes made by Tenant because of the erection of such sign, awning, canopy or thing.
6. **Tenant Parking:** Landlord hereby grants to Tenant a non-exclusive easement to use the employee parking facilities at the Shopping Center. Tenant and Tenant's employees shall be required to park only in the employee parking facilities as designated by the Landlord. Tenant agrees not to overburden the employee parking facilities and to cooperate with Landlord and other tenants in the use of the parking facilities.
7. **General Covenants:** Tenant agrees: (a) all deliveries or shipments of any kind to and from the Premises, including loading and unloading of goods, shall be made only by way of the rear of the Premises or at any other reasonable location designated by Landlord, and only at such reasonable time designated for such purpose by Landlord; (b) not to keep any animals on or within the Premises; (c) no radio, television, phonograph, loudspeaker, amplifier or other similar device, or aerial attached thereto, shall be installed outside the Premises; no such device shall be used inside the Premises in a manner so as to be heard outside of the Premises; and no flashing lights or search lights shall be used which can be seen outside the Premises; (d) to keep the Premises at a temperature sufficiently high to prevent freezing of water pipes and plumbing fixtures; (e) the outside areas immediately adjoining the Premises shall be kept clean and free from dirt and rubbish caused by Tenant, and Tenant shall not place, suffer or permit any obstructions, advertising matter or merchandise in such area; (f) not to use the public or common areas in any part of the whole Shopping Center for business or advertising purposes, or for solicitations, demonstrations or any activity which might tend to create civil disorder or commotion; (g) plumbing facilities shall not be used for any other purpose than that for which they are constructed; all lines shall be kept open and no foreign substance of any kind shall be thrown therein, nor shall Tenant install or cause to be installed, without Landlord's written consent, any automatic garbage disposal equipment; (h) Tenant shall use, at Tenant's cost, a rodent, pest and vermin exterminator at such intervals as Landlord may require and the identity of whom Landlord shall designate from time to time, provided the prices charged therefore by the person or company so designated shall be competitive; (i) Tenant shall not burn trash or garbage in or about the Premises or the whole Shopping Center; (j) Tenant shall not place, suffer or permit, displays, decorations or shopping carts on the sidewalk in front of the Premises or on or upon any of the other common areas of the whole Shopping Center; (k) Tenant shall not use, permit or suffer the use of any portion of the Premises as living, sleeping or lodging quarters, or other residential purposes; (l) Tenant shall not use, permit or suffer the use of the Premises, or any part thereof, for manufacturing purposes; (m) to keep all mechanical equipment and machinery

free of noise and vibrations which may be transmitted to any part of the walls or buildings in which the Premises are located or beyond the confines of the Premises; (n) not to cause or permit any odors or vapors or water to emanate from the Premises; (o) not to place a load upon any floor of the Premises which exceeds the load per square foot which such floor area was designed to carry. No additional locks of any type shall be affixed to any Premise door except by written consent of Landlord. Upon termination of Lease all keys including any postal box key shall be delivered to Landlord prior to vacating Premises.

EXHIBIT F

ACH DIRECTIONS

I hereby authorize Landlord or Landlord's agent to debit entries and to initiate, if necessary, credit entries and adjustments for any debit entries made in error to my (our) account indicated below and the financial institution named below, hereinafter called FINANCIAL INSTITUTION, to debit the same to such account. I (we) acknowledge that the origination of ACH transactions to my (our) account must comply with the provisions of United States law. ***Landlord reserves the right to update this account information.***

INDIVIDUAL/ORGANIZATION _____

ADDRESS _____

FINANCIAL INSTITUTION _____

ADDRESS _____

PHONE NUMBER _____

ACCOUNT NAME _____

9-DIGIT ROUTING NUMBER _____

ACCOUNT TITLE _____

ACCOUNT NUMBER _____

TYPE OF ACCOUNT: _____ Checking _____ Savings

This authority is to remain in full force and effect for the entire term of the Lease and any and all renewal options.

Print Name

Signature

Date



Opportunity to Lease Space for the New HR Department of the City of Vestavia Hills

Location: 1056 Montgomery Hwy/The Shoppes at City Hall – Suite 1062 (1,200 sq ft)



Negotiated Terms

- Ten-year lease with two, five-year options
- Proposed delivery date: January 1, 2025
- Tenant improvement allowance from landlord = \$21,000 and total replacement of HVAC system
- Proposed fixed rent commencement date: May 1, 2025
- FY 25 City budget impact: \$2,200 (\$22/sf) fixed monthly rent (\$11,000 expense for FY 25) plus CAM and utilities
- Initial annual fixed rent: \$26,400 w/ a 3% escalation clause annually
- Utilities and CAM charges: approximately \$8,220 annually (\$685.00 per mo.)
- Mark Gibbs, Chief of Building Maintenance, has inspected the property and approves its condition upon replacement of the HVAC system.

Use Case

The new HR Department has two employees. They are currently housed in the Finance Department work space. They have one enclosed office and a cubicle space. **This condition offers no space for confidential employee consultations and no dedicated training space for employee onboarding or exit interviews. Collaborative space is non-existent due to the separation of work spaces.** The proposed leasable space allows work space for two employees along with growth allowance up to four employees. It can be configured to provide an ample group meeting area. The proximity to City Hall is ideal.

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

November 1, 2024

By Electronic Mail

City Manager Jeffrey D. Downes
Vestavia Hills Municipal Center
1032 Montgomery Highway
Vestavia Hills, Alabama 35216

In Re: Proposed Commercial Lease Agreement

Dear Mr. Downes:

On October 23, 2024, you sent to me via electronic mail proposed Commercial Lease Agreement by and between SWNC-Vestavia, LLC, as "Landlord," and the City of Vestavia Hills, Alabama, as "Tenant," with a request that I review said Lease and provide you with my written legal opinion. The purpose of this letter is to comply with your request.

I. FACTS

SWNC-Vestavia, LLC, as "Landlord," proposes to lease to the City of Vestavia Hills, Alabama, as "Tenant," office space in the shopping center known as "Shoppes at City Hall" for a term of 124 months with the right of the City to renew the lease for two periods of five (5) years each. The City plans to use the property for its Human Resources Department if the parties mutually agree to the terms, provisions and conditions of the lease.

If the lease is executed and delivered, then in such event the Landlord will install a new HVAC system within 60 days and shall reimburse the City in the amount of Twenty-one Thousand Dollars (\$21,000.00) as a Tenant improvement allowance.

Among other things, the 22-page Commercial Lease Agreement ("Lease") provides that:

- A. The Tenant shall indemnify and hold harmless the Landlord; and
- B. The Tenant shall purchase and maintain a Commercial General Liability Insurance policy with a limit of One Million Dollars (\$1,000,000.00) and naming the Landlord as an additional insured.
- C. The Lease shall be kept confidential.

II. THE PROPERTY

A. LOCATION: Suite 1062 in the Shopping Center known as “Shoppes at City Hall” (formerly known as “Vestavia Plaza Shopping Center”).

B. ADDRESS: 1056 Montgomery Highway in Vestavia Hills, Alabama.

C. LEGAL DESCRIPTION: The property is part of Lot 2B according to the Resurvey of Lot 2, Cobbs Addition to Vestavia Hills as recorded in Map Book 237, Page 99, on the Probate Office of Jefferson County, Alabama.

D. SIZE OF THE PROPERTY: Approximately 1,200 square feet.

E. ZONING CLASSIFICATION: General Business District (B-2) pursuant to Zoning Ordinance Number 3098 (June 27, 2022).

F. PERMITTED USE: Public facility is permitted.

G. OWNER: SWNC-Vestavia, LLC, a Delaware limited liability company.

1. **Address:** 3800 Colonnade Parkway, Suite 250
Birmingham, Alabama 35243

2. **Formation Date:** October 7, 2021

3. **Qualified in Alabama:** October 25, 2021

4. **Acquired Property:** November 17, 2021 from Vestavia Plaza, LLC

5. **Deed:** Filed in the office of the Judge of Probate of Jefferson County, Alabama on November 19, 2021 and recorded at Inst. #2021133338.

H. CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT (“COREA”):

1. **Original Parties:**

(a) Vestavia Plaza, LLC, an Alabama limited liability company (“Developer”); and

(b) The City of Vestavia Hills, Alabama, a municipal corporation (“City”).

2. **Date of COREA:** November 21, 2013.

3. **Subject Properties:**

(a) **City Lot:** Lot 2A, according to Lot 2 Cobbs Addition to Vestavia Hills Resurvey Final Plat, as recorded in Map Book 237, Page 99, in the office of the Judge of Probate of Jefferson County, Alabama.

(b) **Developer Lot:** Lot 2B, according to Lot 2 Cobbs Addition to Vestavia Hills Resurvey Final Plat, as recorded in Map Book 237, Page 99, in the office of the Judge of Probate of Jefferson County, Alabama.

4. **Binding Effect:** Section 10.04 on page 50 of the COREA reads,

“10.04 **Binding Effect.** The terms of this Agreement and all easements granted hereunder shall constitute covenants running with the land and shall bind the Tracts described herein and inure to the benefit of and be binding upon each Party and such Party’s successors and assigns.”

5. **COREA Applies to the Property:** The COREA applies to the property by virtue of Section 10.04 effective on November 17, 2021 when Vestavia Plaza, LLC conveyed the property to SWNC-Vestavia, LLC by the General Warranty Deed filed in the office of the Judge of Probate of Jefferson County, Alabama on November 19, 2021 and recorded at Inst. #2021133338.

III. **TRANSACTING BUSINESS WITH A MUNICIPALITY**

Alabama law dictates how municipalities may transact business and establishes certain limitations and restrictions regarding contracts. Some of the 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. **MUNICIPALITIES MAY ENTER INTO CONTRACTS:** Title 11-40-1, *Code of Alabama, 1975*, declares municipalities bodies corporate and gives them the power to contract and be contracted with; provided, however, that the contract is in writing as required by Title 11-47-5, *Code of Alabama, 1975*; that the execution and delivery of the contract shall have first been approved by the City Council, *Town of Boligee v. Greene County Water and Sewer Authority*, 77 So.3d 1166 (2011), in the form of an ordinance or resolution, *Van Antwerp, et al v. Board of Commissioners of City of Mobile*, 217 Ala. 201, 115 So. 239 (1928); that the contract be signed by the Mayor as required by Title 11-43-83, *Code of Alabama, 1975*; and that the contract be signed by the City Manager as required by Title 11-43-21(b)(7), *Code of Alabama, 1975*.

Municipalities are limited and restricted by Alabama law when contracting with private entities. The limitations and restrictions imposed upon municipalities by Alabama law have been applied to the proposed Lease Agreement by and between SWNC-Vestavia, LLC and the City and are fully discussed in the legal opinions set forth below.

IV. **LEGAL ISSUE ONE**

A. **LEGAL ISSUE:** Can the City legally indemnify, defend and hold harmless another party as required by Sections 16C, 24, 50, 57 and #5 on Exhibit E of the Lease Agreement?

B. **LEGAL OPINION:** It is my legal opinion that a city cannot spend public funds to indemnify, defend and hold harmless other parties.

C. **BASIS FOR LEGAL OPINION:** It is my legal opinion that the *Constitution of Alabama of 2022*, decisions by the Supreme Court of Alabama and statutory law prohibit a municipality from spending public funds to indemnify and hold harmless third parties. The legal authorities supporting my legal opinion are cited and discussed fully below.

1. **Constitution of Alabama of 2022:** 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. Supreme Court of Alabama:

(a) 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.”

(b) 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; *Ex Parte Cranman*, 792 So.2d 392 (2000).

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.

3. Statutory Law:

(a) Municipalities May Be Liable for the Negligent Acts of Its Employees Acting in the Line and Scope of Their Employment: 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.”

(b) **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 by the City to indemnify and hold harmless a third party would violate the above statute.

(c) **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.”

It is my legal opinion that an agreement by the City to indemnify and hold harmless a third party would violate the above statute.

(d) **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.”

(e) **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.”

(f) **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.

(g) **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.

(h) **Sovereign Immunity:** In 2014, the Alabama Legislature enacted Act No. 2014-14, now set forth in Title 36-1-12, *Code of Alabama, 1975*, that provides state agent immunity to officers, employees and agents of the State of Alabama just as the Supreme Court of Alabama did in 2000 when it decided *Ex Parte Cranman*, 792 So.2d 392. It is my legal opinion that the indemnity and hold harmless language would waive discretionary immunity for City employees.

V. **LEGAL ISSUE TWO**

A. **LEGAL ISSUE TWO:** Are City business records and meetings confidential?

B. **LEGAL OPINION:** It is my legal opinion that all City business must be conducted in an open meeting after giving the required legal notice to the public and that citizens have a right to attend the meetings and to inspect and obtain copies of City business records and writings.

C. **BASIS FOR LEGAL OPINION:** I base my legal opinion upon the following Alabama legal authorities:

1. **The Open Meetings Act:**

(a) **The Open Meetings Act at Title 36-25-1, et seq., Code of Alabama, 1975, Requires that All Public Business Be Transacted and Conducted During a Public Meeting After Giving the Required Legal Notice:** The Open Meetings Act (OMA) at Title 36-25A-1(a), *Code of Alabama, 1975*, provides “The deliberative process of governmental bodies shall be open to the public during meetings as defined in Section 36-25A-2(6). All meetings of a governmental body shall be open to the public and no meetings of a governmental body may be held without providing notice pursuant to the requirements of Section 36-25A-3.”

(b) **The OMA Defines the Term “Meeting”:** The OMA at Title 36-25A-2(6)(a)(3), *Code of Alabama, 1975*, defines the term “meeting” as,

“3. The gathering, whether or not it was prearranged, of a quorum of a governmental body during which the members of the governmental body deliberate specific matters that, at the time of the exchange, the participating members expect to come before the full governmental body at a later date.”

(c) **The OMA Defines the Term “Deliberation”:** The OMA at Title 36-25A-2(1), *Code of Alabama, 1975*, defines the term “deliberation” as,

“(1) **Deliberation.** An exchange of information or ideas among a quorum of members of a subcommittee, committee, or full governmental body intended to arrive at or influence a decision as to how any members of the subcommittee, committee, or full governmental body should vote on a specific matter that, at the time of the exchange, the participating members expect to come before the subcommittee, committee, or full body immediately following the discussion or at a later time.”

(d) **The OMA Defines the Term “Quorum”:** The OMA at Title 36-25A-2(12), *Code of Alabama, 1975*, defines the term “quorum” as a majority of the voting members of a governmental body.

(e) **The OMA Requires that Records Be Kept and Maintained by Governmental Bodies”:** The OMA at Title 36-25A-4, *Code of Alabama, 1975*, reads as follows:

“§36-25A-4. **Records.** A governmental body shall maintain accurate records of its meetings, excluding executive sessions, setting forth the date, time, place, members present or absent, and action taken at each meeting. Except as otherwise provided by law, the records of each meeting **shall become a public record and be made available to the public as soon as practicable after approval** (*emphasis added*).”

2. **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:

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

(i) **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.”

(ii) **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.

D. **MY RECOMMENDATION:** This Lease Agreement is a “public document/record” and cannot be confidential. The City must comply with the Open Records Act. Only those records that qualify for an exception to the Open Records Act may be kept confidential. Therefore, I recommend that Section 51 of the Lease requiring the Lease to be kept confidential be deleted in its entirety.

VI. **COMMERCIAL GENERAL LIABILITY INSURANCE**

If the Lease is executed and delivered, then in such event the City shall be required to provide commercial general liability insurance naming SWNC-Vestavia as an additional insured as set forth below.

A. **COREA:** Section 6.01 of the COREA requires the City to maintain in full force and effect commercial general liability insurance with a single limit of liability in the amount of \$3,000,000.00 naming SWNC-Vestavia as an additional insured.

B. **COMMERCIAL LEASE AGREEMENT:** Section 25 of the Lease requires the City, as “Tenant,” to keep in full force during the entire term of the Lease, Commercial General Liability Insurance with a single limit of \$1,000,000.00 naming SWNC, as Landlord, an additional insured.

In my judgment, insurance in the aggregate amount of \$4,000,000.00 is sufficient to protect both the Tenant and Landlord and justifies the deletion of all indemnity and hold harmless language.

VII. **CONCLUSION**

I recommend, based upon the Alabama legal authorities cited herein, that all indemnity and hold harmless language, along with Section 51 regarding confidentiality, be deleted from the Lease Agreement. If those revisions are made, then in such event I approve it from a legal standpoint and recommend the execution and delivery thereof.

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

Sincerely,

A handwritten signature in blue ink, reading "Patrick H. Boone". The signature is fluid and cursive, with a long horizontal line extending to the right.

Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp

cc: City Clerk Rebecca Leavings (by e-mail)
Administrative Assistant Melissa Hipp (by e-mail)



CITY OF VESTAVIA HILLS

INTER-DEPARTMENT MEMO

November 25, 2024

To: Jeff Downes, City Manager

From:

Cc:

RE: Citizens Comments

Background:

Recommendation:

Fiscal Impact:

Attachments:

None