Vestavia Hills
City Council Agenda
December 9, 2024
6:00 PM

1. Call to Order
2. Roll Call
3. Invocation - Sam Williamson, 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 - November 25, 2024 regular meeting minutes

Old Business (Public Hearing)

10. 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

New Business

11. Resolution Number 5535 - A Resolution appointing a member to the Vestavia Hills Parks and Recreation Board
12. Resolution Number 5536 - Appointing a member to the Vestavia Hills Library Board
13. Ordinance Number 3260 - An Ordinance Authorizing the Mayor and City Manager to Execute an Agreement to allow the Vestavia Hills Board of Education to Utilize the Terms of a City Competitively Bid Contract for Landscaping Services

New Business Requesting Unanimous Consent (Public Hearing)

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

14. Public Hearing - Ordinance Number 3261 - An Ordinance Authorizing The Mayor And City Manager To Execute And Deliver A Renewal Agreement For Continued Use Of Consolidated Debt, Lease, And Subscription Management For The City
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 Minutes
November 25, 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 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 Kimberly Cook*, City Councilor Paul Head, City Councilor George Pierce

MEMBERS ABSENT: None.

OTHER OFFICIALS PRESENT: Jeff Downes, City Manager; Patrick H. Boone, City Attorney; Cinnamon McCulley, Asst. City Manager; Rebecca Leavings, City Clerk; Shane Ware, Police Chief; Melvin Turner, Finance Director; Lori Beth Kearley, Public Works Director; Marvin Green, Fire Chief; Keith Blanton, Building Official*

*participating via Zoom

3. Invocation - David Harwell, Member, Vestavia Hills Methodist Church

4. Pledge Of Allegiance

5. Approval Of The Agenda

The Mayor opened the floor for a motion to approve the agenda as presented.

MOTION: Approve the agenda as presented. Motion By: Rusty Weaver. Seconded By: George Pierce.

Roll call vote as follows: Yes: Ashley Curry, Rusty Weaver, Kimberly Cook, Paul Head, George Pierce.

No: None. Abstain: None. Motion passed.

6. Announcements, Candidates and Guest Recognition

- Mr. Pierce introduced Bridgett Glassgow, who was attending the meeting representing the Chamber of Commerce Board.

7. City Manager's Report

- Mr. Downes stated that every couple of years the City sends out a citizen's survey to random residents for review of city services. This year's survey will be mailed in December and results will be available for the February strategic planning session.
- Mr. Pierce asked about the installation of curbing on Highway 31. Mr. Downes explained this is part of a joint ALDOT, Jefferson County, and Vestavia Hills improvement project which will help with drainage, signal modification, paving, etc., to make that area safer. This project was just begun and should be completed soon.

8. Councilors' Reports

- Mr. Pierce announced he attended the Chamber of Commerce Board meeting. The Chamber is working on the annual Viva Vestavia event which is scheduled for January 28, 2025. The Chamber is currently recruiting vendors and making plans for the event. All proceeds from the event go to the Chamber Foundation.
- Mr. Weaver stated that the Planning and Zoning Commission had its regular meeting on November 14, 2024, with some compatible rezoning that will be coming to Council soon.

9. Approval Of Minutes of the October 21, 2024, work session; November 4, 2024, regular meeting; and November 6, 2024, work session

The Mayor announced that the minutes of the November 4, 2024 regular meeting are being presented for approval. He opened the floor for a motion.

MOTION: Approve the minutes of November 4, 2024 regular meeting 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: Kimberly Cook, Paul Head. Motion passed.

The Mayor announced that the minutes of the October 21, 2024 Work Session, and November 6, 2024 Work Session are being presented for approval. He opened the floor for a motion.

MOTION: Approve the minutes of the October 21, 2024 Work Session, and November 6, 2024 Work Session as presented. Motion By: Kimberly Cook. Seconded By: Rusty Weaver.

Roll Call vote as follows: Yes: Ashley Curry, Rusty Weaver, Kimberly Cook, Paul Head, George Pierce.
No: None. Abstain: None. Motion passed.

10. Financial Reports - Melvin Turner III, Finance Director

Mr. Turner presented the ending balances for FY24. He read and explained the balances.

Mrs. Cook asked about a possible reason for the unexpected increase in sales tax collections. Mr. Turner explained the City was conservative in their budget projections.

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

MOTION: Approve Ordinance Number 3249 as presented. Motion by: George Pierce. Seconded by: Rusty Weaver.

Mr. Weaver explained that this is a request for rezoning to allow a plant nursery. Renderings of the plans for the property are included in the agenda packet. The owner agreed to certain prohibited uses, which are detailed in the ordinance.

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.

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

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

MOTION: Approve Ordinance Number 3250 as presented. Motion by: George Pierce. Seconded by: Paul Head.

Mr. Weaver stated that this is a part of a recent annexation/de-annexation agreement to swap properties with the City of Birmingham. This action will make the entire lot zoned PUD PB.

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.

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

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

MOTION: Approve Resolution Number 5537 as presented. Motion by: Rusty Weaver. Seconded by: George Pierce.

Mr. Downes stated that a group has come forward to purchase this old Vestavia Hills Central school property, and the City has a desire to utilize the gymnasium through this next season. This agreement will authorize that. The City will provide insurance and pay rent, which are the same as those obligations currently being paid. This is a simple use agreement.

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

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

- None.

16. Time Of Adjournment

There being no further business, Mr. Pierce made a motion to adjourn. The Mayor adjourned the meeting at 6:18 PM.

Ashley C. Curry, Mayor

ATTESTED BY:

Rebecca Leavings, City Clerk

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

December 9, 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

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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 ORDAINAED 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: ln 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 untenantable by reason of fire 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 untenantable, 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 untenantable; (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 untenantable 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 (1) 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 OMITTED

Section 52. INTENTIONALLY OMITTED

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	$35.58

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

ATTEST/WITNESS:

By: SW Manager, LLC
Its: Manager

_____
Print Name: _____

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

TENANT:

THE CITY OF VESTAVIA HILLS, ALABAMA

ATTEST/WITNESS:

_____
Print Name: _____

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

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: _____

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 mush 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:

- Individual dimensional metal back-lit (halo effect) letters or light by external light fixtures.
- 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.

- 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.
- May not extend below 8'-0" above finished floor.
- Face area may not exceed 16 SF not
- 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.
- 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:

- Flat panel signs and internally illuminated letters with plastic faces
- Temporary or sales signs attached to the storefront
- Free standing signs
- Luminous vacuum formed plastic letters
- Paper, cardboard, fabric, injected molded plastic and Styrofoam signs
- Exposed lamps and neon.
- Animated, moving, chaser, flashing, smoke, audible, or odor emitting signs
- Cabinet, can or box signs
- Credit card decals, stickers, and/or trademarks
- 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 OMITTED

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.

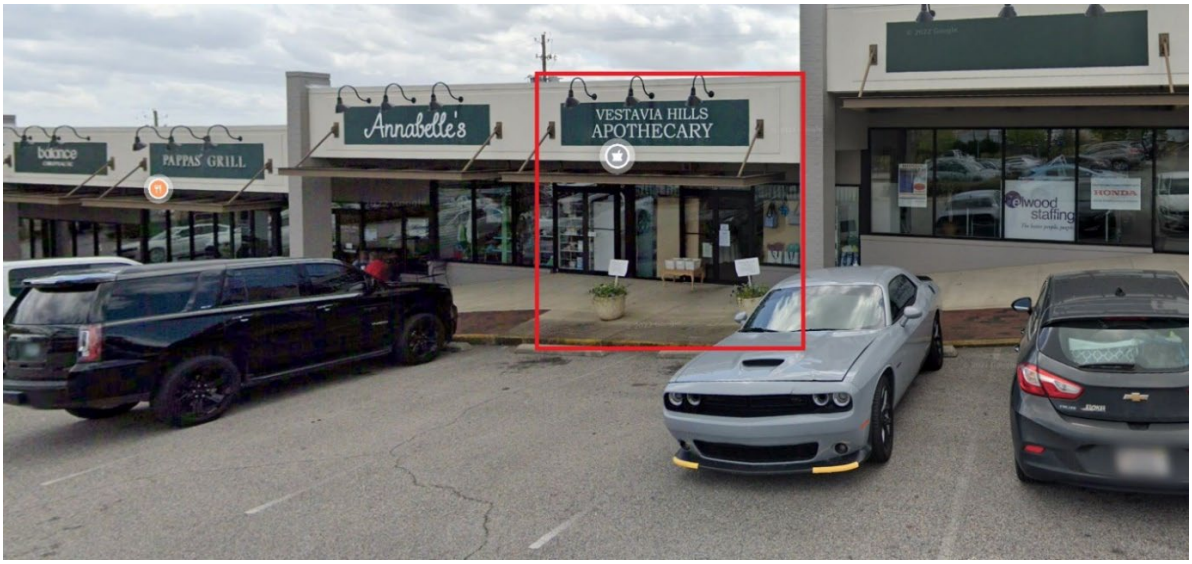
_____
Print Name

_____
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,

Patrick H. Boone
Vestavia Hills City Attorney

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

RESOLUTION NUMBER 5535

APPOINTING A MEMBER TO THE VESTAVIA HILLS PARKS AND RECREATION BOARD

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

WHEREAS, _____ is hereby appointed as a member of the City of Vestavia Hills Parks and Recreation Board; and

WHEREAS, the appointment shall be effective January 1, 2025, and shall expire December 31, 2029.

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

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

RESOLUTION NUMBER 5536

APPOINTING MEMBERS TO THE VESTAVIA HILLS LIBRARY BOARD

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

WHEREAS, _____ is hereby appointed as a member of the City of Vestavia Hills Library Board; and

WHEREAS, the said appointment shall be effective January 1, 2025 and shall expire December 31, 2028.

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

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

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

December 9, 2024

To: Mayor and Council

From: Jeff Downes, City Manager

Cc:

RE: Ordinance Number 3260 - An Ordinance Authorizing the Mayor and City Manager to Execute an Agreement to allow the Vestavia Hills Board of Education to Utilize the Terms of a City Competitively Bid Contract for Landscaping Services

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Background:
The VHBOE has requested that the City of Vestavia Hills allow them to utilize the provisions of an existing contract with Specialty Turf Supply to maintain various athletic fields owned by the VHBOE.

Recommendation:
Given the existence of an athletic field shared use agreement between the City and VHBOE, collaboration on a field maintenance contract already bid by the City creates an efficient and effective delivery of public services.

Fiscal Impact:
The additional scope of work proposed for the contractor and its additional costs will be paid by the VHBOE. There will not be any additional City expenses as a result of this ordinance.

Attachments:

1. Ordinance 3260
2. First Amendment to Contract (unsigned)
3. Superintendent and City Manager December 2 2024

ORDINANCE NUMBER 3260

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER A FIRST AMENDMENT TO CONTRACT BETWEEN SPECIALTY TURF AND THE CITY OF VESTAVIA HILLS TO ALLOW THE VESTAVIA HILLS BOARD OF EDUCATION TO BE A PARTY TO SAID CONTRACT BASED UPON A RECENT MEMORANDUM OF UNDERSTANDING CONCERNING SHARED FACILITY USAGE, LAND PLANNING AND FUNDING BETWEEN THE CITY AND THE BOARD

WHEREAS, on July 20, 2023, the City of Vestavia Hills ("the City") advertised for and invited competitive bids for athletic field maintenance as required by Alabama law; and

WHEREAS, Specialty Turf Supply, Inc., was the sold bidder and determined to be the lowest and most responsive bid; and

WHEREAS, the Vestavia Hills City Council accepted the bid and a contract was signed for a term beginning October 1, 2023 until September 30, 2026; and

WHEREAS, the City and the Vestavia Hills Board of Education ("the Board") entered a Memorandum of Understanding on February 4, 2019 which gave the parameters of a shared facility use, land planning and funding between the City and the Board; and

WHEREAS, the City Manager and the Board Superintendent have agreed that it is in the best public interest to make the Board a party to the existing contract for field maintenance with Specialty Turf Supply, Inc.; and

WHEREAS, the City Attorney has drafted a "First Amendment to Contract" ("the Contract") which allows the Board to become a party to the existing contract between the City and Specialty Turf; and

WHEREAS, a copy of the Contract is marked as Exhibit A which is attached to and incorporated into this Ordinance Number 3260 as if written fully therein; and

WHEREAS, the Mayor and City Council feel it is in the best public interest to accept the Contract and authorize the Mayor and City Manager to execute it.

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 First Amendment of Contract between the City and Specialty Turf as detailed in the attached Exhibit A; and

2. This Ordinance Number 3260 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 3260 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 Municipal Center, Vestavia Hills Library in the Forest, Vestavia Hills New Merkle House and Vestavia Hills Recreational Center this the _____ day of _____, 2024.

Rebecca Leavings
City Clerk

STATE OF ALABAMA

JEFFERSON COUNTY

FIRST AMENDMENT TO CONTRACT

WITNESSETH THIS FIRST AMENDMENT TO CONTRACT DATED OCTOBER 1, 2023, by and between the City of Vestavia Hills, Alabama ("City") and Specialty Turf Supply, Inc., an Alabama corporation ("Contractor") made and entered into on this 16th day of December 2024 by and among the City, the Contractor and the Board of Education of the City of Vestavia Hills, Alabama ("Board").

WITNESSETH THESE RECITALS:

WHEREAS, on February 4, 2019, the City and Board entered into a *Memorandum of Understanding for Shared Facility Use, Land Planning and Funding Between the City of Vestavia Hills and the Vestavia Hills City Schools* ("MOU"); and

WHEREAS, the MOU provides, among other things, as follows:

A. The City may use athletic fields owned by the Board.

B. The Board may use athletic fields owned by the City.

C. The general maintenance of any fields is the responsibility of the owner.

D. "Additional considerations:

1. All efforts will be made by the VHBOE and VH City Council to create specs and jointly bid for lawn maintenance for athletic fields and other shared public spaces."; and

WHEREAS, on July 20, 2023, the City advertised for and invited competitive bids for athletic field maintenance for athletic fields owned by the City (the "work") as required by the Alabama Competitive Bid laws set forth at Title 39-2-1, et seq., Title 41-16-50, et seq. and Title 16-13B-1, et seq., *Code of Alabama, 1975;* and

WHEREAS, Specialty Turf Supply, Inc. submitted the only bid and the City found and determined that said sole bid was the lowest, responsible and responsive bid; and

WHEREAS, on September 11, 2023, the City Council enacted Ordinance Number 3194 accepting the bid from Specialty Turf Supply, Inc. for "Inside the Fence Recreational Field Maintenance" for the City of Vestavia Hills for a period of three (3) years beginning October 1, 2023 and ending September 30, 2026 and directed the execution and delivery of a Contract for the Contractor to perform the work; and

WHEREAS, a copy of the Contract ("Contract") is attached hereto, marked as Exhibit 1 and is incorporated into this First Amendment to Contract by reference as though set out fully herein; and

WHEREAS, the Contract was signed on October 1, 2023 provides in pertinent parts as follows:

> **"XXIII. CHANGES IN WORK**
>
> The City may make changes in the scope of the work required to be performed by the Contractor under the contract by eliminating any portion of the work and the corresponding unit price charged therefor. Any change order for additional work shall be done by mutual agreement and in writing. Any change order for deletion of work shall be in writing given by City to Contractor. The deletion of work pursuant to this contract is subject to and conditioned upon the total amount of public funds available."
>
> **"XXVI.**
>
> **8. WAIVER OF MODIFICATIONS:** Any waiver, alteration or modification of any of the provisions of this Contract or cancellation or replacement of this contract shall not be valid unless in writing and signed by the City and Contractor. This contract may be amended at any time by written agreement of the parties' signatory hereto. No claims for any extra work or materials shall be allowed unless covered by written agreement of the parties."

WHEREAS, the Alabama Competitive Bid Law at Title 41-16-50(b), *Code of Alabama, 1975,* authorizes municipalities in Alabama to enter into joint purchasing agreements with other enumerated governmental bodies, including a city school board of education; and

WHEREAS, the Alabama Competitive Bid Law at Title 16-13B-1(c), *Code of Alabama, 1975,* authorizes city school boards of education in Alabama to enter into joint purchasing agreements with other enumerated governmental bodies, including a municipality; and

WHEREAS, the City of Vestavia Hills, Alabama, a municipal corporation ("City"), and the Board of Education of the City of Vestavia Hills, Alabama ("Board") wish to enter into a joint purchasing agreement pursuant to the two statutes cited above by amending the Contract; and

WHEREAS, the statute set forth in Title 41-16-50(b), *Code of Alabama, 1975,* authorizing the City to enter into joint purchasing agreements provides in pertinent part as follows:

> "Each contracting agency's share of expenditures for purchases under any agreement shall be appropriated and paid in the manner set forth in the agreement and in the same manner as for other expenses of the contracting agency."; and

WHEREAS, the statute set forth in Title 16-13B-1(c), *Code of Alabama, 1975,* authorizing the Board to enter into joint purchasing agreements provides that:

> "Each contracting agency's share of expenditures for purchases under any agreement shall be appropriated and paid in the manner set forth in the agreement and in the same manner as for other expenses of the contracting agency."; and

WHEREAS, the Board is in need of lawn maintenance services for athletic fields located on school campuses and properties owned by it; and

WHEREAS, the Contractor is willing to perform additional lawn maintenance services for the Board based upon cost and unit prices as set forth in the Contract; and

WHEREAS, the City, Board and Contractor are willing to enter into this First Amendment to Contract to create joint purchasing agreement.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That the City, Board and Contractor, hereby mutually and expressly amend the Contract as set forth below:

Notwithstanding anything contained in the Contract to the contrary, the City, Board and Contractor agree to modify the Contract by adding the following terms, provisions, limitations and conditions to said Contract:

I. RECITALS

The recitals set forth above are incorporated into this First Amendment to Contract by reference as though set out fully herein.

II. EXHIBIT

Exhibit 1 is attached hereto and incorporated into this First Amendment to Contract by reference as though set out fully herein.

III. BOARD ADDED AS PARTY TO THE CONTRACT

The Board of Education of the City of Vestavia Hills, Alabama ("Board") is added as a party to the Contract dated October 1, 2023 (Exhibit 1 is attached).

IV. SCOPE OF WORK FOR THE BOARD

The scope of the work to be performed by the Contractor for the Board is set forth below.

Complete Management Program for the 8 fields in Vestavia Hills City Schools includes:

- Mow the fields with a reel mower 2 times per week
- Mow and maintain areas inside the fences of athletic venues and designated common spaces outside the fence at Pizitz and Dolly Ridge
- Complete fertility and weed management program
- Aerate and top-dress the fields 1 time in summer
- Apply sand as needed
- Overseed the fields with ryegrass
- Paint the fields for the programs during seasons
- Coordinate and implement schedule of the irrigation system
- Weed eating and blowing along fence lines
- Blow clippings and debris from fields
- Maintain hillside landscaping, including one annual application of straw at VHHS football stadium

The work performed by the Contractor for the Board shall be pursuant to the terms, provisions and conditions set forth in the Contract as amended by this First Amendment to Contract.

V. CONTRACT PRICE FOR BOARD

The Board shall pay to the Contractor for the work described above, the sum of _____ Dollars ($_____).

VI. LIABILITY OF CITY

The City shall not be liable to the Contractor for any amount for work performed by the Contractor for the Board. The City shall be required to pay Contractor only for the work performed on athletic fields owned by the City.

VII. LIABILITY OF BOARD

The Board shall not be liable to the Contractor for any amount for work performed by the Contractor for the City. The Board shall be required to pay Contractor only for the work performed on athletic fields owned by the Board.

VIII. INSURANCE POLICY

The Board and its public employees and public officials shall be added as additional insureds to the insurance policy to be kept and maintained by Contractor as required by Sections 16 and 17 of the Contract.

IX. PERFORMANCE BOND

The performance bond required by the Contract shall be amended so as to include the work performed by the Contractor for the Board.

X. INDEMNITY

The indemnity provisions of Section XVII of the Contract shall also apply to the Board and its public employees and public officials, as well as to the City and its public employees and public officials.

XI. AFFIRMATION

The City, Board and Contractor further agree to all other aspects, terms, provisions and conditions of the original Contract and they are hereby ratified, approved and confirmed by the parties so that the same shall remain in full force and effect.

IN WITNESS WHEREOF, the City of Vestavia Hills, Alabama, a municipal corporation, the Board of Education of the City of Vestavia Hills, Alabama and Specialty Turf Supply, Inc., an Alabama corporation, have hereunto caused this First Amendment to Contract to be executed by their duly authorized officers and their respective seals to be affixed hereto on this the 16th day of December, 2024.

CITY:
CITY OF VESTAVIA HILLS, ALABAMA
A Municipal Corporation

By _____
Ashley C. Curry
Its Mayor

By _____
Jeffrey D. Downes
Its City Manager

ATTESTED

By _____

BOARD:
THE BOARD OF EDUCATION OF THE
CITY OF VESTAVIA HILLS, ALABAMA

By _____
Dr. Todd Freeman
Its Superintendent

ATTESTED:

By _____

CONTRACTOR:
SPECIALTY TURF SUPPLY, INC.
An Alabama Corporation

By _____
Michael Hill, Its President

ATTESTED

By _____

STATE OF ALABAMA
JEFFERSON COUNTY

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Ashley C. Curry, whose name as Mayor of the City of Vestavia Hills, Alabama, a municipal corporation, is signed to the foregoing First Amendment to Contract, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said City of Vestavia Hills, Alabama.

Given under my hand and official seal, this the _____ day of _____, 20249.

_____
Notary Public

My Commission Expires:

_____
SEAL

STATE OF ALABAMA
JEFFERSON COUNTY

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Jeffrey D. Downes, whose name as City Manager of the City of Vestavia Hills, Alabama, a municipal corporation, is signed to the foregoing First Amendment to Contract, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said City of Vestavia Hills, Alabama.

Given under my hand and official seal, this the _____ day of _____, 2024.

_____
Notary Public

My Commission Expires:

_____
SEAL

STATE OF ALABAMA
JEFFERSON COUNTY

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public, in and for said County, in said State, hereby certify that Dr. Todd Freeman, whose name as Superintendent of the Board of Education of the City of Vestavia Hills, Alabama is signed to the foregoing First Amendment to Contract, and who is known to me, acknowledged before me on this day that being informed of the contents of the contract, he in his capacity as such and with full authority, executed the same voluntarily for and as the act of said the Board of Education of the City of Vestavia Hills, Alabama on the day the same bears date.

Given under my hand and official seal, this the _____ day of _____, 2024.

_____
Notary Public

My Commission Expires:

_____
SEAL

STATE OF ALABAMA
JEFFERSON COUNTY

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Michael Hill, whose name as President of Specialty Turf Supply, Inc., an Alabama corporation, is signed to the foregoing First Amendment to Contract, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said Specialty Turf Supply, Inc., an Alabama corporation.

Given under my hand and official seal, this the _____ day of _____, 2024.

_____
Notary Public

My Commission Expires:

_____
SEAL

EXHIBIT 1

STATE OF ALABAMA

JEFFERSON COUNTY

CONTRACT

WITNESSETH THIS CONTRACT, made and entered into on this the 1st day of October, 2023, by and between the City of Vestavia Hills, Alabama, a municipal corporation, located at 1032 Montgomery Highway, Vestavia Hills, Alabama 35216 (hereinafter referred to as "City"), and SPECIALTY TURF SUPPLY, INC., an Alabama corporation (hereinafter referred to as "Contractor").

WITNESSETH THESE RECITALS:

WHEREAS, The City of Vestavia Hills, Alabama ("City") invited competitive bids for athletic field maintenance (hereinafter referred to as "the work"), which is more particularly described in Exhibit A to Section II of this Contract; and

WHEREAS, the Contractor, SPECIALTY TURF SUPPLY, submitted a bid for the completion of work described in the Invitation to Bid, which the City has determined to be the lowest, best and most responsible bid received; and

WHEREAS, the City and the Contractor have agreed to the terms, provisions and conditions of this Contract and have further agreed that it is in the best interests of the parties that this Contract be reduced to writing.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that in consideration of the mutual covenants, promises and premises contained herein and other good and valuable consideration, the receipt and sufficiency is whereof is hereby acknowledged by each of the parties hereto, the City and Contractor mutually and expressly agree as follows:

I. CONTRACTOR

Contractor, SPECIALTY TURF SUPPLY, represents, covenants and warrants that it is duly licensed and qualified to furnish the equipment, labor, materials and supplies and perform the work described herein.

II. GENERAL STATEMENT OF WORK

The Contractor shall furnish all labor, materials, equipment, machinery, supplies, tools, power, utilities, transportation, fuel and services, and perform all labor necessary for the work described in Exhibit A, which is attached hereto and incorporated into this contract by reference as though set out fully herein.

III. TERM OF THE CONTRACT

The term of this contract shall be for a three (3) year period, beginning October 1, 2023, and ending on September 30, 2026. The effective date of this contract shall be October 1, 2023.

IV. CONTRACT PRICE

As consideration of this contract, the City agrees to pay to Contractor for the faithful performance of this contract the following sums:

A. $346,900 for the twelve (12) month period beginning October 1, 2023 and ending September 30, 2024, unless changed according to paragraph XX and XXIII; and

B. $346,900 for the twelve (12) month period beginning October 1, 2024 and ending September 30, 2025, unless changed according to paragraph XX and XXIII; and

C. $346,900 for the twelve (12) month period beginning October 1, 2025 and ending September 30, 2026, unless changed according to paragraph XX and XXIII.

V. PAYMENT OF CONTRACT PRICE

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

VI. TERMINATION OF CONTRACT

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

VII. COMPLIANCE WITH APPLICABLE LAWS

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

VIII. LICENSE

The contractor shall, at his expense, procure all necessary licenses and permits needed to contract.

IX. QUALITY OF WORK

All labor, materials and supplies applied/installed by the Contractor in the performance of this agreement shall be done in a professional, proficient and workmanlike manner.

X. CREW INFORMATION

a) Crews will be dressed neat. Shirts shall be worn at all times.
b) Courtesy to persons utilizing City facilities is required at all times.
c) Breaks will be taken individually, at the discretion of the Supervisor.
d) All refuse from lunches and breaks will be disposed of immediately.
e) The contractor shall properly supervise its employees at all times during the work performed by the contractor. The City shall have the right to direct what work shall be performed and when. However, the contractor shall determine and decide the methodology of the work.

XI. **EQUIPMENT**

a) Equipment will be mechanically sound. Inoperable equipment in the field will not be charged to the contracting agency. The contracting agency reserves the option to demand replacement of any equipment which in its opinion has a poor operational record.

b) All equipment which is proposed to be used on the work shall be of sufficient size and in such mechanical condition as to meet requirements of the work and to produce a satisfactory quality of work.

c) Equipment can be stored on City property with consent of City, however the City will not be responsible for any damage to stored equipment.

d) Equipment used on any portion of the project shall be such that no injury to plant materials, curbs, drives, walks, roadways, buildings or adjacent property will result from its use.

e) Reel Mowers are preferred for mowing of all grass turf areas.

e) Sharpen blades on cutting tools periodically to insure clean, smooth cuts and to prevent damage to plant materials.

XII. **SAFETY STANDARDS**

a) All equipment to be used and all work to be performed must be in full compliance with the most current safety requirements for performing this type of work.

b) The contractor shall be solely responsible for pedestrian and vehicular safety and control on the worksite and shall provide the necessary warning devices, barricades and ground personnel needed to give safety, protection and warning to persons and vehicular traffic within the area.

XIII. **PROTECTION OF UNDERGROUND UTILITIES**

The contractor shall be responsible for contacting the appropriate utility for location of any underground services which are in the work area and could be damaged by the contractor's operations.

XIV. **DISCONTINUANCE OF WORK**

Any practice obviously hazardous as determined by the contracting agency shall be immediately discontinued by the contractor upon receipt of either written or oral notice to discontinue such practice.

XV. **INDEPENDENT CONTRACTOR**

The Contractor, SPECIALTY TURF SUPPLY, is an independent contractor for purposes of this agreement. Nothing contained herein shall be construed to mean that said Contractor is the servant, agent or employee of the City of Vestavia Hills, Alabama.

XVI. **IMMIGRATION**

By signing this contract, the contracting parties affirm, for the duration of the contract, that they will not violate federal immigration law or knowingly employ, hire for employment or continue to employ an unauthorized alien with the State of Alabama. Furthermore, a

contracting party found to be in violation of this provision shall be deemed in breach of the contract and shall be responsible for all damages resulting therefrom.

XVII. INDEMNITY

To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City of Vestavia Hills, Alabama, a municipal corporation, and the Vestavia Hills Park and Recreation Board, as Owner, and their agents, employees and consultants, including the Mayor, elected members of the City Council, the appointed members of the Vestavia Hills Park and Recreation Board, (hereinafter collectively referred to as the "Indemnitees") from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of, or related to, or resulting from performance of the work provided such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destructing of tangible property, including loss of use resulting therefrom, and is caused in whole or in part by negligent acts or omissions of the Contractor, subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether such claim, damage, loss or expense is caused in part, or is alleged by not legally established to have been caused in whole or in part by the negligence or other fault of a party indemnified hereunder. This indemnification shall extend to all claims, damages, losses and expenses for injury or damage to adjacent or neighboring property, or persons injured thereon, that arise out of, relate to, or result from performance of the work.

XVIII. INSURANCE

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

a) For personal injuries, including death, in an amount of not less than:
   i) $500,000 for any one person occurrence
   ii) $1,000,000 for any one occurrence
b) For damage to property not belonging to the contractor or his subcontractors in an amount not less than:
   i) $500,000 for any one accident
   ii) $1,000,000 aggregate amount
c) For personal injuries including death and/or for damages to property not belonging to the contractor or his subcontractors caused by automotive equipment or used by the contractor or his subcontractors in an amount not less than:
   i) $500,000 personal injury per person per occurrence
   ii) $1,000,000 personal injury per occurrence
   iii) $500,000 property damage per accident
d) Workmen's Compensation, State and Federal Statutory requirements plus:
   i) $500,000 employer's liability per person

   Such insurance shall be placed with an insurer acceptable to the contracting agency and the policies shall provide notice by the insurer to the contracting agency of cancellation, non-renewal or material change in any such policy and shall contain an endorsement naming the City of Vestavia Hills as an additional insured there under.

XIX. ADDITIONAL INSUREDS

The Contractor shall cause the commercial general liability insurance coverage and the commercial umbrella liability insurance coverage required by the contract documents to include:

a) The City of Vestavia Hills, Alabama, a municipal corporation, and its public officials and employees, the Vestavia Hills Park and Recreation Board, and its appointed Board members as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and

b) The insurance policy coverages shall state that these coverages shall be primary insurance for the additional insureds; and

c) Contain no exclusions of the additional insureds relative to job accidents; and

d) The policies must be on an "occurrence" basis.

XX. ADDITIONAL SERVICES

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

XXI. ASSIGNMENT

This contract shall not be assignable by the Contractor in any respect without having first obtained the written consent of the City evidenced by a properly enacted resolution of the City.

XXII. SUBCONTRACTORS

The contractor will not be allowed to subcontract work under this contract unless written approval is granted by the contracting agency. The subcontractor, as approved, shall be bound by the contractor. All directions given to the subcontractor in the field shall bind the contractor as if the notice has been given directly to the contractor.

XXIII. CHANGES IN WORK

The City may make changes in the scope of the work required to be performed by the Contractor under the contract by eliminating any portion of the work and the corresponding unit price charged therefor. Any change order for additional work shall be done by mutual agreement and in writing. Any change order for deletion of work shall be in writing given by City to Contractor. The deletion of work pursuant to this contract is subject to and conditioned upon the total amount of public funds available.

XXIV. REMOVAL OF DEBRIS AND CLEANING

The Contractor shall, periodically or as directed during the progress of the work, remove and legally dispose of all surplus excavated material and debris, and keep the project area and public rights of way reasonable clear and clean. Upon completion of the work, it shall remove all temporary construction facilities, debris and unused materials provided for the work, and put the whole site of the work and public rights of way in a neat and clean condition.

XXV. COMPLIANCE WITH TITLE 41-16-5, CODE OF ALABAMA, 1975, BOYCOTT LIMITATIONS

Act 2016-312 of the Alabama Legislature prohibits a governmental entity from entering into certain public contracts with a business entity unless the contract includes a representation that the business is not currently engaged in, and an agreement that the business will not engage in, the boycott of a person or an entity based upon the person or business doing business with a jurisdiction with which the state can enjoy open trade. The prohibition does not apply if a business offers to provide goods or services for at least 20 percent less than the lowest certifying business entity or to a contract with a value less than $15,000.00. The Contractor represents and warrants that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade.

XXVI. MISCELLANEOUS

A. **NON WAIVER:** The failure of the City to insist, in any one or more instances, upon a strict performance of any of the covenants of this contract, or to exercise any option herein contained, shall not be construed as a waiver, or a relinquishment for the future of such covenant or option, but the same shall continue and remain in full force and effect.

B. **WAIVER OF MODIFICATIONS:** Any waiver, alteration or modification of any of the provisions of this Contract or cancellation or replacement of this contract shall not be valid unless in writing and signed by the City and Contractor. This contract may be amended at any time by written agreement of the parties' signatory hereto. No claims for any extra work or materials shall be allowed unless covered by written agreement of the parties.

C. **NOTICES:** Any and all notices required or permitted to be given under this agreement will be sufficient if furnished in writing and sent by Registered Mail to the parties' last known address.

D. **CONSTRUCTION OF TERMS:** The City and Contractor negotiated the terms, provisions and conditions of this contract and both parties had the equal opportunity for input for the drafting of this contract. Therefore, any ambiguities of this contract shall be construed fairly and equitably regardless of the participation of either party in drafting this contract. The reference in terms to gender and number shall be modified as may be appropriate.

E. **GOVERNING LAW:** This contract shall be interpreted, construed and governed to the laws of the State of Alabama. The jurisdiction and venue for the resolution of any dispute shall be in Jefferson County, Alabama.

F. **ARTICLE AND SECTION HEADINGS:** The article and section headings and captions contained herein are included for convenience only, and shall not be considered a part hereof or affect in any manner the construction or interpretation hereof.

G. **EXECUTION IN COUNTERPARTS:** The contract may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

H. **BINDING EFFECT:** The contract shall inure to the benefit of, and shall be binding upon City and Contractor, and their heirs, successors and assigns.

I. **SEVERABILITY:** In the event any provision of this contract shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

J. **ENTIRE AGREEMENT:** This written Contract contains the entire agreement between the City and the Contractor.

IN WITNESS WHEREOF, the City of Vestavia Hills, Alabama, a municipal corporation, and Vestavia Hills, an Alabama corporation, have hereunto caused this contract to be executed by their duly authorized officers and their respective seals to be affixed hereto on this the 1st day of October, 2023.

CITY:
CITY OF VESTAVIA HILLS, ALABAMA
A Municipal Corporation

By Ashley C. Curry
Ashley Curry
Its Mayor

By
Jeffrey D. Downes
Its City Manager

ATTESTED
By

CONTRACTOR: Specialty Turf Supply Inc.

By
Its Michael Nail / President

ATTESTED
By Casey Hall

STATE OF ALABAMA
JEFFERSON COUNTY

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Ashley Curry, whose name as Mayor of the City of Vestavia Hills, Alabama, a municipal corporation, is signed to the foregoing Contract, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said City of Vestavia Hills, Alabama.

Given under my hand and official seal, this the 4 day of October, 2023

Notary Public

My Commission Expires:
4-18-2026
SEAL

JOAN LICARI ALFANO MY COMMISSION EXPIRES NOTARY PUBLIC 04-18-2026 ALABAMA STATE AT LARGE

STATE OF ALABAMA
JEFFERSON COUNTY

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Jeffrey D. Downes, whose name as City of Manager of the City of Vestavia Hills, Alabama, a municipal corporation, is signed to the foregoing Contract, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said City of Vestavia Hills, Alabama.

Given under my hand and official seal, this the 4 day of October, 2023

Notary Public

My Commission Expires:
4-18-2026
SEAL

JOAN LICARI ALFANO MY COMMISSION EXPIRES NOTARY PUBLIC 04-18-2026 ALABAMA STATE AT LARGE

STATE OF ALABAMA
JEFFERSON COUNTY

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Michael Hill, whose name as _____ of the _____ _____, a Alabama corporation, is signed to the foregoing Contract, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said _____ _____, a Alabama corporation.

Given under my hand and official seal, this the 4 day of October 2023

Casey Lauren Hall
Notary Public

My Commission Expires:
8.2.25
SEAL

CASEY LAUREN HALL
MY COMMISSION EXPIRES
AUGUST 2, 2025
NOTARY PUBLIC
STATE OF ALABAMA

10

EXHIBIT A

(PROVIDED BY CONTRACTOR THROUGH THE BID)

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 10/06/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME: Karen Thompson	
Alabama Insurance Exchange	PHONE (A/C, No, Ext): (205) 988-0800	FAX (A/C, No): (770) 858-7545
PO Box 724728	E-MAIL ADDRESS: karen@aieins.com	
Atlanta GA 31139	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : Sentry Insurance Group	
INSURED	INSURER B : Sheffield Group, The	00003
Specialty Turf Supply Inc	INSURER C : Evanston Insurance Company	
1449 Panorama Drive	INSURER D :	
	INSURER E :	
Birmingham AL 35216	INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** 2022 Ren COI **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	[X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [ ] POLICY [X] PRO-JECT [ ] LOC [ ] OTHER:	Y		A0093276	11/03/2022	11/03/2023	EACH OCCURRENCE	$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 500,000
							MED EXP (Any one person)	$ 5,000
							PERSONAL & ADV INJURY	$ 1,000,000
							GENERAL AGGREGATE	$ 3,000,000
							PRODUCTS - COMP/OP AGG	$ 2,000,000
								$
A	AUTOMOBILE LIABILITY [X] ANY AUTO [ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS [ ] HIRED AUTOS ONLY [ ] NON-OWNED AUTOS ONLY			A0093276	11/03/2022	11/03/2023	COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
							BODILY INJURY (Per person)	$
							BODILY INJURY (Per accident)	$
							PROPERTY DAMAGE (Per accident)	$
							limit	$
A	[X] UMBRELLA LIAB [ ] OCCUR [ ] EXCESS LIAB [ ] CLAIMS-MADE [ ] DED [X] RETENTION $ 0			A0093276	11/03/2022	11/03/2023	EACH OCCURRENCE	$ 5,000,000
							AGGREGATE	$ 5,000,000
								$
B/C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N [Y] If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		22093-00 / 3FF3824	01/01/2023	01/01/2024	[X] PER STATUTE [ ] OTH-ER	
							E.L. EACH ACCIDENT	$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	$ 1,000,000
A	Leased and Rented Equipment			A0093276	11/03/2022	11/03/2023	Leased and Rented	$300,000
							Deductible	$5000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The City of Vestavia Hills, Al, a municipal corporation, and its public officials, and employees, the Vestavia Hills Park and recreation Board, and its appointed board members is an additional insured as respects to general liability and umbrella. General liability is primary and non-contributory. Umbrella follows form.

CERTIFICATE HOLDER

City of Vestavia Hills
1032 Montgomery Hwy
Vestavia Hills AL 35216

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Michelle Kidd

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POLICY NUMBER:

COMMERCIAL AUTO
CA 20 48 10 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED FOR COVERED AUTOS LIABILITY COVERAGE

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" for Covered Autos Liability Coverage under the Who Is An Insured provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured:
Endorsement Effective Date:

SCHEDULE

Name Of Person(s) Or Organization(s):
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Each person or organization shown in the Schedule is an "insured" for Covered Autos Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Paragraph **A.1.** of Section **II** - Covered Autos Liability Coverage in the Business Auto and Motor Carrier Coverage Forms and Paragraph **D.2.** of Section **I** - Covered Autos Coverages of the Auto Dealers Coverage Form.

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POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 10 12 19

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. **Section II - Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

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C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III - Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

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POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 24 04 12 19

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US (WAIVER OF SUBROGATION)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
ELECTRONIC DATA LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART DESIGNATED SITES
POLLUTION LIABILITY LIMITED COVERAGE PART DESIGNATED SITES
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
UNDERGROUND STORAGE TANK POLICY DESIGNATED TANKS

SCHEDULE

Name Of Person(s) Or Organization(s):
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph **8. Transfer Of Rights Of Recovery Against Others To Us** of **Section IV - Conditions:**

We waive any right of recovery against the person(s) or organization(s) shown in the Schedule above because of payments we make under this Coverage Part. Such waiver by us applies only to the extent that the insured has waived its right of recovery against such person(s) or organization(s) prior to loss. This endorsement applies only to the person(s) or organization(s) shown in the Schedule above.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CONTRACTORS BLANKET ADDITIONAL INSUREDS, PRIMARY & NONCONTRIBUTORY, WAIVER OF SUBROGATION

This endorsement modifies the coverage provided under the following Coverage Form(s):

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Coverage enhancements are listed below. For details of each coverage, please read the corresponding policy provisions in the body of this endorsement.

1. **Additional Insureds - Automatic Status for 13 Additional Insured Types**
   - **A.** Owners, Lessees Or Contractors - Automatic Status When Required In A Written Construction Agreement With You
   - **B.** Owners, Lessees Or Contractors - Automatic Status When Required In Written Construction Agreement With You (Completed Operations)
   - **C.** State or Governmental Agency or Subdivision or Political Subdivision - Permits or Authorizations
   - **D.** Lessor of Leased Equipment
   - **E.** Owners or Other Interests From Whom Land Has Been Leased
   - **F.** Manager or Lessor of Premise
   - **G.** Mortgagee, Assignee, or Receiver
   - **H.** Controlling Interest
   - **I.** Co-owner Of Insured Premises
   - **J.** Executors, Administrators, Trustees Or Beneficiaries
   - **K.** State Or Governmental Agency Or Subdivision Or Political Subdivision - Permits Or Authorizations Relating To Premises
   - **L.** Vendors
   - **M.** Grantor of Franchise
2. **Primary and Noncontributory - Other Insurance Condition**
3. **Waiver Of Transfer Of Rights Of Recovery Against Others To Us (Waiver Of Subrogation) - Automatic**

With respect to the coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

1. Additional Insureds - Automatic Status for 13 Additional Insured Types

Section II - Who Is An Insured is amended to include the following as additional insureds when you have agreed to add that person or organization as an Additional Insured on your policy in a written contract or written agreement with that person or organization, or because of a permit issued by a state or political subdivision; provided the injury or damage occurs subsequent to the execution of the contract or agreement or issuance of the permit and while the contract, agreement or permit remains in effect.

A. Owners, Lessees Or Contractors - Automatic Status When Required In A Written Construction Agreement With You

1) A person or organization with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

   a. Your acts or omissions; or

   b. The acts or omissions of those acting on your behalf;

   in the performance of your ongoing operations for the additional insured.

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A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

2) With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

a. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

1. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

2. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

b. "Bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

B. Owners, Lessees Or Contractors - Automatic Status When Required In Written Construction Agreement With You (Completed Operations)

1) Any person(s) or organization(s) with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" performed for that additional insured and included in the "products-completed operations hazard", but only when that portion of the "products-completed operations hazard" is not excluded by endorsement.

2) With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to:

"Bodily injury" or "property damage" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

C. State or Governmental Agency or Subdivision or Political Subdivision - Permits or Authorizations

Any state or governmental agency or subdivision or political subdivision, subject to the following provisions:

1) This insurance applies only with respect to operations performed by you or on your behalf for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization.

2) This insurance does not apply to:

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a. "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or

b. "Bodily injury" or "property damage" included within the "products-completed operations hazard".

D. Lessor of Leased Equipment

1) Any person(s) or organization(s) with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

E. Owners or Other Interests From Whom Land Has Been Leased

1) Any person(s) or organization(s) with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by you or those acting on your behalf in connection with the ownership, maintenance or use of that part of the land leased to you by the additional insured person(s) or organization(s).

2) With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

a. Any "occurrence" which takes place after you cease to lease that land;

b. Structural alterations, new construction or demolition operations performed by or on behalf of the additional insured person(s) or organization(s).

F. Manager or Lessor of Premise

Any person(s) or organization(s) with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by you or those acting on your behalf in connection with the ownership, maintenance or use of that part of the premises leased to you by the additional insured person(s) or organization(s), subject to the following additional exclusions:

This insurance does not apply to:

1) Any "occurrence" which takes place after you cease to be a tenant in that premises.

2) Structural alterations, new construction or demolition operations performed by or on behalf of the person(s) or organization(s) shown in the Schedule.

G. Mortgagee, Assignee, or Receiver

Any person(s) or organization(s) with respect to their liability as mortgagee, assignee or receiver and arising out of the ownership, maintenance or use of a premises by you.

This insurance does not apply to structural alterations, new construction and demolition operations performed by or for such additional insured person(s) or organization(s).

H. Controlling Interest

1) Any person(s) or organization(s) with respect to their liability arising out of:

a. Their financial control of you; or

b. Premises they own, maintain or control while you lease or occupy these premises.

2) This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

I. Co-owner Of Insured Premises

Any person(s) or organization(s) with respect to their liability as co-owner of a premises co-owned by you and covered under this insurance.

J. Executors, Administrators, Trustees Or Beneficiaries

Any executor, administrator, trustee or beneficiary of your estate or living trust while acting within the scope of their duties as such.

K. State Or Governmental Agency Or Subdivision Or Political Subdivision - Permits Or Authorizations Relating To Premises

Any state or governmental agency or subdivision or political subdivision, subject to the following additional provision:

This insurance applies only with respect to the following hazards for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization in connection with premises you own, rent or control and to which this insurance applies:

1) The existence, maintenance, repair, construction, erection or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners or decorations and similar exposures; or
2) The construction, erection or removal of elevators; or
3) The ownership, maintenance or use of any elevators covered by this insurance.

L. Vendors

1) Any person(s) or organization(s) (referred to throughout this endorsement as vendor), but only with respect to liability for "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business.

   However:

   a. The insurance afforded to such vendor only applies to the extent permitted by law; and
   b. If coverage provided to the vendor is required by a contract or agreement, the insurance afforded to such vendor will not be broader than that which you are required by the contract or agreement to provide for such vendor.

2) With respect to the insurance afforded to these vendors, the following additional exclusions apply:

   a. The insurance afforded the vendor does not apply to:

      1) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
      2) Any express warranty unauthorized by you;
      3) Any physical or chemical change in the product made intentionally by the vendor;
      4) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
      5) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
      6) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
      7) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
      8) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

         (1) The exceptions contained in Subparagraphs **d.** or **f.**; or

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(2) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

b. This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

M. Grantor of Franchise

Any person(s) or organization(s) with respect to their liability as grantor of a franchise to you.

However:

1. The insurance afforded to such additional insureds only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

   With respect to the insurance afforded to these additional insureds, the following is added to **Section III - Limits Of Insurance**:

   If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

   1. Required by the contract or agreement; or
   2. Available under the applicable limits of insurance;

   whichever is less.

   This endorsement shall not increase the applicable limits of insurance.

   If there is any difference in coverage afforded to an additional insured in this endorsement and that provided under another additional insured endorsement attached to this policy, the broader coverage will apply to that additional insured.

2. Primary And Noncontributory Insurance

The following is added to the Other Insurance Condition and supersedes any provision to the contrary:

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

(1) The additional insured is a Named Insured under such other insurance; and

(2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

3. Waiver Of Transfer Of Rights Of Recovery Against Others To Us (Waiver Of Subrogation) - Automatic

The following is added to Paragraph **8. Transfer Of Rights Of Recovery Against Others To Us** of **Section IV - Conditions:**

We waive any right of recovery against any person or organization, because of any payment we make under this Coverage Part, to whom the insured has waived its right of recovery in a written contract or agreement. Such waiver by us applies only to the extent that the insured has waived its right of recovery against such person or organization prior to loss.

POLICY NUMBER:

COMMERCIAL AUTO
CA 04 44 10 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US (WAIVER OF SUBROGATION)

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured:
Endorsement Effective Date:

SCHEDULE

Name(s) Of Person(s) Or Organization(s):
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The **Transfer Of Rights Of Recovery Against Others To Us** condition does not apply to the person(s) or organization(s) shown in the Schedule, but only to the extent that subrogation is waived prior to the "accident" or the "loss" under a contract with that person or organization.

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CITY OF VESTAVIA HILLS

1032 Montgomery Highway

Vestavia Hills, AL 35216

BUSINESS LICENSE

LICENSE YEAR: 2023
LICENSE TYPE: General Contractor - 236200

LICENSE NUMBER: 276
EXPIRATION DATE: December 31, 2023
FEES: $312.00
ISSUED TO: Specialty Turf Supply
CONTRACTOR ADDRESS: 1449 Panorama Drive Birmingham AL 35216
CONTRACTOR PHONE NUMBER: 2053378248

Keith Blanton
Building Official

CITY OF VESTAVIA HILLS

Bond No. 9430115

Performance Bond

CONTRACTOR:
(Name, legal status and address)

Specialty Turf Supply, Inc.
1449 Panorama Drive
Birmingham, AL 35216

OWNER:
(Name, legal status and address)

City of Vestavia Hills, Alabama
1032 Montgomery Highway
Vestavia Hills, AL 35216

SURETY:
(Name, legal status and principal place of business)

Fidelity and Deposit Company of Maryland
1299 Zurich Way, 5th Floor
Schaumburg, IL 60196-1056
An IL Corporation

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.
Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.
This document combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

CONSTRUCTION CONTRACT
Date: October 1, 2023

Amount: Three Hundred Forty Six Thousand Nine Hundred Dollars and 00/100 ($346,900.00)

Description:
(Name and location)
Athletic Field Maintenance "Inside the Fences"
City of Vestavia Hills, Alabama

BOND
Date: October 6, 2023
(Not earlier than Construction Contract Date)

Amount: Three Hundred Forty Six Thousand Nine Hundred Dollars and 00/100 ($346,900.00)

Modifications to this Bond: __ None X See Section 16

CONTRACTOR AS PRINCIPAL
Company: Specialty Turf Supply, Inc. *(Corporate Seal)*

Signature: _____
Name and Title: Michael Nix President

SURETY
Company: Fidelity and Deposit Company of Maryland *(Corporate Seal)*

Signature: Mark W. Edwards II
Name and Title: Mark W. Edwards, II, Attorney-in-Fact

(Any additional signatures appear on the last page of this Performance Bond.)

(FOR INFORMATION ONLY— Name, address and telephone)
AGENT or **BROKER:**

McGriff Insurance Services, LLC
2211 7th Avenue South
Birmingham, AL 35233
205-252-9871

OWNER'S REPRESENTATIVE:
(Architect, Engineer or other party:)

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§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

.1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;

.2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

.3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

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§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

.2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and

.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 **Definitions**

§ 14.1 **Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 **Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 **Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

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§ 16 Modifications to this bond are as follows:

Notwithstanding the provisions of the Contract, the term of this bond shall apply from 1st day of October, 2023, until 30th day of September, 2024, and may be extended by the Surety by Continuation Certificate. However, neither nonrenewal by the Surety, nor the failure or inability of the Principal to file a replacement bond in the event of nonrenewal, shall itself constitute a loss to the obligee recoverable under this bond or any renewal or continuation thereof. The liability of the Surety under this bond and all Continuation Certificates issued in connection therewith shall not be cumulative and shall in no event exceed the amount as set forth in this bond or in any additions, riders, or endorsements properly issued by the Surety as supplements thereto.

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL		**SURETY**	
Company:	*(Corporate Seal)*	Company:	*(Corporate Seal)*
Signature:		Signature:	
Name and Title:		Name and Title:	
Address:		Address:	

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CERTIFICATE OF ACKNOWLEDGEMENT OF ALL PURPOSE SURETY

State of Alabama)
)ss
County of Jefferson)

On this 6th[th] day of October, 2023, before me appeared Mark W. Edwards, II, to me personally known, who, being by me duly sworn, did say that he is the Attorney-In-Fact of Fidelity and Deposit Company of Maryland, the corporation named in the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and said Mark W. Edwards, II acknowledged said instrument to be the free act and deed of said corporation.

Tyler Joseph Tucker

Tyler Joseph Tucker, Notary Public, State at Large
My commission expires: May 03, 2026

ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND
POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Illinois, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Illinois (herein collectively called the "Companies"), by Robert D. Murray, Vice President, in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint Mark W. EDWARDS, II, Anna CHILDRESS, Jeffrey M. WILSON, Robert R. FREEL, Alisa B. FERRIS, William M. SMITH, Richard H. MITCHELL, all of Birmingham, Alabama, its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings,** and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said **ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND**, this 29th day of September, A.D. 2023.

ATTEST:
ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND

By: Robert D. Murray
Vice President

By: Dawn E. Brown
Secretary

State of Maryland
County of Baltimore

On this 29th day of September, A.D. 2023, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **Robert D. Murray, Vice President and Dawn E. Brown, Secretary** of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, deposeth and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

Genevieve M. Maison

GENEVIEVE M. MAISON
NOTARY PUBLIC
BALTIMORE COUNTY, MD
My Commission Expires JANUARY 27, 2025

Authenticity of this bond can be confirmed at bondvalidator.zurichna.com or 410-559-8790

EXTRACT FROM BY-LAWS OF THE COMPANIES

"Article V, Section 8, Attorneys-in-Fact. The Chief Executive Officer, the President, or any Executive Vice President or Vice President may, by written instrument under the attested corporate seal, appoint attorneys-in-fact with authority to execute bonds, policies, recognizances, stipulations, undertakings, or other like instruments on behalf of the Company, and may authorize any officer or any such attorney-in-fact to affix the corporate seal thereto; and may with or without cause modify of revoke any such appointment or authority at any time."

CERTIFICATE

I, the undersigned, Vice President of the ZURICH AMERICAN INSURANCE COMPANY, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that Article V, Section 8, of the By-Laws of the Companies is still in force.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY at a meeting duly called and held on the 15th day of December 1998.

RESOLVED: "That the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the Seal of the Company may be affixed by facsimile on any Power of Attorney...Any such Power or any certificate thereof bearing such facsimile signature and seal shall be valid and binding on the Company."

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of May, 1994, and the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seals of the said Companies, this 6th day of October, 2023.

Thomas O. McClellan
Vice President

TO REPORT A CLAIM WITH REGARD TO A SURETY BOND, PLEASE SUBMIT A COMPLETE DESCRIPTION OF THE CLAIM INCLUDING THE PRINCIPAL ON THE BOND, THE BOND NUMBER, AND YOUR CONTACT INFORMATION TO:

Zurich Surety Claims
1299 Zurich Way
Schaumburg, IL 60196-1056
reportsfclaims@zurichna.com
800-626-4577

Authenticity of this bond can be confirmed at bondvalidator.zurichna.com or 410-559-8790

Bond No. 9430115

Payment Bond

CONTRACTOR:
(Name, legal status and address)

Specialty Turf Supply, Inc.
1449 Panorama Drive
Birmingham, AL 35216

OWNER:
(Name, legal status and address)

City of Vestavia Hills, Alabama
1032 Montgomery Highway
Vestavia Hills, AL 35216

SURETY:
(Name, legal status and principal place of business)

Fidelity and Deposit Company of Maryland
1299 Zurich Way, 5th Floor
Schaumburg, IL 60196-1056
An IL Corporation

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.
Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.
This document combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

CONSTRUCTION CONTRACT
Date: October 1, 2023

Amount: Three Hundred Forty Six Thousand Nine Hundred Dollars and 00/100 ($346,900.00)

Description:
(Name and location)
Athletic Field Maintenance "Inside the Fences", City of Vestavia Hills, Alabama

BOND
Date: October 6, 2023
(Not earlier than Construction Contract Date)

Amount: Three Hundred Forty Six Thousand Nine Hundred Dollars and 00/100 ($346,900.00)

Modifications to this Bond: __ None X See Section 18

CONTRACTOR AS PRINCIPAL
Company: Specialty Turf Supply, Inc. *(Corporate Seal)*

Signature: _____
Name and Title: Michael Hall, President

SURETY
Company: Fidelity and Deposit Company of Maryland *(Corporate Seal)*

Signature: Mark W. Edwards II
Name and Title: Mark W. Edwards, II, Attorney-in-Fact

(Any additional signatures appear on the last page of this Payment Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)
AGENT or BROKER:

McGriff Insurance Services, LLC
2211 7th Avenue South
Birmingham, AL 35233
205-252-9871

OWNER'S REPRESENTATIVE:
(Architect, Engineer or other party:)

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§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

.1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and

.2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5. 1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

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§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

.1 the name of the Claimant;
.2 the name of the person for whom the labor was done, or materials or equipment furnished;
.3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
.4 a brief description of the labor, materials or equipment furnished;
.5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
.6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
.7 the total amount of previous payments received by the Claimant; and
.8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

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§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

Notwithstanding the provisions of the Contract, the term of this bond shall apply from 1st day of October, 2023, until 30th day of September, 2024, and may be extended by the Surety by Continuation Certificate. However, neither nonrenewal by the Surety, nor the failure or inability of the Principal to file a replacement bond in the event of nonrenewal, shall itself constitute a loss to the obligee recoverable under this bond or any renewal or continuation thereof. The liability of the Surety under this bond and all Continuation Certificates issued in connection therewith shall not be cumulative and shall in no event exceed the amount as set forth in this bond or in any additions, riders, or endorsements properly issued by the Surety as supplements thereto.

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL		SURETY	
Company:	*(Corporate Seal)*	Company:	*(Corporate Seal)*
Signature:		Signature:	
Name and Title:		Name and Title:	
Address:		Address:	

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CERTIFICATE OF ACKNOWLEDGEMENT OF ALL PURPOSE SURETY

State of Alabama)
)ss
County of Jefferson)

On this 6th[th] day of October, 2023, before me appeared Mark W. Edwards, II, to me personally known, who, being by me duly sworn, did say that he is the Attorney-In-Fact of Fidelity and Deposit Company of Maryland, the corporation named in the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and said Mark W. Edwards, II acknowledged said instrument to be the free act and deed of said corporation.

Tyler Joseph Tucker, Notary Public, State at Large
My commission expires: May 03, 2026

ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND
POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Illinois, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Illinois (herein collectively called the "Companies"), by Robert D. Murray, Vice President, in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint Mark W. EDWARDS, II, Anna CHILDRESS, Jeffrey M. WILSON, Robert R. FREEL, Alisa B. FERRIS, William M. SMITH, Richard H. MITCHELL, all of Birmingham, Alabama, its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings,** and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said **ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND**, this 29th day of September, A.D. 2023.

ATTEST:
ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND

By: Robert D. Murray
Vice President

By: Dawn E. Brown
Secretary

State of Maryland
County of Baltimore

On this 29th day of September, A.D. 2023, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **Robert D. Murray, Vice President and Dawn E. Brown, Secretary** of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, deposeth and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

Genevieve M. Maison

GENEVIEVE M. MAISON
NOTARY PUBLIC
BALTIMORE COUNTY, MD
My Commission Expires JANUARY 27, 2025

Authenticity of this bond can be confirmed at bondvalidator.zurichna.com or 410-559-8790

EXTRACT FROM BY-LAWS OF THE COMPANIES

"Article V, Section 8, Attorneys-in-Fact. The Chief Executive Officer, the President, or any Executive Vice President or Vice President may, by written instrument under the attested corporate seal, appoint attorneys-in-fact with authority to execute bonds, policies, recognizances, stipulations, undertakings, or other like instruments on behalf of the Company, and may authorize any officer or any such attorney-in-fact to affix the corporate seal thereto; and may with or without cause modify of revoke any such appointment or authority at any time."

CERTIFICATE

I, the undersigned, Vice President of the ZURICH AMERICAN INSURANCE COMPANY, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that Article V, Section 8, of the By-Laws of the Companies is still in force.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY at a meeting duly called and held on the 15th day of December 1998.

RESOLVED: "That the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the Seal of the Company may be affixed by facsimile on any Power of Attorney...Any such Power or any certificate thereof bearing such facsimile signature and seal shall be valid and binding on the Company."

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of May, 1994, and the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seals of the said Companies, this 6th day of October, 2023.

Thomas O. McClellan
Vice President

TO REPORT A CLAIM WITH REGARD TO A SURETY BOND, PLEASE SUBMIT A COMPLETE DESCRIPTION OF THE CLAIM INCLUDING THE PRINCIPAL ON THE BOND, THE BOND NUMBER, AND YOUR CONTACT INFORMATION TO:

Zurich Surety Claims
1299 Zurich Way
Schaumburg, IL 60196-1056
reportsfclaims@zurichna.com
800-626-4577

Authenticity of this bond can be confirmed at bondvalidator.zurichna.com or 410-559-8790

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

December 2, 2024

By Electronic Mail

Dr. Todd Freeman
Superintendent of Education
Vestavia Hills Board of Education
Post Office Box 660826
Vestavia Hills, Alabama 35266-0826

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

In Re: First Amendment to Contract/Joint Purchasing Agreement

Dear Dr. Freeman and Mr. Downes:

It is my understanding that you have agreed to recommend to the City Council and the Vestavia Hills Board of Education that the Contract dated October 1, 2023 by and between the City and Specialty Turf Supply, Inc. for City athletic field maintenance be amended to add the Board as a party to the Contract so that Board athletic fields be included pursuant to the Contract. Accordingly, I forward you a First Amendment to Contract, along with this legal opinion.

I. FACTS

A. MEMORANDUM OF UNDERSTANDING: On February 4, 2019, the City of Vestavia Hills, Alabama ("City") and the Vestavia Hills Board of Education ("Board") entered into a *Memorandum of Understanding for Shared Facility Use, Land Planning and Funding Between the City of Vestavia Hills and the Vestavia Hills City Schools* ("MOU").

Among other things, the MOU provides that:

1. The City may use athletic fields owned by the Board.
2. The Board may use athletic fields owned by the City.
3. The general maintenance of any fields is the responsibility of the owner.
4. "Additional considerations:

1. All efforts will be made by the VHBOE and VH City Council to create specs and jointly bid for lawn maintenance for athletic fields and other shared public spaces."

B. **ADVERTISEMENT FOR COMPETITIVE BIDS:** On July 20, 2023, the City advertised for and invited competitive bids for athletic field maintenance for athletic fields (the "work") as required by the Alabama Competitive Bid laws set forth at Title 39-2-1, et seq., Title 41-16-50, et seq. and Title 16-13B-1, et seq., *Code of Alabama, 1975.*

C. **SOLE BIDDER WAS SPECIALTY TURF SUPPLY, INC.:** Specialty Turf Supply, Inc. submitted the only bid and the City found and determined that said sole bid was the lowest, responsible and responsive bid.

D. **CITY ORDINANCE NUMBER 3194 ACCEPTING THE BID AND DIRECTING THE EXECUTION AND DELIVERY OF THE CONTRACT:** On September 11, 2023, the City Council enacted Ordinance Number 3194 accepting the bid from Specialty Turf Supply, Inc. for "Inside the Fence Recreational Field Maintenance" for the City of Vestavia Hills for a period of three (3) years beginning October 1, 2023 and ending September 30, 2026 and directed the execution and delivery of a Contract for the Contractor to perform the work.

E. **THE CONTRACT WAS SIGNED ON OCTOBER 1, 2023:** The Contract was signed by the City and Specialty Turf Supply, Inc. on October 1, 2023 and provides:

> **"XXIII. CHANGES IN WORK**
>
> The City may make changes in the scope of the work required to be performed by the Contractor under the contract by eliminating any portion of the work and the corresponding unit price charged therefor. Any change order for additional work shall be done by mutual agreement and in writing. Any change order for deletion of work shall be in writing given by City to Contractor. The deletion of work pursuant to this contract is subject to and conditioned upon the total amount of public funds available."
>
> **"XXVI.**
>
> **8. WAIVER OF MODIFICATIONS:** Any waiver, alteration or modification of any of the provisions of this Contract or cancellation or replacement of this contract shall not be valid unless in writing and signed by the City and Contractor. This contract may be amended at any time by written agreement of the parties' signatory hereto. No claims for any extra work or materials shall be allowed unless covered by written agreement of the parties."

F. **ALABAMA COMPETITIVE BID LAWS:**

1. The Alabama Competitive Bid Law at Title 41-16-50(b), *Code of Alabama, 1975,* authorizes municipalities in Alabama to enter into joint purchasing agreements with other enumerated governmental bodies, including a city school board of education.

2. The Alabama Competitive Bid Law at Title 16-13B-1(c), *Code of Alabama, 1975,* authorizes city school boards of education in Alabama to enter into joint purchasing agreements with other enumerated governmental bodies, including a municipality.

G. JOINT PURCHASING AGREEMENT: The City of Vestavia Hills, Alabama, a municipal corporation ("City"), and the Board of Education of the City of Vestavia Hills, Alabama ("Board") wish to enter into a joint purchasing agreement pursuant to the two statutes cited above by amending the Contract.

H. PAYMENT FOR LAWN MAINTENANCE SERVICES:

1. City Bills: The statute set forth in Title 41-16-50(b), *Code of Alabama, 1975,* authorizing the City to enter into joint purchasing agreements provides in pertinent part as follows:

> "Each contracting agency's share of expenditures for purchases under any agreement shall be appropriated and paid in the manner set forth in the agreement and in the same manner as for other expenses of the contracting agency."

2. Board Bills: The statute set forth in Title 16-13B-1(c), *Code of Alabama, 1975,* authorizing the Board to enter into joint purchasing agreements provides that:

> "Each contracting agency's share of expenditures for purchases under any agreement shall be appropriated and paid in the manner set forth in the agreement and in the same manner as for other expenses of the contracting agency."

I. INTENT OF PARTIES:

1. Need By Board: The Board is in need of lawn maintenance services for athletic fields located on school campuses and properties owned by it.

2. Agreement by Contractor: The Contractor is willing to perform additional lawn maintenance services for the Board on its athletic fields. Those services are "additional work" as described below based upon cost and unit prices as set forth in the Contract.

Complete Management Program for the 8 fields in Vestavia Hills City Schools includes:

- Mow the fields with a reel mower 2 times per week
- Mow and maintain areas inside the fences of athletic venues and designated common spaces outside the fence at Pizitz and Dolly Ridge
- Complete fertility and weed management program
- Aerate and top-dress the fields 1 time in summer
- Apply sand as needed
- Overseed the fields with ryegrass
- Paint the fields for the programs during seasons

- Coordinate and implement schedule of the irrigation system
- Weed eating and blowing along fence lines
- Blow clippings and debris from fields
- Maintain hillside landscaping, including one annual application of straw at VHHS football stadium

3. First Amendment to Contract: The City, Board and Contractor are willing to enter into a First Amendment to Contract to create joint purchasing agreement.

II. ALABAMA COMPETITIVE BID LAWS

A. APPLICABLE TO MUNICIPALITIES:

1. Bid Threshold: With the exception of public works, all expenditure of funds by municipalities for labor, services or work involving **Thirty Thousand Dollars ($30,000.00)** *(emphasis added)* or more shall be made under contractual agreement entered into by free and open competitive bidding, on sealed bids, to the lowest responsible and responsive bidder (Title 41-16-50(a), *Code of Alabama, 1975).*

2. Term: Contracts by municipalities for the purchase of personal property or contractual services shall be let for periods not greater than **three (3) years** *(emphasis added)* (Title 41-16-57(f), *Code of Alabama. 1975).*

3. Joint Purchasing Agreement:

(a) Authority: The Alabama Competitive Bid Law at Title 41-16-50(b), *Code of Alabama, 1975,* authorizes municipalities in Alabama to enter into joint purchasing agreements with other enumerated governmental bodies, including a city school board of education.

(b) City Bills: The statute set forth in Title 41-16-50(b), *Code of Alabama, 1975,* authorizing the City to enter into joint purchasing agreements provides in pertinent part as follows:

> "Each contracting agency's share of expenditures for purchases under any agreement shall be appropriated and paid in the manner set forth in the agreement and in the same manner as for other expenses of the contracting agency."

2. The Alabama Competitive Bid Law at Title 16-13B-1(c), *Code of Alabama, 1975,* authorizes city school boards of education in Alabama to enter into joint purchasing agreements with other enumerated governmental bodies, including a municipality.

B. APPLICABLE TO CITY BOARD OF EDUCATION:

1. **Bid Threshold:** With the exception of public works, all expenditure of funds by municipalities for labor, services or work involving **Forty Thousand Dollars ($40,000.00)** *(emphasis added)* or more shall be made under contractual agreement entered into by free and open competitive bidding, on sealed bids, to the lowest responsible and responsive bidder (Title 16-13B-1(a), *Code of Alabama, 1975).*

2. **Term:** Contracts by city boards of education for the purchase of personal property or contractual services shall be let for periods not greater than **five (5) years** (*emphasis added)* (Title 41-16-57(f), *Code of Alabama. 1975).*

3. **Joint Purchasing Agreement:**

(a) Authority: The Alabama Competitive Bid Law at Title 16-13B-1(c), *Code of Alabama, 1975,* authorizes city school boards of education in Alabama to enter into joint purchasing agreements with other enumerated governmental bodies, including a municipality.

(b) Board Bills: The statute set forth in Title 16-13B-1(c), *Code of Alabama, 1975,* authorizing the Board to enter into joint purchasing agreements provides that:

> "Each contracting agency's share of expenditures for purchases under any agreement shall be appropriated and paid in the manner set forth in the agreement and in the same manner as for other expenses of the contracting agency."

C. PUBLIC WORKS APPLICABLE TO MUNICIPALITIES AND CITY BOARDS OF EDUCATION:

1. **Applicable to Municipalities and City Boards of Education:** The public improvements competitive bid law applies to all municipalities and city boards of education in the State of Alabama (Title 39-2-1(1), *Code of Alabama, 1975).*

2. **Definition:** Title 39-2-1(a), *Code of Alabama, 1975*, defines "public works" as:

> "(6) **Public Works.--**The construction, installation, repair, renovation, or maintenance of public buildings, structures, sewers, waterworks, roads, curbs, gutters, side walls, bridges, docks, underpasses, and viaducts as well as any other improvement to be constructed, installed, repaired, renovated, or maintained on public property and to be paid, in whole or in part, with public funds or with financing to be retired with public funds in the form of lease payments or otherwise."

3. **Bid Threshold:**

(a) **In Excess of $100,000.00**: Title 39-2-2(a)(1), *Code of Alabama, 1975,* provides "Before entering into any contract for public works, involving an amount in excess of One Hundred Thousand Dollars ($100,000.00), a municipality or city board of education shall advertise for sealed bids.

(b) **$100,000.00 or Less**: Title 39-2-2(b)(1), *Code of Alabama, 1975,* provides that a municipality or city board of education may let contracts for public works involving One Hundred Thousand Dollars ($100,000.00) or less with or without advertising for sealed bids.

III. LEGAL ISSUE

May the City, Board and Contractor legally enter into the First Amendment to Contract without inviting competitive bids?

IV. LEGAL OPINION

In my opinion, the answer to the legal question is in the affirmative.

V. BASIS FOR LEGAL OPINION

I base my legal opinion upon the following Alabama legal authorities cited below:

A. **EXPENDITURE OF PUBLIC FUNDS:**

1. Everything that a governmental body does must be done in the **best interest of the public.**

2. Government officials must act in **good faith** in executing the requirements of law.

B. **STATUTORY LAW REGARDING CHANGE ORDERS:** Change Orders are not provided for in (a) the Alabama Competitive Bid Law set forth in (a) Title 41-16-50(a), *Code of Alabama, 1975;* (b) Title 16-13B-1, et seq., *Code of Alabama, 1975;* or (c) the Public Works Law set forth in Title 39-2-1, *Code of Alabama, 1975.*

C. **SUPREME COURT OF ALABAMA:** Cases decided by the Alabama Supreme Court hold as follows:

1. *White v. McDaniel Ford Tractor Company, Inc.*, 287 Ala. 77 and 248 So.2d 121 (1971).

(a) Public officials exercise their **discretion** in competitive bid matters.
(b) Public officials must exercise **good faith**.

2. *Mobile Dodge, Inc. v. Mobile County,* 442 So.2d 56 (1983):

(a) Public officials must act **reasonably**.
(b) Public officials must act **rationally**.
(c) Public officials must exercise **good faith.**
(d) Public officials must have **proper motives**.
(e) Public officials cannot **abuse their discretion**.

D. **ATTORNEY GENERAL FOR THE STATE OF ALABAMA:** Although change orders are not provided in the Competitive Bid Law or the Public Works Law, they have been allowed pursuant to guidelines articulated by the office of the Attorney General in the interpretation of the legislative intent in formulating the Competitive Bid Law.

Opinion, Dated June 15, 1979, to State Building Commission

On June 15, 1979, the Attorney General for the State of Alabama issued a written legal opinion to the State Building Commission listing guidelines, which provide criteria for approving change orders to existing public works contracts. That opinion reads in pertinent part as follows:

> "Set out as follows are the types of change orders which will be allowed:
>
> (1) minor changes for a total monetary value less than required for competitive bidding;
> (2) changes for matters relatively minor and incidental to the original contract necessitated by unforeseeable circumstances arising during the course of the work;
> (3) emergencies arising during the course of the work on the contract;
> (4) changes or alternates provided for in the original bidding where there is no difference in price of the change order from the original best bid on the alternate;
> (5) changes of relatively minor items not contemplated when the plans and specifications were prepared and the project was bid which are in the public interest and which do not exceed 10% of contract price;
>
> There should be attached to each change order a signed statement from architect containing the following:
>
> (1) a statement of what the change order covers and who instituted the change order and why is it necessary or desired;
> (2) there must be a statement stating the reasons for using the change order method rather than competitive bids;

(3) there must be a statement that all prices have been reviewed and found reasonable, fair, and equitable and recommending approval of same;

(4) the local owner shall either endorse the architect's statement and recommendations or submit a separate statement covering the foregoing items.

The amount of changes approved shall not exceed 10% of the contract price whether made through negotiations with the low bidder or by change order. This limit applies to each individual negotiation and each change order and to the cumulative total for each project. This means that the total of negotiations and/or change orders shall not exceed 10% of the contract price for each project.

It should be pointed out that the above criteria for negotiations with a low bidder and change orders are guidelines only and each factual situation must be decided on the facts and merit of each case."

E. OTHER ATTORNEY GENERAL OPINIONS: The Attorney General for the State of Alabama has issued numerous opinions approving change orders to contracts wherein the change order price exceeds ten percent (10%) of the original contract price. My research found eleven of those opinions described below.

	OPINION NUMBER	DATE
1.	81-00105	November 26, 1980
2.	81-00463	July 22, 1981
3.	81-00580	September 15, 1981
4.	87-00153	April 29, 1987
5.	87-00197	May 27, 1987
6.	91-00279	May 29, 1991
7.	92-00049	November 15, 1991
8.	93-00105	January 8, 1993
9.	2000-098	February 28, 2000
10.	2002-182	March 22, 2002
11.	2011-078	July 20, 2011

F. ALABAMA COMPETITIVE BID LAW:

1. Applicable to Municipalities: The Alabama Competitive Bid Law at Title 41-16-50(b), *Code of Alabama, 1975,* authorizes municipalities in Alabama to enter into joint purchasing agreements with other enumerated governmental bodies, including a city school board of education.

2. **Applicable to City School Boards:** The Alabama Competitive Bid Law at Title 16-13B-1(c), *Code of Alabama, 1975,* authorizes city school boards of education in Alabama to enter into joint purchasing agreements with other enumerated governmental bodies, including a municipality.

VI. CONCLUSION

Based upon the Alabama legal authorities and the opinions of the Alabama Attorney General cited above, it is my legal opinion that the City and Board may legally execute and deliver the First Amendment to Contract. In Alabama, a municipality and city board of education may legally enter into joint purchasing agreements for work and labor in order to promote the public welfare and save public funds.

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

Very truly yours,

Patrick H. Boone
Attorney for Vestavia Hills
Board of Education

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

CITY OF VESTAVIA HILLS
FINANCE DEPARTMENT
INTER-DEPARTMENT MEMO

December 9, 2024

To: Jeff Downes, City Manager

From: Zach Clifton, Asst. Finance Director

Cc: Melvin Turner, III, Finance Director

RE: Public Hearing - Ordinance Number 3261 - An Ordinance Authorizing The Mayor And City Manager To Execute And Deliver A Renewal Agreement For Continued Use Of Consolidated Debt, Lease, And Subscription Management For The City

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Background:
Pricing is based on the number of obligations under management. Within the pricing are including the following:

- Addition of Ongoing GASB 87 Data Extraction and New Lease Implementations as needed
- Addition of Ongoing GASB 96 Data Extraction and New Subscription Implementation as needed
- There is no other application that can handle Debt, Lease, and Subscription management required by GASB 87 & 96.
- Included is a 5% escalator in Year 2 & 3 which is a Software as a Service industry standard
- Funding from General Fund recurring annual expense

Recommendation:
Finance Director recommends approval.

Fiscal Impact:
FY2025: $7,650 to move to a 10/1 - 9/30 period
FY2026: $10,750
FY2027: $11,250

Attachments:
1. Ordinance 3261
2. DebtBook Renewal Proposal - Vestavia Hills, AL

ORDINANCE NUMBER 3261

AN ORDINANCE TO AUTHORIZE THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER A RENEWAL AGREEMENT FOR DEBTBOOK DEBT MANAGEMENT SOFTWARE SUBSCRIPTION

WHEREAS, on January 24, 2022, the City Council adopted and approved Ordinance Number 3082 to authorize the Mayor and City Manager to execute and deliver an Order Form for Fifth Asset, Inc., d/b/a DebtBook ("DebtBook"), a debt management subscription service; and

WHEREAS, Debtbook has offered a Renewal Agreement for continued subscription service for the software. Said Renewal Agreement is marked as Exhibit A, a copy of which is attached to and incorporated into this Ordinance Number 3261 as if written fully therein; and

WHEREAS, pricing is based upon the number of obligations under management as detailed in the attached Memorandum by the Assistant Finance Director; and

WHEREAS, said Debtbook is expensed to the City's General Fund with a cost of $7,650 for FY2025, $10,750 for FY2026 and $11, 250 for FY 2027; and

WHEREAS, the Mayor and City Council feel it is in the best public interest to continue the debt management services provide by Debtbook.

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 Renewal Agreement with Debtbook as detailed in the attached Exhibit A; and
2. Said funding that be expensed to the City's General fund with a cost of $7,650 for FY2025, $10,750 for FY2026 and $11, 250 for FY 2027; and
3. This Ordinance Number 3261 shall become effective immediately upon adoption and approval following posting/publication pursuant to Alabama law.

ADOPTED and APPROVED this the 16th 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 3261 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 16th day of December, 2024, as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills Library in the Forest, Vestavia Hills New Merkle House and Vestavia Hills Recreational Center this the _____ day of _____, 2024.

Rebecca Leavings
City Clerk

DebtBook

RENEWAL AMENDMENT

This Renewal Amendment ("**Renewal Amendment**") to the existing Agreement, as defined below, is entered into between Fifth Asset, Inc. d/b/a DebtBook ("**DebtBook**") and the Customer identified in the signature block below ("**Customer**")(together, the "**Parties**"), effective as of the date of Customer's signature below ("**Effective Date**"), and amends the Agreement as set forth below.

RECITALS

WHEREAS, the Parties have previously executed the Order Form and Terms & Conditions dated January 1, 202, as amended (together, the "**Agreement**"), which established the rights and obligations of each party with respect to the Services.

WHEREAS, the Parties now wish to amend the Agreement to renew the Agreement and the Products & Services for an additional 3 years.

WHEREAS, the Parties wish to add the Premium Support to the renewing Products & Services.

NOW, THEREFORE, in consideration of the mutual covenants and promises set herein and the continuing rights and obligations of the parties as set forth in the Agreement and the Renewal Amendment, the parties agree as follows:

PRODUCTS & SERVICES

Products

Item & Description		Year 1 (2/1/25-9/30/25)	Year 2 (10/1/25-9/30/26)	Year 3 (10/1/26-9/30/27)
Debt Management	**List Price**	$15,000.00	$15,000.00	$15,000.00
Annual recurring fee for DebtBook's debt management software-as-a-service application provided to Customer through access to the Application Services	***Discount***	*($11,800.00)*	*($10,250.00)*	*($10,000.00)*
	Subtotal	**$3,200.00**	**$4,750.00**	**$5,000.00**
Lease & SBITA Management	**List Price**	$15,000.00	$15,000.00	$15,000.00
Annual recurring fee for DebtBook's lease and SBITA management software-as-a-service application provided to Customer through access to the Application Services	***Discount***	*($11,800.00)*	*($10,250.00)*	*($10,000.00)*
	Subtotal	**$3,200.00**	**$4,750.00**	**$5,000.00**

Services

Item & Description		Year 1	Year 2	Year 3
Premium Support	**Price**	**$1,250.00**	**$1,250.00**	**$1,250.00**
Annual recurring fee for Premium Support Services provided in units of up to 25 agreements per unit per 12 month term				

Annual Summary

	Year 1	Year 2	Year 3
Recurring Subscription Fees	$7,650.00	$10,750.00	$11,250.00
Annual Total	**$7,650.00**	**$10,750.00**	**$11,250.00**

TOTAL CONTRACT VALUE	**$29,650.00**

TERMS

1. The Parties have agreed to renew and extend the Agreement for an additional 3 years beginning on February 1, 2025 and concluding on September 30, 2027 (the "**Renewal Term**"). For the avoidance of doubt, the first year of the Renewal Term will run from February 1, 2025, to September 30, 2025, in order to align with Customer's fiscal year. Thereafter, the Term will run annually from October 1 to September 30. The Fees for the first year of the Renewal Term have been discounted and prorated.

2. Premium Support.
    a. There is 1 unit of Premium Support being added under this Renewal Amendment.
    b. Customer will provide applicable agreements to DebtBook as the Customer receives the agreements throughout the year. Failure to provide the agreements promptly as they are received throughout the year may cause material delays or otherwise limit DebtBook's ability to perform the Premium Support Services.
    c. All agreements submitted by Customer to DebtBook in accordance with the Agreement will be processed by DebtBook within 90 days of receipt.
    d. DebtBook will not issue refunds or credits for any unused Premium Support.

3. The Fees for the Renewal Term are set forth above. The first invoice will be issued upon the Effective Date of this Renewal Amendment. All Fees thereafter will be due and payable annually and subject to the payment terms of the Agreement.

4. Any reference to the "Agreement" will mean the Agreement as modified by this Renewal Amendment. Capitalized terms not defined herein will have the same meaning ascribed to them as set forth in the Agreement.

5. The express provisions of this Renewal Amendment constitute the sole amendment and modification of the Agreement by and between the Parties in connection herewith. This Renewal Amendment may be executed in counterparts, including facsimile or other electronic counterparts.

6. Each of the undersigned represents that they are authorized to (1) execute and deliver this Renewal Amendment on behalf of their respective party and (2) bind their respective party to the terms of the Agreement, and (3) sufficient funds have been appropriated and are available to pay any Fees due under the Agreement in Customer's current fiscal year.

Fifth Asset, Inc. d/b/a DebtBook	**City of Vestavia Hills, AL**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

CITY OF VESTAVIA HILLS

INTER-DEPARTMENT MEMO

December 9, 2024

To: Jeff Downes, City Manager

From:

Cc:

RE: Citizens Comments

Background:

Recommendation:

Fiscal Impact:

Attachments:
None