

**MOUNTAIN BROOK CITY COUNCIL  
MEETING AGENDA**

**CITY HALL COUNCIL CHAMBER  
56 CHURCH STREET  
MOUNTAIN BROOK, AL 35213**

**MONDAY, OCTOBER 13, 2014, 7:00 P.M.**

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1. Approval of the minutes of the September 22, 2014 regular meeting of the City Council.
2. Consideration: Resolution appointing Rhett Loveman as a Supernumerary member of the Board of Zoning Adjustment, to serve without compensation through September 22, 2017.
3. Consideration: Resolution ratifying the execution of a professional services agreement between the City and Sain Associates for their review of the traffic study prepared by Skipper Consulting with respect to the proposed Piggly Wiggly development on Vine Street.
4. Consideration: Resolution authorizing the amendment of professional service agreement between the City and Skipper Consulting with respect to the pedestrian crossing signal design at the intersection of Overton Road and Oakdale Drive/River Run Drive in the vicinity of Cahaba River Park.
5. Consideration: Resolution authorizing the execution of fire and emergency medical services contract between the City and commercial property owners of properties located in unincorporated areas within the City's police jurisdiction.
6. Consideration: Resolution(s) authorizing the execution of the following service agreements:
  - a. Jefferson/Blount/St. Clair Mental Health Authority
  - b. Jefferson County Historical Commission
  - c. Alabama Veterans' Memorial Foundation
  - d. Mountain Brook Chamber of Commerce
  - e. Birmingham Museum of Art
  - f. Alabama Symphonic Association
  - g. Birmingham Botanical Society
  - h. Birmingham Children's Theatre
  - i. Exceptional Foundation
  - j. Birmingham Zoo
7. Consideration: Resolution authorizing the installation of a fire hydrant at 2655 Lane Park Road to serve the Bohemian Inn in Mountain Brook Village (cost of installation to be paid by developer, rental to be paid by City).
8. Consideration: Resolution authorizing the City Manager to offer continuing medical coverage to eligible employees (namely 20 years of City service at any age or 10 years of City service for ages 60 and over) who elect to retire between January 1, 2015 and August , 2015.
9. Public hearing: Consideration of an ordinance amending the PUD master development plan for Pilgrim Place on Montclair Road.
10. Public hearing: Consideration of an ordinance amending Chapter 121 ("Sign Ordinance") of the City Code.
11. Announcement: Mayoral appointment to the Planning Commission.
12. Announcement: The next regular meeting of the City Council is October 27, 2014, at 7 p.m. in the Council Chamber of City Hall located at 56 Church Street, Mountain Brook, AL 35213.
13. Comments from residents.
14. Adjourn.

**MOUNTAIN BROOK CITY COUNCIL  
PRE-MEETING DISCUSSION  
SEPTEMBER 22, 2014**

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The City Council of the City of Mountain Brook, Alabama met in public session in the Pre-council Room (A106) of City Hall at 6:15 p.m. on Monday, the 22nd day of September, 2014. The Council President called the meeting to order and the roll was called with the following results:

Present: Virginia C. Smith, Council President  
Amy G. Carter, Council President Pro Tempore  
Jack D. Carl  
William S. Pritchard, III  
Jesse S. Vogtle, Jr.  
Lawrence T. Oden, Mayor

Also present were City Attorney Whit Colvin, City Manager Sam Gaston, and City Clerk Steven Boone.

**1. AGENDA**

1. Chamber of Commerce semi-annual report to the City Council
2. Mobile phone use in school zones (Appendix 1). Council member Pritchard was asked to determine whether the Mountain Brook Board of Education has a policy regarding the use of mobile phones during carpools. This matter will be reconsidered again on October 13, 2014.
3. Review and discussion of the 7 p.m. City Council meeting agenda topics. Proclamation No. 2014-113 (Fire Prevention Month) and Ordinance No. 1918 (opt out of the Alabama Tax Tribunal) were added to the formal meeting agenda.
4. Executive Session. There being no further business to come before the City Council, it was moved by Council member Pritchard that the City Council convene in executive session to discuss a matter involving an ongoing real estate negotiation and another matter involving threatened litigation. The motion was seconded by Council President Smith. The City Attorney certified that the subject matter of the executive session is allowed pursuant to the Open Meetings Act. Then, upon the question being put and the roll called, the vote was recorded as follows:

Ayes: Virginia C. Smith, Council President  
Amy G. Carter, Council President Pro Tempore  
Jack D. Carl  
William S. Pritchard III  
Jesse S. Vogtle, Jr.

Nays: None

President Smith declared that the motion carried by a vote of 5-0 and then asked that the members of the audience be excused. President Smith also announced that the City Council pre-meeting is adjourned and the regular council meeting will commence upon conclusion of the executive session.

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Steven Boone, City Clerk

**MINUTES OF THE REGULAR MEETING OF THE  
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK, ALABAMA  
SEPTEMBER 22, 2014**

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The City Council of the City of Mountain Brook, Alabama met in public session in the City Hall Council Chambers (Room A108) at 7:00 p.m. on Monday, the 22nd day of September, 2014. The Council President called the meeting to order and the roll was called with the following results:

Present: Virginia C. Smith, Council President  
Amy G. Carter, Council President Pro Tempore  
Jack D. Carl  
William S. Pritchard, III  
Jesse S. Vogtle, Jr.  
Lawrence T. Oden, Mayor

Also present were City Attorney Whit Colvin, City Manager Sam Gaston, and City Clerk Steven Boone.

The City Council President stated that a quorum was present and that the meeting was open for the transaction of business.

**1. JUDGE SUZANNE CHILDERS, CANDIDATE FOR JEFFERSSON COUNTY DISTRICT COURT, PLACE 1**

Judge Childers introduced herself and solicited the support in the upcoming election.

**2. LIBRARY PRESENTATIONS**

Library Board member Max Pulliam presented tokens of appreciation to Council members Vogtle and Carter thanking them for their service as City Council liaisons to The Emmet O'Neal Library Board. Mr. Pulliam also expressed thanks to outgoing Library Board member Robert Aland and introduced his [soon to be] replacement, Mr. Patrick Carlton (Resolution No. 2014-114).

**3. CONSENT AGENDA**

Council President Smith announced that the following matters will be considered at one time on the consent agenda provided no one in attendance objects:

Approval of the minutes of the September 8, 2014 meeting of the City Council.

<b>2014-113 Proclamation</b>	Proclamation: Fire Prevention Month	Exhibit 1
<b>2014-114</b>	Appoint Patrick Carlton to The Emmet O'Neal Library Board, to serve without compensation through September 30, 2018.	Exhibit 2 Appendix 1
<b>2014-115</b>	Recommend to the State of Alabama, Alcoholic Beverage Control Board, the issuance of a 020 – Restaurant Retail Liquor License to Golden Harvest Culinary Mountain Brook, LLC (trade name La Catrina Mexican Cantina) located at 2031 Cahaba Road, Mountain Brook, AL 35223.	Exhibit 3 Appendix 2
<b>2014-116</b>	Set a public hearing for October 13, 2014 at 7 p.m. to consider an ordinance amending the PUD master development plan for Pilgrim Place on Montclair Road.	Exhibit 4

<b>2014-117</b>	Set a public hearing for October 13, 2014 at 7 p.m. to consider an ordinance rezoning several parcels of land located on Vine Street to Local Business.	Exhibit 5
<b>2014-118</b>	Authorize the execution of a right-of-way maintenance agreement with respect to the Cahaba Village development.	Exhibit 6 Appendix 3
<b>2014-119</b>	Increase the salary schedule by 1-1/2% for all classified and unclassified employees effective October 7, 2014.	Exhibit 7

Thereupon, the foregoing minutes, proclamation and resolutions were introduced by Council President Smith and their immediate adoption was moved by Council member Pritchard. The minutes, proclamation and resolutions were then considered by the City Council. Council member Vogtle seconded the motion to adopt the foregoing minutes, proclamation and resolutions. Then, upon the question being put and the roll called, the vote was recorded as follows:

Ayes: Virginia C. Smith, Council President  
Amy G. Carter, Council President Pro Tempore  
Jack D. Carl  
William S. Pritchard III  
Jesse S. Vogtle, Jr.

Nays: None

Council President Smith thereupon declared that said minutes, proclamation no. 2014-113 and resolution nos. 2014-114 through 2014-119 are adopted by a vote of 5-0.

**4. PUBLIC HEARING: CONSIDERATION OF AN ORDINANCE (NO. 1915) ADOPTING THE CITY'S FISCAL 2015 BUDGET (APPENDIX 4)**

Council President Smith introduced the ordinance in writing and invited Mr. Boone to go over the highlights of the fiscal 2015 budget (Appendix 4). Afterward, President Smith invited questions and comments. There being none, Council member Vogtle made a motion that all rules and regulations which, unless suspended, would prevent the immediate consideration and adoption of said ordinance be suspended, and that unanimous consent to the immediate consideration of said ordinance is given and that the reading of the ordinance at length be waived. The motion was seconded by Council member Pritchard and was carried, as follows:

Ayes: Virginia Smith, Council President  
Amy G. Carter, Council President Pro Tempore  
Jack D. Carl  
William S. Pritchard, III  
Jesse S. Vogtle, Jr.

Nays: None

The President of the Council declared the motion carried by a vote of 5-0.

After said ordinance had been considered in full by the Council, Council member Vogtle then moved for the adoption of said ordinance. The motion was seconded by Council member Pritchard. Thereupon, Council President Smith called for vote with the following results:

Ayes: Virginia Smith, Council President  
Amy G. Carter, Council President Pro Tempore  
Jack D. Carl  
William S. Pritchard, III  
Jesse S. Vogtle, Jr.

Nays: None

The President of the Council declared that the ordinance (No. 1915) is hereby adopted by a vote of 5-0 and, as evidence thereof, she signed the same.

**5. CONSIDERATION: ORDINANCE (NO. 1916) INCREASING THE SALARY OF THE CITY MANAGER OF THE CITY OF MOUNTAIN BROOK 4% EFFECTIVE OCTOBER 7, 2014 (EXHIBIT 8, APPENDIX 5)**

Council President Smith introduced the ordinance in writing and invited comments and questions from the audience. There being none, Council member Vogtle made a motion that all rules and regulations which, unless suspended, would prevent the immediate consideration and adoption of said ordinance be suspended, and that unanimous consent to the immediate consideration of said ordinance is given and that the reading of the ordinance at length be waived. The motion was seconded by Council member Pritchard and was carried, as follows:

Ayes: Virginia Smith, Council President  
Amy G. Carter, Council President Pro Tempore  
Jack D. Carl  
William S. Pritchard, III  
Jesse S. Vogtle, Jr.

Nays: None

The President of the Council declared the motion carried by a vote of 5-0.

After said ordinance had been considered in full by the Council, Council member Vogtle then moved for the adoption of said ordinance. The motion was seconded by Council member Pritchard. Thereupon, Council President Smith called for vote with the following results:

Ayes: Virginia Smith, Council President  
Amy G. Carter, Council President Pro Tempore  
Jack D. Carl  
William S. Pritchard, III  
Jesse S. Vogtle, Jr.

Nays: None

The President of the Council declared that the ordinance (No. 1916) is hereby adopted by a vote of 5-0 and, as evidence thereof, she signed the same.

**6. CONSIDERATION: ORDINANCE (NO. 1917) APPROVAL OF THE EDUCATIONAL DEGREE PREMIUM PAY PURSUANT TO SECTION 1.VIII.G. OF THE PERSONNEL BOARD OF JEFFERSON COUNTY "SALARY ADMINISTRATION GUIDE & PAY PLAN" (EXHIBIT 9)**

Council President Smith introduced the ordinance in writing and invited comments and questions from the audience. There being none, Council member Pritchard made a motion that all rules and regulations which, unless suspended, would prevent the immediate consideration and adoption of said ordinance be suspended, and that unanimous consent to the immediate consideration of said ordinance is given and that the reading of the ordinance at length be waived. The motion was seconded by Council President Smith and was carried, as follows:

Ayes: Virginia Smith, Council President  
Amy G. Carter, Council President Pro Tempore  
Jack D. Carl

William S. Pritchard, III  
Jesse S. Vogtle, Jr.

Nays: None

The President of the Council declared the motion carried by a vote of 5-0.

After said ordinance had been considered in full by the Council, Council member Pritchard then moved for the adoption of said ordinance. The motion was seconded by Council President Smith. Thereupon, Council President Smith called for vote with the following results:

Ayes: Virginia Smith, Council President  
Amy G. Carter, Council President Pro Tempore  
Jack D. Carl  
William S. Pritchard, III  
Jesse S. Vogtle, Jr.

Nays: None

The President of the Council declared that the ordinance (No. 1917) is hereby adopted by a vote of 5-0 and, as evidence thereof, she signed the same.

**7. CONSIDERATION: ORDINANCE (NO. 1918) ELECTION NOT TO COME UNDER THE PROVISIONS OF THE ALABAMA TAX APPEALS COMMISSION (AKA "THE ALABAMA TAX TRIBUNAL") (EXHIBIT 10)**

Council President Smith introduced the ordinance in writing and invited comments and questions from the audience. There being none, Council member Pritchard made a motion that all rules and regulations which, unless suspended, would prevent the immediate consideration and adoption of said ordinance be suspended, and that unanimous consent to the immediate consideration of said ordinance is given and that the reading of the ordinance at length be waived. The motion was seconded by Council member Vogtle and was carried, as follows:

Ayes: Virginia Smith, Council President  
Amy G. Carter, Council President Pro Tempore  
Jack D. Carl  
William S. Pritchard, III  
Jesse S. Vogtle, Jr.

Nays: None

The President of the Council declared the motion carried by a vote of 5-0.

After said ordinance had been considered in full by the Council, Council member Pritchard then moved for the adoption of said ordinance. The motion was seconded by Council member Vogtle. Thereupon, Council President Smith called for vote with the following results:

Ayes: Virginia Smith, Council President  
Amy G. Carter, Council President Pro Tempore  
Jack D. Carl  
William S. Pritchard, III  
Jesse S. Vogtle, Jr.

Nays: None

The President of the Council declared that the ordinance (No. 1918) is hereby adopted by a vote of 5-0 and, as evidence thereof, she signed the same.

**8. ANNOUNCEMENT REGARDING THE NEXT REGULAR MEETING OF THE CITY COUNCIL**

Council President Smith announced that the next meeting of the Mountain Brook City Council will be held on Monday, October 13, 2014 at 7 p.m. in the Council Chamber of City Hall located at 56 Church Street, Mountain Brook, AL 35213. Please visit the City's web site ([www.mtnbrook.org](http://www.mtnbrook.org)) for more information.

**9. ADJOURNMENT**

There being no further business to come before the City Council at this time, Council President Smith adjourned the meeting.

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Steven Boone, City Clerk

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**EXHIBIT 1**

**PROCLAMATION NO. 2014-113**

**WHEREAS**, the Mountain Brook Fire Department is committed to ensuring the safety and security of all those living in, working in and visiting the City of Mountain Brook, Alabama; and

**WHEREAS**, fire is a serious public safety concern both locally and nationally, and homes are the location where people are at greatest risk from fire; and

**WHEREAS**, in 2013, fire killed more than 3,200 people, injured more than 15,900 people in the United States, and fire departments in the United States responded to more than 369,500 home fires; and

**WHEREAS**, in 2013, fire killed 81 people in the State of Alabama; and

**WHEREAS**, while the risk of a fatality in the home caused by fire increases with the age of the occupants, research shows a working smoke alarm cuts the risk of a home fire fatality in half and an automatic fire sprinkler system in the home cuts the risk by approximately 80%; and

**WHEREAS**, Alabamians are responsive to public education measures and are able to take personal steps to increase their safety from fire, especially in their homes; and

**WHEREAS**, Alabamians who plan and practice a home fire escape plan are more prepared and will therefore be more likely to survive a fire; and

**WHEREAS**, Alabama's first responders are dedicated to reducing the occurrence of home fires and fire deaths and injuries through prevention and education; and

**WHEREAS**, in 2014 the Alabama Association of Fire Chiefs and the Office of the State Fire Marshal met to address the alarming increase in fire fatalities, and have invited all fire service and injury prevention organizations to join with them; and

**WHEREAS**, the 2014 Fire Prevention theme, "Turn your Attention to Fire Prevention!" effectively serves to remind us all of the simple actions we can take to keep our home and families safe from fire; and

**RESOLUTION NO. 2014-120**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that Rhett Loveman is hereby appointed as a Supernumerary member to the Board of Zoning Adjustment, to serve without compensation, his term to end October 13, 2017.

**ADOPTED:** This 13th day of October, 2014.

\_\_\_\_\_  
Council President

**APPROVED:** This 13th day of October, 2014.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its regular meeting held on October 13, 2014, as same appears in the minutes of record of said meeting.

\_\_\_\_\_  
City Clerk

**M e m o**

**Date: September 11, 2014**

**To: Mayor Oden  
City Council  
City Manager  
City Clerk**

**From: Carole Epstein, Executive Assistant**

**RE: BOARD OF ZONING ADJUSTMENT: SUPERNUMERARY POSITION**

The Board of Zoning Adjustment submits the name of Rhett Loveman for your consideration to fill the vacant position of Supernumerary. Mr. Loveman's resume is attached.

There were two applicants who applied for the position. After deliberation it was the consensus of the Board members that Mr. Loveman would be bring the knowledge and experience needed to serve on the Board.

We respectfully ask that you approve Mr. Loveman's appointment.

2014-120

Rhett B. Loveman, CCIM  
3844 Glencoe Drive  
Mountain Brook, Alabama 35213  
rhettloveman@hotmail.com  
(205) 215-5940

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July 23, 2014

Mr. Sam Gaston  
City Manager, City of Mountain Brook  
P.O. Box 130009  
Mountain Brook, Alabama 35213

RE: Supernumerary Member vacancy on the Board of Zoning Adjustments

Dear Mr. Gaston,

I am submitting my resume for consideration to fill the Supernumerary Member vacancy on the Board of Zoning Adjustments (BZA). I have over ten years experience in the real estate industry which includes navigating municipal zoning ordinances, and representing applicants before zoning, planning, and BZA commissions around the Birmingham metro area. I also have a master's degree in Urban and Regional Planning. This experience and education has equipped me with the skills needed to be a valuable BZA Supernumerary Member. As a Mountain Brook resident I have a vested interest in preserving the character and charm of the city, and helping it to succeed, while not hindering its growth.

Please let me know should you need any additional information. I look forward to hearing from you soon.

Best regards,

Rhett B. Loveman

2014-120

# Rhett Loveman, CCIM

3844 Glencoe Drive • Mountain Brook, Alabama 35213 • 205-215-5940 • [rhettloveman@hotmail.com](mailto:rhettloveman@hotmail.com)

## WORK EXPERIENCE

### **U.S. Steel Real Estate, Birmingham, AL**

*Project Manager, 10/2013 – present*

- Oversee all aspects of development and planning for current and future phases of USS Real Estate holdings by coordinating with engineers, land planners, zoning boards, architects, builders, land development contractors, marketing professionals and sales associates to ensure USS's goals and objectives are implemented to obtain the highest possible return for company assets;
- Negotiate joint venture agreements and land/lot sales contracts for managed holdings;
- Perform project management duties for Birmingham neighborhood associations including Trace Crossings, Hillsboro, Rosser Farms, and Grand River;
- Serve on the Board of Directors and Architectural Review Committee for homeowners' associations to review house plans, plot plans, setback variance request, landscape request, and home remodeling projects for approximately 1,500 homes;
- Prepare financial analysis for corporate review and approval; and
- Implement processes and controls to ensure USS sites are in compliance with municipal zoning ordinances, the Alabama Department of Environmental Management's (ADEM) rules and regulations as well as other local and state regulations.

### **D. R. Horton, Inc., Birmingham, AL**

*Vice President, Land Acquisition, 2/2010 – 9/2013  
Land Acquisition Manager, 7/2004 to 10/2007*

- Managed all aspects of the North-Central Alabama Land Acquisition Department for a Fortune 500 Company which includes the following markets: Birmingham, Montgomery, Tuscaloosa, and Auburn;
- Facilitated the entire land acquisition process, including the determination of land suitability, contract negotiations, working with the corporate legal department on contract preparations, compliance with municipal zoning, entitlement, and permitting regulations, collaboration with land planners and adhering to corporate policies to ensure the transaction closes;
- Conducted a weekly land meeting for the Birmingham division where potential real estate opportunities are presented to the executive management team for approval;
- Brokered over \$40 million in land and developed lot real estate transactions;
- Prepared financial proformas for each project to ensure that gross margins meet corporate standards, and supply supporting documentation for the division's "five year plan" and company forecasts;
- Analyzed environmental reports, geotechnical reports, and engineered drawings alongside third-party contractors to ensure developments are turn-key ready for our construction department; and
- Facilitated the company's emergence into new markets in Alabama and the Florida panhandle.

### **Southpace Properties, Inc., Birmingham, AL**

*Commercial Real Estate Broker, 10/2007 to 2/2010*

- Developed business relationships with prospective clients to procure new business for the largest independently owned commercial real estate firm in the state of Alabama;
- Created and implemented marketing strategies and disseminated to the commercial real estate brokerage community and the general public to sell real estate assets for clients;
- Coordinated all aspects of the real estate transaction, including negotiating listing agreements, securing financing, title insurance, surveys, and zoning entitlements in preparation for closing;
- Established relationships with municipalities and monitored the process for land entitlement matters to ensure the property was properly zoned and permitted for the end-user; and
- Advised clients on contract negotiations, due diligence matters, and the real estate closing process.
- Featured clients: Compass Bank, Bancorp South Bank, Alamerica Bank, Iberia Bank, Bank of America, Arlington Properties, Krebs Architecture & Engineering, and the Sheffield Fund.

2014-120

**Congressman Terry Everett, Washington D.C.**

*Legislative Assistant, 8/2001 to 7/2002*

- Facilitated constituent relationships by conveying Congressman's position on legislative matters, addressing constituent concerns, and attending events on Congressman Everett's behalf;
- Monitored and advised Congressman Everett on banking and finance, housing, education, and transportation legislation; and
- Conducted meetings with lobbyists, interest groups, and constituents to discuss pending legislation.

**The Redding Firm, Washington D.C.**

*Legislative Analyst, 1/2001 to 8/2001*

- Monitored relevant legislation and current events and cultivated client relationships with members of Congress and other government personnel.

**EDUCATION**

- **The University of Alabama, Tuscaloosa, Alabama**  
*Master of Science, Geography/Urban & Regional Planning, May 2004*
- **The University of Alabama, Tuscaloosa, Alabama**  
*Bachelor of Arts, Political Science, May 2000*

**PROFESSIONAL ASSOCIATIONS**

- Certified Commercial Investment Member (CCIM)--Candidate Guidance Chairman, Alabama Chapter (2009-2011)
- Alabama Center for Real Estate (ACRE) Leadership Council Member (2011-2013)
- Licensed Alabama Real Estate Broker

2014-120

**RESOLUTION NO. 2014-121**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby ratifies the execution of the Sain Associates work authorization, in the form as attached hereto as Exhibit A, with respect to its review of the Skipper Consulting traffic study for the proposed Piggly Wiggly development in Crestline Village.

**ADOPTED:** This 13th day of October 2014.

\_\_\_\_\_  
Council President

**APPROVED:** This 13th day of October 2014.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its meeting held on October 13, 2014, as same appears in the minutes of record of said meeting.

\_\_\_\_\_  
City Clerk



## WORK AUTHORIZATION

**TO:** Sam Gaston  
City of Mountain Brook  
Post Office Box 130009  
Mountain Brook, AL 35213

**PROJECT #:** 14-0228

**FROM:** Becky White, PTP

**DATE:** September 26, 2014

**SUBJECT:** Traffic Study Review for Piggly Wiggly Development

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### I. SCOPE

Sain Associates will review the traffic impact analysis prepared by Skipper Consulting for the proposed Piggly Wiggly development on Vine Street in Mountain Brook and provide our conclusions and recommendations as they relate to traffic operations and safety of the proposed development. The review of the traffic analysis will likely yield questions and necessitate direct correspondence with Skipper Consulting Inc. regarding their assumptions, analysis techniques, conclusions, and recommendations. Our estimated budget includes time for that coordination.

In addition to reviewing the traffic study and documenting our comments, I will attend the October 6 Planning Commission meeting to summarize our review.

We have established an estimated budget based on attendance at only the Planning Commission meeting. We will be available to attend additional meetings, as needed and approved by you. If approved in advance by you, additional meetings will be billed at our standard hourly rates even if they cause us to exceed the estimated budget.

II. BUDGET Hourly, with an estimated budget of \$1,800

III. STATUS We are ready to proceed based on your email authorization dated 9/24/14.

*This contract is subject to the enclosed Terms and Conditions. All subsequent services required by you outside the scope of services specified will be performed on a time and materials basis according to the schedule of rates enclosed.*

APPROVED:

Becky White, PTP  
Vice President

Accepted  
City of Mountain Brook

By:   
Authorized Representative

Printed Name, Title

Date

Enclosures: Terms & Conditions, Sch. (2014)

# SAIN ASSOCIATES, INC. TERMS AND CONDITIONS

**Rates:**

Principal.....	\$150.00 - \$170.00 per Hour
Engineer/Planner .....	\$91.00 - \$140.00 per Hour
GIS Professional .....	\$125.00 per Hour
Designer .....	\$75.00 - \$108.00 per Hour
Surveyor.....	\$88.00 - \$123.00 per Hour
Survey Crew (1-Person) .....	\$80.00 per Hour
Survey Crew (2-Person).....	\$120.00 - 135.00 per Hour
Survey Crew (3-Person).....	\$160.00 per Hour
Survey Crew (Overtime, Holidays – 2-Person).....	* \$150.00 - \$165.00 per Hour
Survey Crew (Overtime, Holidays – 3-Person).....	* \$190.00 per Hour
Survey Per Diem.....	\$100.00 per Man per Night
Administrative Support.....	\$60.00 per Hour

\* Overtime rate is based on working over 8 hours a day.

**Reimbursable Expenses**

Printing, contract carrier service, and travel expenses are not included within our basic fee and will be passed along to you at our cost, plus 10%.

**Payment**

To be made monthly based upon the percentage of work completed and invoiced to you. Your obligation to pay for services rendered hereunder is in no way dependent upon your ability to obtain financing, to obtain payment from a third party, or to obtain approval of any governmental or regulatory agencies, or upon your successful completion of the project. If any payment due for services and expenses hereunder is not made in full within thirty (30) days after receipt of invoice, the amounts due Sain Associates, Inc., shall include a charge at the rate of 1½% per month from said thirtieth (30th) day, plus attorney's fees for collection in the amount of 1/3 of the outstanding balance or such greater amount as the court finds reasonable. In addition, we reserve the right to suspend services under this agreement until receipt of payment in full for all amounts due for services rendered and expenses incurred.

**AL Immigration Law Compliance**

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

**Standard of Care**

The standard of care for all professional services performed or furnished by Sain Associates under this Agreement will be the skill and care used by members of Consultant's profession practicing under similar circumstances at the same time and in the same locality. Sain makes no warranties, express or implied, under this Agreement or otherwise, in connection with Sain's services.

**Limitation of Remedies**

Liability of remedies of Sain Associates, Inc. resulting from errors, omissions, or the negligence of Sain Associates, Inc., its agents or employees, pursuant to work under this agreement shall not exceed the lesser of the value of engineering or surveying services required to correct the deficiency or the basic consulting fee for work covered hereunder or the actual cost of the remedies. This provision is being agreed to as a result of the fees being charged.

**Dispute Resolution**

Client and Sain Associates agree that if a dispute arises out of or relates to this contract, the parties will attempt to settle the dispute through good faith negotiations. If direct negotiations do not resolve the dispute, the parties agree to endeavor to settle the dispute by mediation prior to the initiation of any legal action unless delay in initiating legal action would irrevocably prejudice one of the parties. Mediation to take place in County where project is located and if mediation cannot be agreed upon by parties then it is agreed that AAA (American Arbitration Association) will appoint mediator and the parties agree to split cost of mediator 50 – 50.

**Force Majeure**

Neither party shall be deemed in default of this Agreement to the extent that any delay or failure in the performance of its obligations results from any cause beyond its reasonable control and without its negligence.

**Termination of Contract**

Client may terminate this Agreement with seven days prior written notice to Consultant for convenience or cause. Consultant may terminate this Agreement for cause with seven days prior written notice to Client. Failure of Client to make payments when due shall be cause for suspension of services or, ultimately, termination, unless and until Consultant has been paid in full all amounts due for services, expenses and other related charges.

**Ownership of Documents**

All documents prepared or furnished by Consultant pursuant to this Agreement are instruments of Consultant's professional service, and Consultant shall retain an ownership and property interest therein. Consultant grants Client a license to use instruments of Consultant's professional service for the purpose of constructing, occupying and maintaining the Project. Reuse or modification of any such documents by Client, without Consultant's written permission, shall be at Client's sole risk, and Client agrees to indemnify and hold Consultant harmless from all claims, damages and expenses, including attorneys' fees, arising out of such reuse by Client or by others acting through Client.

Schedule 2014

**RESOLUTION NO. 2014-122**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes the execution of an amendment to the professional services contract between the City and Skipper Consulting, Inc., in the form as attached hereto as Exhibit A subject to such minor revisions determined appropriate by the City Attorney, with respect to its pedestrian crossing signal design on Overton Road at its intersection with Oakdale Drive and River Run Road in the vicinity of Cahaba River Park.

**ADOPTED:** This 13th day of October 2014.

\_\_\_\_\_  
Council President

**APPROVED:** This 13th day of October 2014.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk of the City of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its meeting held on October 13, 2014, as same appears in the minutes of record of said meeting.

\_\_\_\_\_  
City Clerk



---

3644 Vann Road, Suite 100  
Birmingham, Alabama 35235  
Phone (205) 655-8855 Fax (205) 655-8825

## **AGREEMENT AMENDMENT #1**

**TO:** The City of Mountain Brook  
P.O. Box 130009  
Mountain Brook, Alabama 35213-0009

**FROM:** Skipper Consulting, Inc.  
3644 Vann Road, Suite 100  
Birmingham, Alabama 35235

**DATE:** October 6, 2014

**RE:** Traffic Signal Modification Design  
Overton Road at Oakdale Drive/River Run Drive

This agreement amendment outlines the terms and conditions for Skipper Consulting, Inc. to perform traffic data collection and analysis to respond to recent comments received from Jefferson County Roads and Transportation related to roadway design changes at the intersection of Overton Road at Oakdale Drive/River Run Drive. This agreement amendment would modify the original agreement between Skipper Consulting, Inc. and the City of Mountain Brook, fully executed on May 27, 2014.

**SCOPE OF SERVICES:** Upon written authorization from the Client, the Consultant shall perform analysis and prepare documentation sufficient to address the traffic impacts of the proposed roadway changes at the intersection of Overton Road at Oakdale Drive/River Run Drive. The proposed scope of work includes the following:

- Performing a traffic count at the intersection from 7:00-9:00 a.m., 2:30-3:30 p.m., and 4:00-6:00 p.m.
- Performing capacity analyses to determine the impact of removal of the right turn lane from Oakdale Drive onto Overton Road
- Performing capacity analysis to determine the appropriate sequencing of pedestrian intervals
- Documenting the results of the study in a memorandum
- Attending meetings with the design team, the City of Mountain Brook, and Jefferson County as required to resolve concerns

**BUDGET AMENDMENT:** Skipper Consulting proposes to perform the work as described in the scope of services on a fixed fee basis for the following fee amount:

Traffic Study/Meetings	\$ 1,850.00
------------------------	-------------

**SCHEDULE:** Skipper Consulting proposes to perform the work as described in the scope of services within a period of two (2) calendar weeks, up to and including issuing the memorandum, barring unforeseen circumstances outside of the control of Skipper Consulting.

**TERMS AND CONDITIONS:** We propose to undertake this work as an amendment to the terms and conditions in effect according to our current agreement with the City of Mountain Brook.

If this amendment is acceptable, please indicate acceptance by signing this letter in the space provided and return one copy for our records.

***For Skipper Consulting, Inc.***

Submitted by: 

Date: 10/2/14

***For the City of Mountain Brook***

Approval by: \_\_\_\_\_

Date: \_\_\_\_\_

## Sam Gaston

---

**From:** Richard Caudle  
**Sent:** Wednesday, October 01, 2014 2:46 PM  
**To:** gastons@mtnbrook.org  
**Subject:** FW: Overton Road at Oakdale Drive/River Run Drive

Sam:

Our original scope of work for the intersection of Overton Road at Oakdale Drive/River Run Drive only included signal design and did not include a traffic study (see item #1 below). Is there a chance that we could get a small increase in our fee to cover our cost in preparing the study which Jefco has requested?

Richard C

---

**From:** Richard Caudle  
**Sent:** Wednesday, October 01, 2014 2:41 PM  
**To:** gastons@mtnbrook.org; Ronald Vaughn; Joel Eliason (JEliason@nimrodlong.com); 'nimrod@nimrodlong.com'; 'Boozer, Ken'; Christopher Brady (cbrady@vhal.org)  
**Subject:** Overton Road at Oakdale Drive/River Run Drive

The following is a summary of the meeting held with Ken Boozer with Jefco Roads and Transportation today:

1. In order to determine what needs to be done with changes to Oakdale Drive and how to handle pedestrians, a traffic study needs to be performed. This should include a traffic count at the intersection, review of crashes at the intersection, and capacity analyses. Ken Boozer will provide County crash data. Richard Caudle will arrange the traffic counts and request crash data from Mountain Brook and Vestavia Hills
2. It is anticipated that the traffic study will show that changes to Oakdale Drive which remove the existing right turn lane or shorten the through/left lane will result in unacceptable traffic operations. This would include installing a crosswalk across Oakdale Drive at the intersection. We generally agreed that to provide a crosswalk crossing Oakdale Drive will require significant reconstruction of Oakdale Drive which cannot reasonably be accomplished as part of the park project. The City is encouraged to pursue another project at some point in the future to make improvements to Oakdale Drive to allow reconstruction of a longer right turn lane and appropriate design provisions for the pedestrian crossing. Perhaps a more detailed study and design for this intersection could be included in the upcoming APPLE grant project that the City will be performing in conjunction with the RPC.
3. The curb radius for Overton Road turning onto River Run Road needs to be modified to result in a slower operating speed and reduced pedestrian crossing distance. A WB-40 design vehicle should be used to design this modification.
4. The sidewalk system in the park should be extended to the corner of Overton Road and River Run Road. NLA should determine the most appropriate route for the sidewalk.
5. Crosswalks should be added crossing Overton Road from Oakdale Drive to the corner by the park and also crossing River Run Drive. These additional crosswalks will need push buttons and pedestrian signal heads.
6. Both pedestrian crossings of Overton Road should display walk/flashing don't walk during the traffic signal

10/6/2014

interval which serves River Run Road. A sign stating "Yield to Pedestrians" needs to be added to the signal span wire facing River Run Drive.

7. Jefco will need roadway, drainage, and signal plans for approval. The drainage the northwest corner of the intersection where the Oakdale Drive sidewalk is to be extended needs to be addressed.

If there are issues which I have missed, please reply to all.

Richard L. Caudle, P.E.  
Skipper Consulting, Inc.  
3644 Vann Road Suite 100  
Birmingham, Alabama 35235  
[richard@skipperinc.com](mailto:richard@skipperinc.com)  
(205) 655-8855 fax (205) 655-8825  
Cell (205) 790-4307 home (205) 594-4708





BIRMINGHAM

VESTAVIA  
HILLS

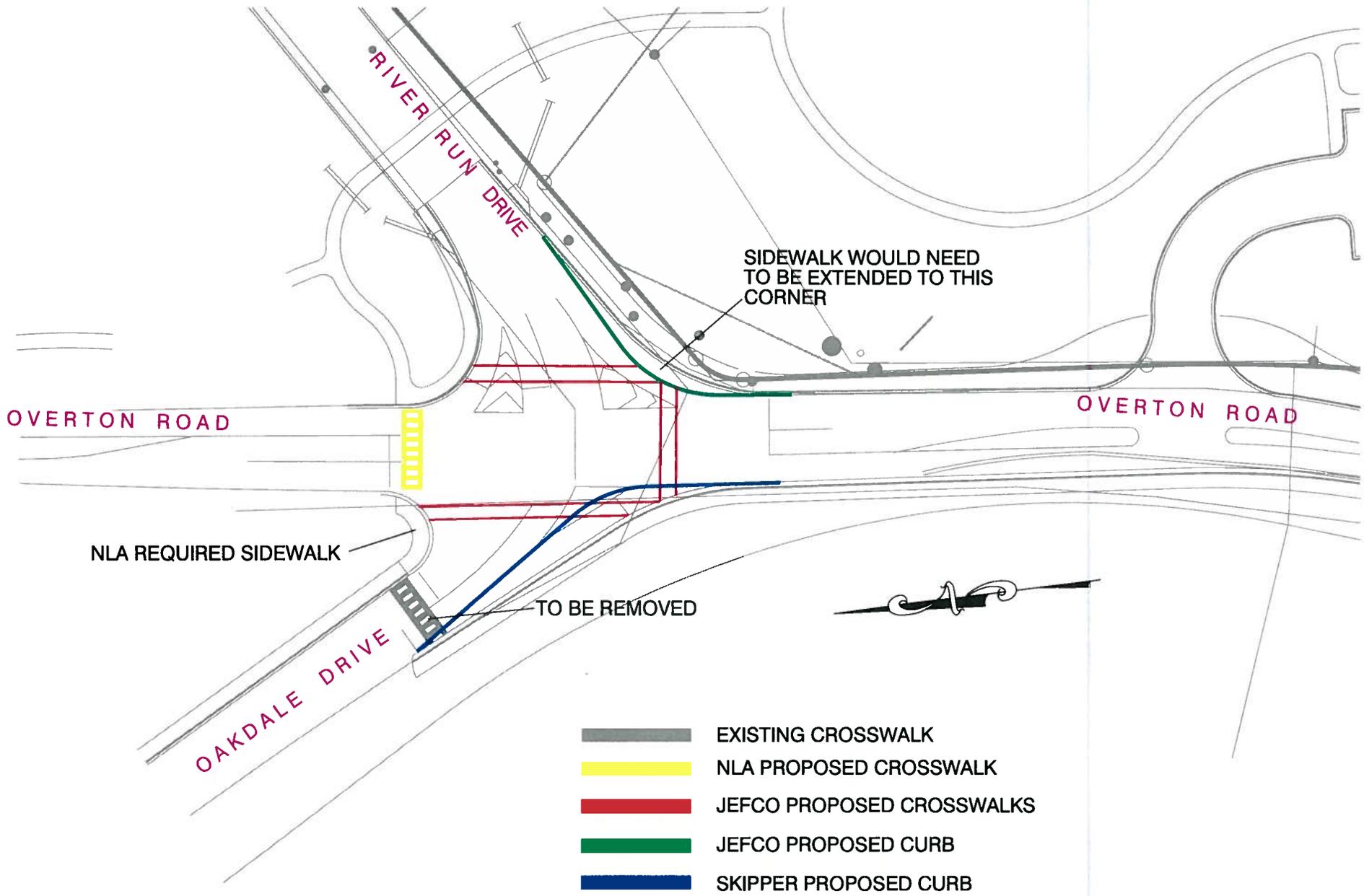
MOUNTAIN  
BROOK

OAKDALE DR

RIVER RUN DR

OVERTON RD

MOUNTAIN  
BROOK



- EXISTING CROSSWALK
- NLA PROPOSED CROSSWALK
- JEFco PROPOSED CROSSWALKS
- JEFco PROPOSED CURB
- SKIPPER PROPOSED CURB

**RESOLUTION NO. 2014-123**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that either the Mayor or the City Manager of the City is hereby authorized and directed, for and on behalf of the City, to execute the following Fire Protection and Emergency Medical Services agreements, copies of which are attached hereto:

- |                                                  |             |
|--------------------------------------------------|-------------|
| 1. Shades Parkway, LLC, 813 Shades Creek Parkway | - Exhibit A |
| 2. Orchid, LLC, 800 Shades Creek Parkway         | - Exhibit B |
| 3. Brookwood, LLC, 2900 Highway 280 South        | - Exhibit C |
| 4. 280 Associates, LLC, 600 Luckie Drive         | - Exhibit D |

**ADOPTED:** This 13th day of October 2013.

\_\_\_\_\_  
Council President

**APPROVED:** This 13th day of October 2013.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk of the City of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its meeting held on October 13, 2013, as same appears in the minutes of record of said meeting.

\_\_\_\_\_  
City Clerk

**AGREEMENT**

---

This Agreement is made and entered into by and between **Shades Parkway, LLC** ("Owner"), owners of "Shades Creek Plaza," and the City of Mountain Brook, an Alabama municipal corporation ("City").

**RECITALS**

1. Owner owns office facilities which are located at, and contiguous to, **813 Shades Creek Parkway**, Jefferson County, Alabama commonly known as "The Shades Creek Plaza" which is within the police jurisdiction of the City ("Building").
2. Owner has requested that the City provide or otherwise make available to Owner and the occupants of the building fire protection and emergency medical services.
3. The City has agreed to make available to the building and the occupants thereof such fire protection and emergency medical services upon the terms and conditions contained in this Agreement and Owner agrees to such terms and conditions.

**AGREEMENTS**

1. The City agrees to make available fire protection for the building and to make available emergency medical services to the occupants of the building.
2. The term of this Agreement shall be for a period of three (3) years beginning January 1, 2015 through December 31, 2017.
3. In consideration of City's agreement to provide and make available said services, **Shades Parkway, LLC** shall pay to the City a fee, the amount of which shall not exceed the cost (direct costs and overhead expenses) incurred by the City to ensure the availability of personnel, equipment, and infrastructure required to make available such services. Owner and the City agree that the fee for the 3-year term shall be as follows:

2015	\$5,100
2016	5,100
2017	5,100

4. To the extent that fire protection and emergency medical services are required to be allocated in the event of multiple calls for such services, houses, commercial, and institutional buildings and other buildings within the City limits of the City and residents of the City shall have priority.
5. Owner and the City shall each have the right to terminate this Agreement at any time by giving the other party hereto at least thirty (30) days prior written notice of termination. In the event of such termination by either party, the pro-rata portion of the annual fee for the remainder of the then current term of this Agreement shall be promptly refunded to the Owner.
6. Notwithstanding any other provisions contained in this Agreement, the City shall have no greater liability for negligence or breach of contract with respect to providing the services

EXHIBIT A

2014-123

referred to herein than the limitations imposed under the provisions of the Code of Alabama 1975, Section 11-93-2.

7. Nothing in this agreement shall be deemed or construed to impose, establish, or recognize a duty or obligation on the party of the City to investigate, inspect, or evaluate the building for compliance with fire safety codes, regulations, or standards, to report or undertake any corrective or ameliorative action with respect thereto, or to create any special or enhanced standard of care with respect to the provision of services hereunder.

In witness whereof, the City of Mountain Brook has caused this Agreement to be executed by its duly authorized officer and **Shades Parkway, LLC** (Owner) has caused this Agreement to be executed by its duly authorized corporate officer, all as of the \_\_\_\_ day of \_\_\_\_\_, 2014.

Witness:

\_\_\_\_\_  
Steven Boone, City Clerk

**City of Mountain Brook**

By: \_\_\_\_\_  
Sam Gaston, City Manager

Witness:

\_\_\_\_\_

Its \_\_\_\_\_

**Stone River Property Management, LLC on behalf of Shades Parkway, LLC**

By: *A. R. GRIFFIN BEARD*

Its *PROPERTY MANAGER*

EXHIBIT A

## AGREEMENT

---

This Agreement is made and entered into by and between **Orchid, LLC ("Owner")**, owners of "The First Commercial Bank Building," and the City of Mountain Brook, an Alabama municipal corporation ("City").

### RECITALS

1. Owner owns office facilities which are located at, and contiguous to, 800 Shades creek Parkway, Jefferson County, Alabama which is within the police jurisdiction of the City ("Building").
2. Owner has requested that the City provide or otherwise make available to Owner and the occupants of the building fire protection and emergency medical services.
3. The City has agreed to make available to the building and the occupants thereof such fire protection and emergency medical services upon the terms and conditions contained in this Agreement and Owner agrees to such terms and conditions.

### AGREEMENTS

1. The City agrees to make available fire protection for the building and to make available emergency medical services to the occupants of the building.
2. The term of this Agreement shall be for a period of three (3) years beginning January 1, 2015 through December 31, 2017.
3. In consideration of City's agreement to provide and make available said services, **Orchid, LLC** shall pay to the City a fee, the amount of which shall not exceed the cost (direct costs and overhead expenses) incurred by the City to ensure the availability of personnel, equipment, and infrastructure required to make available such services. Owner and the City agree that the fee for the 3-year term shall be as follows:

2015	\$27,600
2016	27,600
2017	27,600

where such fees may be paid in monthly installments of \$2,300.00.

4. To the extent that fire protection and emergency medical services are required to be allocated in the event of multiple calls for such services, houses, commercial, and institutional buildings and other buildings within the City limits of the City and residents of the City shall have priority.
5. Owner and the City shall each have the right to terminate this Agreement at any time by giving the other party hereto at least thirty (30) days prior written notice of termination. In the event of such termination by either party, the pro-rata portion of the annual fee for the remainder of the then current term of this Agreement shall be promptly refunded to the Owner.

6. Notwithstanding any other provisions contained in this Agreement, the City shall have no greater liability for negligence or breach of contract with respect to providing the services referred to herein than the limitations imposed under the provisions of the Code of Alabama 1975, Section 11-93-2.
7. Nothing in this agreement shall be deemed or construed to impose, establish, or recognize a duty or obligation on the party of the City to investigate, inspect, or evaluate the building for compliance with fire safety codes, regulations, or standards, to report or undertake any corrective or ameliorative action with respect thereto, or to create any special or enhanced standard of care with respect to the provision of services hereunder.

In witness whereof, the City of Mountain Brook has caused this Agreement to be executed by its duly authorized officer and Orchid, LLC (Owner) has caused this Agreement to be executed by its duly authorized corporate officer, all as of the 18<sup>th</sup> day of September, 2014.

Witness:

\_\_\_\_\_  
Steven Boone, City Clerk

City of Mountain Brook

By: \_\_\_\_\_  
Sam Gaston, City Manager

Witness:

Wanda M. Wanninger

Its \_\_\_\_\_  
WANDA M. WANNINGER  
Notary Public, State of Alabama  
Alabama State At Large  
My Commission Expires  
August 26, 2018

Orchid, LLC

By: Juan L. Wanger  
Its Real Estate Manager



**AGREEMENT**

---

This Agreement is made and entered into by and between **Brookwood, LLC ("Brookwood")**, owners of "**Raymond James**," and the City of Mountain Brook, an Alabama municipal corporation ("City").

**RECITALS**

1. **Brookwood** owns office facilities which are located at, and contiguous to, **2900 Highway 280 South**, Jefferson County, Alabama commonly known as "**Raymond James**" which is within the police jurisdiction of the City ("Building").
2. **Brookwood** has requested that the City provide or otherwise make available to Brookwood and the occupants of the building fire protection and emergency medical services.
3. The City has agreed to make available to the building and the occupants thereof such fire protection and emergency medical services upon the terms and conditions contained in this Agreement and **Brookwood** agrees to such terms and conditions.

EXHIBIT C

**AGREEMENTS**

1. The City agrees to make available fire protection for the building and to make available emergency medical services to the occupants of the building.
2. The term of this Agreement shall be for a period of three (3) years beginning January 1, 2015 through December 31, 2017.
3. In consideration of City's agreement to provide and make available said services, Brookwood shall pay to the City a fee, the amount of which shall not exceed the cost (direct costs and overhead expenses) incurred by the City to ensure the availability of personnel, equipment, and infrastructure required to make available such services. **Brookwood** and the City agree that the fee for the 3-year term shall be as follows:

2015	\$7,950
2016	7,950
2017	7,950

4. To the extent that fire protection and emergency medical services are required to be allocated in the event of multiple calls for such services, houses, commercial, and institutional buildings and other buildings within the City limits of the City and residents of the City shall have priority.
5. Owner and the City shall each have the right to terminate this Agreement at any time by giving the other party hereto at least thirty (30) days prior written notice of termination. In the event of such termination by either party, the pro-rata portion of the annual fee for the remainder of the then current term of this Agreement shall be promptly refunded to the Owner.
6. Notwithstanding any other provisions contained in this Agreement, the City shall have no

2014-123

greater liability for negligence or breach of contract with respect to providing the services referred to herein than the limitations imposed under the provisions of the Code of Alabama 1975, Section 11-93-2.

7. Nothing in this agreement shall be deemed or construed to impose, establish, or recognize a duty or obligation on the party of the City to investigate, inspect, or evaluate the building for compliance with fire safety codes, regulations, or standards, to report or undertake any corrective or ameliorative action with respect thereto, or to create any special or enhanced standard of care with respect to the provision of services hereunder.

In witness whereof, the City of Mountain Brook has caused this Agreement to be executed by its duly authorized officer and Brookwood, LLC (Owner) has caused this Agreement to be executed by its duly authorized corporate officer, all as of the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

Witness:

**City of Mountain Brook**

\_\_\_\_\_  
Steven Boone, City Clerk

By: \_\_\_\_\_  
Sam Gaston, City Manager

Witness:

**Brookwood, LLC**

Cind P. Rte  
Its Sr. Property Mgr

By: \_\_\_\_\_  
Its WGB

EXHIBIT C

**AGREEMENT**

---

This Agreement is made and entered into by and between **280 Associates, LLC ("Owner")**, owners of "The Luckie Building," and the City of Mountain Brook, an Alabama municipal corporation ("City").

**RECITALS**

1. Owner owns office facilities which are located at, and contiguous to, 600 Luckie Drive, Jefferson County, Alabama which is within the police jurisdiction of the City ("Building").
2. Owner has requested that the City provide or otherwise make available to Owner and the occupants of the building fire protection and emergency medical services.
3. The City has agreed to make available to the building and the occupants thereof such fire protection and emergency medical services upon the terms and conditions contained in this Agreement and Owner agrees to such terms and conditions.

**AGREEMENTS**

1. The City agrees to make available fire protection for the building and to make available emergency medical services to the occupants of the building.
2. The term of this Agreement shall be for a period of three (3) years beginning January 1, 2015 through December 31, 2017.
3. In consideration of City's agreement to provide and make available said services, **Cahaba, LLC** shall pay to the City a fee, the amount of which shall not exceed the cost (direct costs and overhead expenses) incurred by the City to ensure the availability of personnel, equipment, and infrastructure required to make available such services. Owner and the City agree that the fee for the 3-year term shall be as follows:

2015	\$6,900
2016	6,900
2017	6,900

4. To the extent that fire protection and emergency medical services are required to be allocated in the event of multiple calls for such services, houses, commercial, and institutional buildings and other buildings within the City limits of the City and residents of the City shall have priority.
5. Owner and the City shall each have the right to terminate this Agreement at any time by giving the other party hereto at least thirty (30) days prior written notice of termination. In the event of such termination by either party, the pro-rata portion of the annual fee for the remainder of the then current term of this Agreement shall be promptly refunded to the Owner.
6. Notwithstanding any other provisions contained in this Agreement, the City shall have no greater liability for negligence or breach of contract with respect to providing the services

EXHIBIT D

2014-123

referred to herein than the limitations imposed under the provisions of the Code of Alabama 1975, Section 11-93-2.

7. Nothing in this agreement shall be deemed or construed to impose, establish, or recognize a duty or obligation on the party of the City to investigate, inspect, or evaluate the building for compliance with fire safety codes, regulations, or standards, to report or undertake any corrective or ameliorative action with respect thereto, or to create any special or enhanced standard of care with respect to the provision of services hereunder.

In witness whereof, the City of Mountain Brook has caused this Agreement to be executed by its duly authorized officer and 280 Associates, LLC (Owner) has caused this Agreement to be executed by its duly authorized corporate officer, all as of the \_\_\_\_ day of \_\_\_\_\_, 2014.

Witness:

\_\_\_\_\_  
Steven Boone, City Clerk

**City of Mountain Brook**

By: \_\_\_\_\_  
Sam Gaston, City Manager

Witness:

Carl B. Roth  
Its Sr. Property Mgr.

**280 Associates, LLC**

By: \_\_\_\_\_  
Its M. G. H.

EXHIBIT D

**RESOLUTION NO. 2014-124**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that either the Mayor or the City Manager of the City is hereby authorized and directed, for and on behalf of the City, to enter into an agreement with the Jefferson-Blount-St. Clair Mental Health Authority, in the form as attached hereto as Exhibit A, subject to such minor changes as may be determined appropriate by the City Attorney.

**ADOPTED:** This 13th day of October 2013.

\_\_\_\_\_  
Council President

**APPROVED:** This 13th day of October 2013.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk of the City of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its meeting held on October 13, 2013, as same appears in the minutes of record of said meeting.

\_\_\_\_\_  
City Clerk

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

**CONTRACT AGREEMENT**

**THIS AGREEMENT** is entered into on this the \_\_\_\_\_ day of \_\_\_\_\_ 2014, by and between the City of Mountain Brook (hereinafter referred to as “City”) and the Jefferson – Blount – St. Clair Mental Health Authority (hereinafter referred to as “Contractor”):

**WHEREAS**, municipalities in the State of Alabama are authorized to promote the public health, safety, morals, security, prosperity, contentment and the general welfare of the community;

**WHEREAS**, Jefferson – Blount – St. Clair Mental Health Authority, is an organization which has as one of its goals the promotion of public health, safety, morals, security, prosperity, contentment and the general welfare in the City of Mountain Brook;

**WHEREAS**, the City Council of the City of Mountain Brook, Alabama desires to enter into a contract with the Contractor for the purpose of providing mental health services to residents of the City of Mountain Brook;

**WITNESSETH,**

1. That the City, for and in consideration of the covenants and agreements hereinafter set out to be kept and performed by the Contractor, does hereby agree to pay the Contractor the sum of TWO THOUSAND ONE HUNDRED and NO/100 (\$2,100.<sup>00</sup>) Dollars, for performing the services herein provided for the period beginning October 1, 2014 through September 30, 2015).

2. SCOPE OF SERVICES:

In consideration of the covenants and agreements made herein by the City, the Contractor agrees that it shall be totally responsible for, and shall have exclusive control over the management and disbursement of all such monies received from the City, and that all monies received under this contract shall be used only for the purposes herein described:

- a. Provide relief for residents who are in need of crisis stabilization for uninsured mentally ill persons;
- b. Provide medication and outpatient therapy for mentally ill persons;
- c. Provide housing and treatment for mentally ill persons;
- d. Provide in – home therapy for at – risk youths who are in danger of being removed from their homes;
- e. Provide case management to access housing and other supports to avoid unnecessary admissions to state hospitals;
- f. Provide social work assistance to families; and
- g. Contractor agrees to provide any and all personnel, supplies, equipment necessary for the services herein to be provided.

3. The Contractor agrees to provide to the City at all reasonable times and places an



IN WITNESS WHEREOF, we have hereunto set our hands and seals on this the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**CITY OF MOUNTAIN BROOK,  
A Municipal Corporation**

BY: \_\_\_\_\_  
Lawrence Terry Oden  
Mayor, City of Mountain Brook

**WITNESSED:**

BY: \_\_\_\_\_

**JEFFERSON – BLOUNT – ST. CLAIR MENTAL  
HEALTH AUTHORITY**

BY: \_\_\_\_\_  
Its Authorized Agent  
Print name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF ALABAMA )

COUNTY OF JEFFERSON )

I, \_\_\_\_\_ a notary public in and for said County in said State, hereby certify that \_\_\_\_\_ whose name as Authorized Agent of the **JEFFERSON – BLOUNT – ST. CLAIR MENTAL HEALTH AUTHORITY**, a nonprofit corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he/she, as such officer and with full authority executed the same voluntarily for and as the act of said corporation.

Given under my hand this the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
**NOTARY PUBLIC**

My Commission Expires

**JEFFERSON - BLOUNT - ST. CLAIR MENTAL HEALTH AUTHORITY**

940 Montclair Road Suite 200 Birmingham, Alabama 35213 www.jbsmha.com  
Telephone: (205) 595-4555 Voice Mail: (205) 380-6460 Fax: (205) 592-3539 TDD: 1-800-545-1833 ext. 516

Executive Committee of the Board

Marianne Sharbel  
President

Cathy Irvin  
First Vice-President

Margie Sanford  
Second Vice-President

Lois Scott  
Secretary

J. Marvin Thornton  
Treasurer

Cindy Smith  
Asst. Secretary / Treasurer

Scotty Colson  
Member-At-Large

Ann Glass  
Member-At-Large

Lamar Kelly  
Member-At-Large

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October 1, 2014

Mr. Steven Boone  
City Clerk  
City of Mountain Brook  
56 Church Street  
Mountain Brook, AL 35213

Dear Mr. Boone:

This is to request the fiscal year 2014 – 2015 appropriation to the Jefferson – Blount – St. Clair Mental Health Authority. Please remit the funds at your earliest convenience.

Thank you for your support.

Sincerely,



Wvonne Gallman  
Senior Accountant

2014-124

**RESOLUTION NO. 2014-125**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that either the Mayor or the City Manager of the City is hereby authorized and directed, for and on behalf of the City, to enter into an agreement with the Jefferson County Historical Commission, in the form as attached hereto as Exhibit A, subject to such minor changes as may be determined appropriate by the City Attorney.

**ADOPTED:** This 13th day of October 2013.

\_\_\_\_\_  
Council President

**APPROVED:** This 13th day of October 2013.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its meeting held on October 13, 2013, as same appears in the minutes of record of said meeting.

\_\_\_\_\_  
City Clerk

## CONTRACT FOR SERVICES

This Contract for Services ("Contract") is entered into between the City of Mountain Brook, an Alabama municipal corporation ("City") and the Jefferson County Historical Commission ("Commission").

**WHEREAS**, the Commission was established in 1971 by a act of the Alabama Legislature; and

**WHEREAS**, the Commission sponsors publications on Jefferson County history and works with other organizations and agencies to further historic preservation and the documentation and protection of the historic resources of the City of Mountain Brook.

**NOW THEREFORE**, in consideration of the premises and in consideration of the covenants and agreements contained herein, the City and the Commission hereby agree as follows:

1. This contract shall be effective on the 1st day of October, 2014, and will continue in effect until September 30, 2015, unless terminated sooner by either party.
2. The City shall pay to the Commission the sum of One Thousand Dollars (\$1,000.00), upon execution of this contract for services.
3. In consideration of the payment of the contract fund as provided herein, the Commission shall provide at least the following services to the City ("Services"):
  - a. The Commission, through its Historic Marker Program, shall identify and recognize houses, commercial, or public buildings, churches, and sites of historic interest and integrity, encouraging the preservation of these historically important places.
  - b. The Commission shall sponsor publications on Jefferson County history and cooperate with property owners, historical societies and authors in the publication of books, videotapes and audiotapes concerning the City of Mountain Brook and Jefferson County.
  - c. The Commission shall furnish information concerning advantages of preservation/restoration and provide assistance for architectural/preservation/ design interns, teachers, students, and other citizen groups.
  - d. The Commission shall furnish speakers for civic clubs, parent-teacher associations, and school groups about history and historic preservation and its importance to the past, present, and future.
4. The Commission shall provide the personnel, supplies, equipment, and expertise necessary to fulfill its obligations under this Contract. The Commission is an independent contractor and none of its agents or employees shall be deemed to be under the control of the City, nor shall any of the agents or employees of other persons, firms, or corporations conducting business for or on behalf of the Commission be deemed to be agents or employees of the City.

2014-125

5. The Commission shall indemnify and hold harmless the City and its agents, employees, and elected officials, from and against any and all actions, causes of actions, claims, demands, damages, losses, and expenses of any kind, including but not limited to attorney's fees and court cost, which may be asserted against, or suffered by, the City or its agents and employees arising out of, or in connection with: (a) the performance or attempted performance, by the Commission or its agents or employees of the Commission's obligations under this Contract; and (b) any claim that the Contract Funds were improperly paid by the City to the Commission.

6. The Commission agrees to employ accounting procedures which are appropriate to the types of operations conducted by the Commission and which are customary to similar operations. All financial records and other documents pertaining to this Contract shall be maintained by the Commission for a period of three (3) years after the expiration or termination of this Contract. The City shall have full access to, and the right to examine any of such financial records and other documents at all reasonable times during the term of this Contract and during said three-year period. The Commission agrees that upon request from the City, the Commission will submit to, and cooperate with, periodic audits by the Alabama Department of Public Examiners or other audit procedures requested by the City.

7. If the Commission fails to comply with the provisions of this Contract, such failure shall constitute a default under this Contract and, unless corrected by the Commission within thirty (30) days following receipt of written notice from City of such default, shall be deemed a breach of this Contract and the City shall have the right to terminate this Contract by giving the Commission twelve (12) days prior written notice of such termination. Such termination of this Contract by the City shall not relieve the Commission of any of its obligations or liabilities to the City under the provisions of paragraph 4 of this Contract, whether such obligations or liabilities occur or accrue before or after the termination of this Contract.

**IN WITNESS WHEREOF**, the Jefferson County Historical Commission has caused this Contract to be executed by its duly authorized Executive Director on the \_\_\_\_\_ day of \_\_\_\_\_, 2014 and the City of Mountain Brook has caused this Contract to be executed by its duly authorized representative, on the \_\_\_\_ day of \_\_\_\_\_, 2014.

**ATTEST:**

**JEFFERSON COUNTY HISTORICAL  
COMMISSION**

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**ATTEST:**

**CITY OF MOUNTAIN BROOK, ALABAMA**

\_\_\_\_\_

\_\_\_\_\_

By: Lawrence T. Oden

Its: Mayor

**RESOLUTION NO. 2014-126**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that either the Mayor or the City Manager of the City is hereby authorized and directed, for and on behalf of the City, to enter into an agreement with the Alabama Veterans' Memorial Foundation, in the form as attached hereto as Exhibit A, subject to such minor changes as may be determined appropriate by the City Attorney.

**ADOPTED:** This 13th day of October 2014.

\_\_\_\_\_  
Council President

**APPROVED:** This 13th day of October 2013.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk of the City of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its meeting held on October 13, 2013, as same appears in the minutes of record of said meeting.

\_\_\_\_\_  
City Clerk

## CONTRACT FOR SERVICES

This Contract for Services ("Contract") is entered into between the City of Mountain Brook, an Alabama municipal corporation ("City") and the Alabama Veterans Memorial Foundation ("Foundation").

**WHEREAS**, the City desires to promote learning opportunities and resources for its citizens; and

**WHEREAS**, the Foundation provides educational resources to the citizens of the City by operating and maintaining a park which honors Alabama veterans; and

**WHEREAS**, the City has determined that it is in the public interest to engage the Foundation in order to assist in the development and promotion of said educational resources.

**NOW THEREFORE**, in consideration of the premises and in consideration of the covenants and agreements contained herein, the City and the Foundation hereby agree as follows:

1. This contract shall be effective on the 1st day of October, 2014, and will continue in effect until September 30, 2015, unless terminated sooner by either party.
2. The City shall pay to the Foundation the sum of One Thousand Dollars (\$1,000.00) upon execution of this contract for services.
3. In consideration of the payment of the funds as provided herein, the Foundation shall provide at least the following services to the City ("Services"):
  - a. The Foundation will continue to operate and maintain the Alabama Veterans Memorial Park so that the park will remain a symbol of our servicemen's and servicewomen's dedication to their country.
  - b. The Foundation will provide educational resources to the citizens of the City through the Alabama Veterans Memorial Park that will not only teach the high cost of war, but celebrate peace and democracy.
4. The Foundation shall provide the personnel, supplies, equipment, and expertise necessary to fulfill its obligations under this Contract. The Foundation is an independent contractor and none of its agents or employees shall be deemed to be under the control of the City, nor shall any of the agents or employees of other persons, firms, or corporations conducting business for or on behalf of the Foundation be deemed to be agents or employees of the City.
5. The Foundation shall indemnify and hold harmless the City and its agents, employees, and elected officials, from and against any and all actions, causes of actions, claims, demands, damages, losses, and expenses of any kind, including but not limited to attorney's fees and court cost, which may be asserted against, or suffered by, the City or its agents and employees arising out of, or in connection with: (a) the performance or attempted performance, by the Foundation or its agents or employees of the Foundation's obligations under this Contract; and (b) any claim that the Contract Funds were improperly paid by the City to the Foundation.

2014-126

6. The Foundation agrees to employ accounting procedures which are appropriate to the types of operations conducted by the Foundation and which are customary to similar operations. All financial records and other documents pertaining to this Contract shall be maintained by the Foundation for a period of three (3) years after the expiration or termination of this Contract. The City shall have full access to, and the right to examine any of such financial records and other documents at all reasonable times during the term of this Contract and during said three-year period. The Foundation agrees that upon request from the City, the Foundation will submit to, and cooperate with, periodic audits by the Alabama Department of Public Examiners or other audit procedures requested by the City.

7. If the Foundation fails to comply with the provisions of this Contract, such failure shall constitute a default under this Contract and, unless corrected by the Foundation within thirty (30) days following receipt of written notice from City of such default, shall be deemed a breach of this Contract and the City shall have the right to terminate this Contract by giving the Foundation twelve (12) days prior written notice of such termination. Such termination of this Contract by the City shall not relieve the Foundation of any of its obligations or liabilities to the City under the provisions of paragraph 4 of this Contract, whether such obligations or liabilities occur or accrue before or after the termination of this Contract.

**IN WITNESS WHEREOF**, the Alabama Veterans Memorial Foundation has caused this Contract to be executed by its duly authorized Executive Director on the \_\_\_\_\_ day of \_\_\_\_\_, 2014 and the City of Mountain Brook has caused this Contract to be executed by its duly authorized Mayor, on the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**ATTEST:**

\_\_\_\_\_

**ATTEST:  
ALABAMA**

\_\_\_\_\_  
Steven Boone, City Clerk

**ALABAMA VETERANS  
MEMORIAL FOUNDATION**

\_\_\_\_\_

By: \_\_\_\_\_  
Its: Executive Director

**CITY OF MOUNTAIN BROOK,**

\_\_\_\_\_  
By: Lawrence T. Oden  
Its: Mayor

**RESOLUTION NO. 2014-127**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama that the City Council hereby authorizes the execution of an agreement between the City and Mountain Brook Chamber of Commerce, in the form as attached hereto as Exhibit A, subject to minor changes as may be determined appropriate by the City Attorney.

**ADOPTED:** This 13th day of October 2014.

\_\_\_\_\_  
Council President

**APPROVED:** This 13th day of October 2014.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk of the City of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its meeting held on October 13, 2014, as same appears in the minutes of record of said meeting.

\_\_\_\_\_  
City Clerk

**EXHIBIT A**

**AGREEMENT FOR SERVICES**

This Agreement entered into between the **City of Mountain Brook**, an Alabama municipal corporation ("City") and **Mountain Brook Chamber of Commerce**, an Alabama non-profit corporation ("Chamber"). City and Chamber hereby agree as follows.

1. This Agreement shall be in effect for a period of two years (October 1, 2014 through September 30, 2016).
2. Notwithstanding any other provision of this Agreement, it is agreed that City shall not be liable for any of the debts or obligations incurred by Chamber, nor shall City be deemed or considered a partner, joint venture or otherwise interested in the assets of Chamber, or profits earned or derived by Chamber, nor shall Chamber at any time use the name or credit of City in purchasing, or attempting to purchase, any equipment, supplies or any other materials or services.
3. Chamber, in the performance of its operations and obligations hereunder, shall not be deemed to be an agent of City, but shall be deemed to be an independent contractor in every respect and shall take all steps, at Chamber's expense, as City may, from time to time, request to indicate that Chamber is an independent contractor.
4. City shall allow Chamber to include membership application, Chamber information and cover letter to be included with the City's annual business license renewal mailing.
5. Chamber may not transfer or assign its interest in this Agreement or assign its rights, duties or obligations under this Agreement without the prior written approval of City.
6. City shall not assume any responsibility for the means by which, or the manner in which, services are provided by Chamber.
7. Chamber agrees to comply strictly with all applicable ordinances and laws while performing its obligations under this Agreement.
8. City agrees to pay Chamber an amount not to exceed the sum of \$145,000.00 each year from October 1, 2014 through September 30, 2016 for all services to be performed by Chamber under this Agreement. Said sum shall be paid as follows:

<b>Installment Due Date or Event</b>	<b>Amount</b>
Upon execution of this Agreement . . . . .	\$36,250.00
December 1, 2014 . . . . .	36,250.00
May 1, 2015 . . . . .	36,250.00
September 1, 2015 . . . . .	36,250.00
On or after October 1, 2015 and after the fiscal 2016 budget is approved by the City . . . . .	36,250.00
December 1, 2015 . . . . .	36,250.00

2014-127

<b>Installment Due Date or Event</b>	<b>Amount</b>
May 1, 2016 . . . . .	36,250.00
September 1, 2016 . . . . .	36,250.00

9. In consideration of the foregoing, Chamber agrees to provide City the following services:

- (a) provide and maintain within the Chamber organization a program for citywide economic development;
- (b) provide a professionally qualified Chamber staff to carry on the functions of Chamber,
- (c) seek, discover and endeavor to attract and promote tourism and commercial development for the benefit and economic improvement of City;
- (d) gather, keep updated, research and distribute information and data to be used as advertisements and presentations for general and specific commercial prospects;
- (e) develop, produce and secure maps, charts, photographs, brochures, briefing facilities, reports, etc., as are necessary and required to promote adequately new and expanding commercial and office development within City;
- (f) for the economic development of City, maintain contact, and cooperate and work closely, with other agencies and organizations with similar purposes such as the Alabama Development Office, industrial development departments of public and private utilities, The Metropolitan Development Board, local, area and regional planning agencies, highway, air and other transportation agencies, organizations and individuals;
- (g) stay familiar with local, state, regional and national trends in economic development; create more and better jobs, for the benefit of City and its citizens, through land control, site development, local and area technical institutions and any and all other sources and aids;
- (h) receive, study and respond to all mail inquires and City referrals which are directly or otherwise sent to City by potential visitors, businesses and professional people, students from all over the United States -and the world, research and survey agencies and outside sources and individuals seeking information about the community, its people, government, history, economic base, institutions, professions, state and federal agencies, schools and educational institutions, housing, job opportunities, legal professions, hospitals, and paramedical services, churches, climatic conditions, laws and statutes, taxes and licenses;
- (i) serve as principal public relations and information agency for City and for all people who are referred to Chamber by City and who come to Chamber's office

or otherwise contact Chamber, but would otherwise have to call upon City for the services and information enumerated in the above item;

- (j) welcome individuals and groups deemed by City to be important to City, and assist and help in coordinating ground-breaking ceremonies, openings, -civic presentations and other activities involving City and its officials;
- (k) report semi-annually to the Mountain Brook City Council on activities within City relating to economic development and other important subjects relating to City;
- (l) assist businesses in conjunction with the City Council and assist new and expanding businesses, agencies, institutions and people moving to the area; and through management and staff of the Chamber, as well as volunteers, to do what is possible to foster and promote the City to create and maintain its good name.

10. In addition to the foregoing services to be provided by Chamber to City:

- (a) The Chamber shall solicit and secure funds from various merchants located in the City where such funds shall be used toward the cost of advertising.
- (b) Chamber will assist in the planning and implementation of at least two major promotional campaigns for each of the three major commercial areas of the City and assist in any other planned and approved minor event for any of the villages or commercial areas of the City. i.e. Highway 280 or Overton Village, which may include but is not limited to advertising, live entertainment, promotional prizes, contest prizes, and refreshments.
- (c) Chamber shall use its best good faith efforts to sell advertisements for the Mountain Brook Reporter, City's quarterly newsletter. The gross receipts ("Receipts") from the sale of such advertisements shall be divided equally between City and Chamber. Chamber shall pay City its share of the Receipts on the fifteenth day of each month following the end of each calendar quarter (April 15, July 15, October 15 and January 15) for advertisements sold during each such calendar quarter.
- (d) Chamber will conduct a yearly membership drive.
- (e) Chamber shall continue to aggressively promote, market and administer the Village Gold Gift Certificate Program along with developing, marketing and administering other phases of the Village Gold Program.
- (f) Chamber shall continue to develop its web technology as one of the primary methods of marketing the City, its commercial areas and individual businesses, along with serving as a primary communication tool to the residence and general public.

- (g) Chamber will continue to develop a branding image for the organization and its membership to include marketing materials in keeping with the image of the Chamber and the City of Mountain Brook.

**IN WITNESS WHEREOF**, City of Mountain Brook has caused this Agreement to be executed by its duly authorized Mayor and Mountain Brook Chamber of Commerce has caused this Agreement to be executed by its duly authorized corporate officer, on the date or dates beneath their signatures.

**ATTEST:**

**CITY OF MOUNTAIN BROOK**

By \_\_\_\_\_  
Its City Clerk

By \_\_\_\_\_  
Its Mayor

\_\_\_\_\_  
Date of execution

**ATTEST:**

**MOUNTAIN BROOK  
CHAMBER OF COMMERCE**

By \_\_\_\_\_  
Its \_\_\_\_\_

By \_\_\_\_\_  
Its \_\_\_\_\_

\_\_\_\_\_  
Date of execution

**RESOLUTION NO. 2014-128**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that either the Mayor or the City Manager of the City is hereby authorized and directed, for and on behalf of the City, to enter into a contract with the Birmingham Museum of Art subject to such minor changes as may be determined appropriate by the City Attorney, a copy of which contract is attached hereto as Exhibit A.

**ADOPTED:** This 13th day of October 2014.

\_\_\_\_\_  
Council President

**APPROVED:** This 13th day of October 2014.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk of the City of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its meeting held on October 13, 2014, as same appears in the minutes of record of said meeting.

\_\_\_\_\_  
City Clerk

July 23, 2014

Sam Gaston, City Manager  
City of Mountain Brook  
Post Office Box 130009  
Mountain Brook, AL 35213

Dear Sam,

I apologize for the delay in sending you the contract for services and the FY 2013-2014 report. They are both included. Please extend our thanks to Mayor Oden and the Mountain Brook City Council for their continued support. If you should have any questions about the enclosed contract or information, please contact me at 205.297.8071 or [modendahl@artsbma.org](mailto:modendahl@artsbma.org).

Sincerely,



Madeleine Odendahl  
Development Officer for Grants and Proposals

**CONTRACT FOR SERVICES**  
**Fiscal Year 2015**

This contract for services ("Contract") is entered into by and between City of Mountain Brook, an Alabama municipal corporation ("City") and the Birmingham Museum of Art, a non-profit corporation organized under the laws of the State of Alabama ("Contractor").

Whereas, City desires to increase the learning opportunities for students in its school system; and

Whereas, Contractor has developed certain programs, exhibitions and learning laboratories which, in City's opinion, will be helpful and instructive to such students; and

Whereas, such programs, exhibitions and learning laboratories are not available in the Mountain Brook school system; and

Whereas, City has agreed to pay Contractor the sum of thirteen thousand dollars (\$11,500.00) in consideration of Contractor providing City the services referred to in this Contract.

Now, therefore, in consideration of the premises and in consideration of the covenants and agreements contained herein, City and Contractor hereby agree as follows:

1. City shall pay to Contractor the sum of thirteen thousand dollars (\$11,500.00), upon execution of this contract for services for one year from the date of execution.
2. In consideration of the payment of the Contract Funds as provided herein, Contractor shall provide at least the following services to City ("Services"):
  - a. Contractor will continue to provide, free of charge, tours of the permanent collection to all students in the Mountain Brook Education system.
  - b. Teachers of the Mountain Brook school system will be permitted to attend teacher-training seminars and special in-service workshops conducted by Contractor. In addition, teachers will have access without charge to materials in the Contractor's Teacher Resource Center. The Contractor will also make *Culture Cases*, poster sets, and other educational materials available to teachers for curriculum enhancement. Teachers also have the option for interdisciplinary museum tours and studio classes. These offerings focus on the Museum's permanent collection and complement and enhance core curricula of language arts, social studies, science and math. Tours may include hand-on art lessons that tie into these various curricula.

2014-128

- c. Contractor will offer the opportunity for an art-making outreach program onsite at a Mountain Brook City school or Emmet O'Neal Library targeting elementary, middle school and high school students.
  - d. During each year of the term of this Contract, Contractor will make available a series of lectures and other programs relating to the Museum's permanent collection and special exhibitions as a part of the programs conducted by the Emmet O'Neal Library, or other locations, in the City of Mountain Brook.
  - e. The City will have the opportunity to host one "Mountain Brook Night" at the Museum, during the year of its contract for services. Museum rental fee will be waived for the event (overhead charges for security and catering will be the responsibility of the City).
3. Contractor shall provide the personnel, supplies, equipment and expertise necessary to fulfill its obligations under this Contract. Contractor is an independent contractor and none of its agents or employees shall be deemed to be under the control of City nor shall any of the agents, or employees of other persons, firms or corporations conducting business for or on behalf of Contractor be deemed to be agents or employees of City.
4. Contractor shall indemnify and hold harmless the City and its agents, employees and elected officials, from and against all actions, causes of action, claims, demands, damages, losses and expenses of any kind, including but not limited to attorneys' fees and court costs, which may be asserted against, or suffered by, City or its agents and employees arising out of, or in connection with: (a) the performance, or attempted performance, by Contractor or its agents or employees of Contractor's obligations under this Contract; and (b) any claim that the Contract Funds were improperly paid by City to Contractor.
5. Contractor agrees to employ accounting procedures which are appropriate to the types of operations conducted by Contractor and which are customary to similar operations. All financial records and other documents pertaining to this Contract shall be maintained by Contractor for a period of three (3) years after the expiration or termination of this Contract. City shall have full access to, and the right to examine, any of such financial records and other documents at all reasonable times during the term of this Contract and during said three-year period. Contractor agrees that upon request from the City, Contractor will submit to, and cooperate with, periodic audits by the Alabama Department of Public Examiners or other audit procedures requested by the City.
6. If Contractor fails to comply with the provisions of this Contract, such failure shall constitute a default under this Contract and, unless corrected by Contractor within thirty (30) days following receipt of written notice from City of such

default, shall be deemed a breach of this Contract and City shall have a right to terminate this Contract by giving Contractor twelve (12) days prior written notice of such termination, and City shall not be obligated to make any additional payments to Contractor. Such termination of this Contract by City shall not relieve Contractor of any of its obligations or liabilities to City under the provisions of paragraph 4 of this Contract, whether such obligations or liabilities occur or accrue before or after the termination of this Contract.

In witness whereof, the Birmingham Museum of Art has caused this Contract to be executed by its duly authorized Director and City of Mountain Brook has caused this Contract to be executed by its duly authorized Mayor, all as of the \_\_\_ day of \_\_\_\_\_, 2013.

ATTEST:

Maddie Odell  
Secretary

Birmingham Museum of Art

By Paul C. Andrews  
Its Director

ATTEST:

\_\_\_\_\_  
City Clerk

City of Mountain Brook

By \_\_\_\_\_  
Its Mayor

Mountain Brook Statistics - July 1, 2014 – June 30, 2014

Criteria	Date of Program	Adults Benefitted	Students Benefitted
List of tours with attendance for Mountain Brook schools		Total: 42 Adults	Total: 213 Youth
Crestline Early Learning Center	8.1.2013	5	16
St. Francis Xavier School	11.15.13	1	21
Crestline Elementary School	11.22.2013	28	105
Cherokee Bend Elementary	12.13.2013	6	62
McElwain Christian Academy	4.25.14	2	9
List of tours with attendance for any groups based in Mountain Brook Brook Hills Women's Group	3.20.14	Total: 10 Adults	Total: 0 Youth
Number of attendees to teacher training seminars and teacher in-service workshops.		Total: 0 Teachers	
List of classrooms and teachers who used educational materials (culture cases, teacher resource center materials, posters, etc.)		Total: 1 Teacher	Total: 480 Youth
List of Studio Classes for Mountain Brook Schools		Total: 0 Adults	Total: 0 Youth
Any art-making outreach through Emmet O'Neal Library	NO	N/A	N/A
Any lectures or programs related to the collection that occurred in Mountain Brook (i.e. at the library)	NO	N/A	N/A
Number of students/people in the 35213 and 35223 zip codes who attended studio classes		Total: 1 Adults	Total: 1 Youth
Number of students/people in the 35213 and 35223 zip codes who attended art camp (Summer 2014)		N/A	Total: 14 Youth

Mountain Brook Statistics - July 1, 2014 – June 30, 2014

Number of students/people in the 35213 and 35223 zip codes who were involved in the Teen Program		0 Adults	1 Youth
Number of students/people in the 35213 and 35223 zip codes who were involved in the Ambassador Program		0 Adults	0 Youth
Number of students/people in the 35213 and 35223 zip codes who were involved in Student Exhibitions	Youth Art Month Exhibition February-March 2014	N/A	Total: 2 Youth
	MB Total Benefitted FY 2013-2014	54 Adults	711 Youth

**RESOLUTION NO. 2014-129**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that either the Mayor or the City Manager of the City is hereby authorized and directed, for and on behalf of the City, to enter into a contract with the Alabama Symphonic Association subject to such minor changes as may be determined appropriate by the City Attorney, a copy of which contract is attached hereto as Exhibit A.

**ADOPTED:** This 13th day of October 2014.

\_\_\_\_\_  
Council President

**APPROVED:** This 13th day of October 2014.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk of the City of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its meeting held on October 13, 2014, as same appears in the minutes of record of said meeting.

\_\_\_\_\_  
City Clerk

## CONTRACT FOR GENERAL SERVICES

This contract for services ("Contract") is entered into by and between City of Mountain Brook, an Alabama municipal corporation ("City"), and the Alabama Symphonic Association, a nonprofit corporation organized under the laws of the State of Alabama ("Association").

Whereas, City desires to increase the learning opportunities for students in its school system, including music and other arts-related subjects; and

Whereas, City also desires to enrich the cultural life of its residents by providing opportunities for them to participate in musical and other arts-related events, recognizing that exposure to educational and cultural experiences is valuable to the residents of the City of Mountain Brook; and

Whereas, in consideration of the payment referred to hereinafter, the Association has agreed to provide musical programs and to perform services for the students of City's school system and for the residents of the City.

Now therefore, in consideration of the premises and in consideration of the covenants and agreements contained herein, City and Contractor hereby agree as follows:

1. City shall pay to the Association the sum of ten thousand dollars (\$10,000.00) for services for the one-year period from October 1, 2014 through September 30, 2015 ("Contract Funds").
2. In consideration of the payment of the Contract Funds by City, the Association shall provide the following services to the students of City's school system and to the residents of City:
  - a. The Association will perform a concert at a City of Mountain Brook school:
    - Crestline Elementary School before September 30, 2015
  - b. The Association will provide up to 300 tickets for Mountain Brook students to attend an ASO Coffee Concert, Young People's Concert or Explorer Concert during the 2014-15 academic school year.
  - c. The Association will provide Mountain Brook school teachers with access to innovative music education lesson plans associated with the ASO Young People's Concerts.
  - d. The Association will provide lectures, demonstrations, and educational programs for the teachers and students of the Mountain Brook school system on request, schedules permitting.

- e. The Association will provide opportunities for young musicians from the Mountain Brook school system to participate in pre-concert performances and special masterclass offerings, and audition for the Alabama Symphony Youth Orchestra (ASYO).
3. The Association shall deliver to City's Finance Department a detailed report describing the Association's use of the Contract Funds by the earlier of sixty days following the expenditures or November 30, 2015.
4. The Association shall provide the personnel, supplies, equipment and expertise necessary to fulfill its obligations under this Contract. The Association is an independent contractor and none of its agents, or employees shall be deemed to be under the control of City, nor shall any of the agents or employees or other persons, firms or corporations conducting business for, or on behalf of, the Association be deemed to be agents or employees of City.
5. The Association shall indemnify City and its employees and elected officials, and hold them harmless from and against, all actions, causes of action, claims, demands, damages, losses and expenses of any kind, including, but not limited to, attorneys' fees and court costs, which may be asserted against, or suffered by, City or its employees or elected officials arising out of, or in connection with:
  - (a) the performance, or attempted performance, by the Association or its agents or employees of the Association's obligations under this contract; and
  - (b) any claim that the Contract Funds were improperly paid by City to the Association.
6. The Association agrees to employ accounting procedures which are appropriate to the types of operations conducted by the Association and which are customary to similar operations. All financial records and other documents pertaining to this Contract shall be maintained by the Association for a period of three (3) years after the expiration or termination of this Contract. City shall have full access to, and the right to examine, such financial records and other documents at all reasonable times during the term of this Contract and during said three (3) year period. The Association agrees that, upon request from City, the Association will submit to, and cooperate with, periodic audits by the Alabama Department of Public Examiners or other audit procedures requested by City.
7. The Association and the representative of the Association, who executes this Contract, by the execution of this Contract, certify that:
  - a. no part of the Contract Funds paid by City pursuant to this Contract shall be paid to, or used in any way for the personal benefit of, any elected official, employee or representative of any government or any family member of any such official, employee or representative, including federal, state, county and municipal governments and any agency of any such government;

- b. neither the Association nor any of its officers, agents, representatives or employees has in any way colluded, conspired or connived with any elected official, employee, or representative of City, or any other elected official or public employee, in any manner whatsoever, to secure or obtain this Contract; and
- c. except as expressly set out in this scope of services of this Contract, no promise or commitment of any nature whatsoever of any thing of value whatsoever has been made to any such elected official, employee or representative of City as an inducement or consideration for this Contract.

Any violation of this certification shall constitute a breach and default of this Contract which shall be cause for termination. Upon such termination, the Association shall immediately refund to City all amounts paid by City pursuant to this Contract.

In witness whereof, the Alabama Symphonic Association has caused this Contract to be executed by it duly authorized Executive Director on (date)\_\_\_\_\_, and City of Mountain Brook has caused this Contract to be executed by its duly authorized representative, on (date) \_\_\_\_\_, but this contract shall be effective as of (date)\_\_\_\_\_.

ATTEST:

Alabama Symphonic Association

\_\_\_\_\_  
 Susan Barclay  
 Its Government Relations Manager

By: \_\_\_\_\_  
 Curt Long  
 Its Executive Director

ATTEST:

City of Mountain Brook

\_\_\_\_\_  
 City Clerk

By: \_\_\_\_\_  
 Sam S. Gaston  
 Its City Manager

**RESOLUTION NO. 2014-130**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that either the Mayor or the City Manager of the City is hereby authorized and directed, for and on behalf of the City, to enter into a contract with the Birmingham Botanical Society subject to such minor changes as may be determined appropriate by the City Attorney, a copy of which contract is attached hereto as Exhibit A.

**ADOPTED:** This 13th day of October 2014.

\_\_\_\_\_  
Council President

**APPROVED:** This 13th day of October 2014.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk of the City of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its meeting held on October 13, 2014 as same appears in the minutes of record of said meeting.

\_\_\_\_\_  
City Clerk

## Contract for Services Fiscal Year 2015

This contract for services ("Contract") is entered into by and between City of Mt. Brook, an Alabama Municipal corporation ("City"), and the Birmingham Botanical Society, a nonprofit corporation organized under the laws of the State of Alabama ("Association").

Whereas, City desires to increase the learning opportunities for students in its school system including: and

Whereas, Contractor has developed certain programs, exhibits, and learning laboratories which, in the City's opinion, will be helpful and instructive to such students; and

Whereas, such programs, exhibits and learning laboratories are not available in the Mt. Brook school system; and

Whereas, City has agreed to pay contractor the sum of five thousand dollars (\$5,000.00) in consideration of Contractor providing City services referred to in the Contract.

Now, therefore, in consideration of the premises and in consideration of the covenants and agreements contained herein, City and Contractor hereby agree as follows:

1. City shall pay to Contractor the sum of five thousand dollars (\$5,000.00), upon execution of this contract for services for one year from date of execution.
2. In consideration of the payment of the Contract Funds as provided herein, Contractor shall provide at least the following services to City ("Services"):
  - a. Contractor will continue to provide city students with a variety of free science curriculum-based field trips. The trained docents provide activities which are based on Alabama Course of Study: Science.
  - b. Contractor agrees to inform the teachers about the Contractor's field trips and invite their participation.
  - c. Field trips are for students in grades Kindergarten (K) through High School, inclusive.
  - d. The following field trips are available during the following months:

2014-130

Native American Area	September-November March-May
Dr. George Washington Carver	September-November
Garden Gates Workshop (Plant Propagation)	January-February
Tropical Rain Forest	March-May
Alabama Woodlands (Interdependence)	September-November March-May
Secret Life of Trees	September-November March-May
Plants: Inside Out	September-November March-May

- e. Field Trips are available Monday through Friday, inclusive, from 9:30-11:30am. No field trips are offered on federal and state holidays.
  - f. Schools shall select the students that will attend the contractors' field trips. The Contractor shall not be responsible for providing transportation.
  - g. Schools shall contact the contractor at least ten (10) business days in advance of a proposed field trip to schedule a date that shall be reasonably convenient for schools and the contractor.
  - h. The Contractor requires the presence of one (1) adult per ten (10) children for the duration of each field trip.
  - i. The city and the contractor shall each monitor the number of students that attend the contractor's field trips and shall agree to reconcile the number at the end of the contract period.
3. Contractor shall provide the personnel, supplies, equipment, and expertise necessary to fulfill its obligations under this Contract. Contractor is an independent contractor and none of its agents or employees shall be deemed to be under the control of City nor shall any of the agents, or employees or other persons, firms, or corporations conducting business for or on behalf of Contractor be deemed to be agents, or employees of City.
  4. Contractor shall indemnify City and its agents, employees and elected officials harmless, from and against all actions, causes of action, claims, demands, damages, losses and expenses of any kind, including, but not limited to attorneys' fees and court costs which may be asserted against, or suffered by, City or its agents and employees arising out of, or in connection with: (a) the performance, or attempted performance, by

Contractor or its agents or employees of Contractor's obligations under this Contract; and (b) any claim that the Contract Funds were improperly paid by City to Contractor.

5. Contractor agrees to employ accounting procedures which are appropriate to the types of operations conducted by Contractor and which are customary to similar operations. All financial records and other documents pertaining to this Contract shall be maintained by Contractor for a period of three (3) years after the expiration or termination of the Contract. City shall have full access to, and the right to examine, any of such financial records and other documents at all reasonable times during the term of this Contract and during said three-year period. Contractor agree that upon request from City, Contractor will submit to, and cooperate with, periodic audits by Alabama Department of Public Examiners or other audit procedures requested by the city.
6. If Contractor fails to comply with the provisions of the Contract, such failure shall constitute a default under this Contract and, unless corrected by Contractor within thirty (30) days following receipt of written notice from City of such default, shall be deemed a breach of this Contract and City shall have a right to terminate this Contract by giving Contractor ten (10) days prior written notice of such termination, and City shall not be obligated to make any additional payments to Contractor. Such termination of this Contract by City shall not relieve Contractor of any of its obligations or liabilities to City under the provisions of paragraph 4 of this Contract, whether such obligations or liabilities occur or accrue before or after the termination of this Contract.
7. The Association and the representative of the Association who executes this Contract, by the execution of the Contract, certify that:
  - a. no part of the Contract Funds paid by City pursuant to this Contract shall be paid to, or used in any way for personal benefit of, any elected official, employee or representative of any government or any family member of any such official, employee or representative, including federal, state, county and municipal governments and any agency of any such government;
  - b. neither the Association nor any of its officers, agents, representatives or employees has in any way colluded, conspired or connived with any elected official, employee, or representative of City, or any other elected official or public employee, in any manner whatsoever to secure or obtain the Contract; and
  - c. except as expressly set out in this scope of services of this Contract, no promise or commitment of any nature whatsoever of

any thing of value whatsoever has been made to any such elected official, employee or representative of City as an inducement or consideration for this Contract.

Any violation of the certification shall constitute a breach and default of this Contract which shall be cause for termination. Upon such termination, the Association shall immediately refund to City all amounts paid by City pursuant to this Contract.

In witness whereof, the Birmingham Botanical Society has caused this Contract to be executed by it duly authorized Executive Director on 7 October, 2014, and City of Mt. Brook has caused this Contract to be executed by its duly authorized representative, on Oct. 7, 2014, but this Contract shall be effective as of October 1, 2014.

Birmingham Botanical Society, Inc.

By:   
Its Executive Director and CEO

City of Mt. Brook

By: \_\_\_\_\_  
Its Mayor

**RESOLUTION NO. 2014-131**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that either the Mayor or the City Manager of the City is hereby authorized and directed, for and on behalf of the City, to enter into a contract with the Birmingham Children's Theatre subject to such minor changes as may be determined appropriate by the City Attorney, a copy of which contract is attached hereto as Exhibit A.

**ADOPTED:** This 13th day of October 2014.

\_\_\_\_\_  
Council President

**APPROVED:** This 13th day of October 2014.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk of the City of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its meeting held on October 13, 2014, as same appears in the minutes of record of said meeting.

\_\_\_\_\_  
City Clerk



BIRMINGHAM  
CHILDREN'S  
THEATRE

**AGREEMENT**

This Agreement (Agreement) is entered into by the **City of Mountain Brook, Alabama**, a municipal corporation (City) and **Birmingham Children's Theatre (BCT)**, a not-for-profit corporation organized under the laws of the State of Alabama, effective as of the date last signed below by a party.

WHEREAS, BCT offers professional theatre for children in the Greater Birmingham Area and associated educational and instruction services aligned to the Alabama Course of Study used in public schools for children who attend its productions (collectively, the Services);

WHEREAS, the Services provided by BCT provide unique educational and enrichment experiences for children living in any community;

WHEREAS, pursuant to the term, conditions and understandings in this Agreement, the City desires that the BCT provides Services that benefit students who attend elementary schools located in the City of Mountain Brook; and

WHEREAS, BCT's performance of Services for students who attend elementary schools in the City enhances the quality of life therein and serves a public purpose for its citizens.

Witnesseth

In consideration of the mutual covenants herein and other consideration, and other good and valuable consideration, the receipt and sufficiency of which is acknowledges, the City and BCT agree as follows:

1. BCT shall offer the following productions and provide Services in connection therewith for students who attend elementary schools located in the City:

**MainStage productions - A Season of Nostalgia for students in grades 2-8 include:**

<i>Babes in Toyland</i> **	December 2 - 19, 2014	28 performances
<i>Play To Win+</i> (Jackie Robinson Story)	February 3 - 20, 2015	30 performances
<i>Robin Hood*</i>	Apr 8 - Apr 29, 2015	30 performances

Wee Folks Productions - A Season Fit for A King for students in grades preK-1 include:

<i>An Elf Tale</i> *	Nov. 24 - 25; Dec. 1 - 19, 2014	42 performances
<i>The Queen of Hearts and the Terrible Tarts</i> +	Feb. 2-20, 2015 & April 13-24, 2015	60 performances

\* *New commissioned work*

\*\* *Birmingham premiere*

+ *Will also tour with BCT On Tour*

Additional information and commitments by BCT about the Services it will provide are set forth on BCT's Request for Contract for Service that is attached hereto and incorporated by reference herein.

2. As part of BCT's mission to integrate the arts into classroom academics, BCT also will provide, at no additional charge other than set forth herein, an on-site Study Guide Live for one grade level at each Mountain Brook elementary school for a BCT production of their choice.

3. In consideration for BCT providing the Services and performing its other obligations set forth herein, the City will pay BCT five thousand dollars (\$5,000) for its fiscal year October 1, 2014 – September 30, 2015. These funds will be paid to BCT on or before October 31, 2014.

4. Other Terms and Conditions.

- (a) At its expense, BCT shall provide all personnel, supplies, equipment, and expertise necessary to fulfill its obligations under this Agreement.
- (b) BCT is an independent contractor of the City. The City has no right to control the persons, agents or employees of BCT who provide the Services, and none of them are agents or employees of the City.
- (c) BCT shall indemnify and hold harmless City and its agents, employees, and elected officials (collectively the City) from and against all actions, causes, claims, demands, damages, losses and expenses of any kind, including, but not limited to attorneys' fees and court costs which may be asserted against, or suffered by the City arising out of, or in connection with the acts or conduct of BCT, and its agents, employees and representatives, in performing or failing to perform any of their obligations under this Agreement. The indemnification obligations in this provision shall survive the expiration or early termination of this Agreement for a period of three years.
- (d) BCT agrees to utilize commercially reasonable accounting procedures which are customary to similar operations. BCT shall maintain all financial records and other documents pertaining to its performance of obligations under this Agreement for a period of three (3) years after its expiration or termination. Upon advance request by the City, BCT agrees to provide the City full access to, and the right to examine and audit, any of such financial records and other documents at reasonable times during the term of this Agreement or during the three-year period following its expiration or termination.

- (e) If BCT fails to perform or comply with any of its material obligations under this Agreement, any such failure shall constitute a default hereunder unless corrected by BCT within thirty (30) days following its receipt of written notice of such default from the City. Upon the occurrence of any such default, the City shall have a right to terminate this Agreement before its expiration by giving BCT written notice of such termination effective as of the time designated in that notice. Any such termination by City shall not relieve BCT of its obligations or liability to City arising hereunder that relate to or arise from events occurring before the termination or early expiration of this Contract.
- (f) This Agreement contains the complete terms, conditions, understandings, representations and covenants between the City and BCT concerning the matters set forth herein. Unless stated herein, any prior negotiations or understandings concerning these matters are merged herein and of no effect.

In witness whereof, the undersigned, duly authorized representatives of the parties have affixed their signatures with the intent to bind their respective entities to the obligations in this Agreement.

**BIRMINGHAM CHILDREN'S THEATRE**

By: \_\_\_\_\_  
Printed Name: Jack R. Lemmon  
Its: Executive Director  
Date: \_\_\_\_\_

**CITY OF MOUNTAIN BROOK, ALABAMA**

By: \_\_\_\_\_  
Printed Name: Lawrence T. Oden  
Its: Mayor  
Date: \_\_\_\_\_

**BIRMINGHAM CHILDREN'S THEATRE**  
**City of Mountain Brook Request for Contract of Services**

**Name of the Organization:**

Birmingham Children's Theatre

**Mission of the Organization:**

To educate, entertain and enrich the lives of children through the magic of professional theatre.

**Request:**

Birmingham Children's Theatre requests a \$5,000 contract for funds from City of Mountain Brook to provide services that create and increase access to live theatre to Mountain Brook school students, parents and teachers. BCT will also provide on-site Study Guide Live to one grade level of the elementary schools in the city.

**Agency Background:**

Birmingham Children's Theatre (BCT), established in 1947, is one of the nation's oldest and largest professional theatre companies for young audiences. The mission of Birmingham Children's Theatre (BCT) is to educate, entertain and enrich the lives of children through the magic of professional theatre. BCT produces high-quality, professional theatrical entertainment and curriculum-relevant arts education experiences for children and families. BCT reaches upwards of 150,000 young people annually through its performances in Birmingham and on tour throughout Alabama and the Southeast. In its seven decades, BCT has touched the lives of more than 12 million children.

BCT celebrates the connection between literature and theatre and bridges professional theatrical entertainment with relevant curriculum-based education experiences for children. Research has shown that when students have access to arts education they perform better academically, participate more actively in extracurricular activities and are more likely to pursue higher education. BCT is committed to live theatre for young audiences within a professional theatre setting.

BCT is second largest employer of professional theatre artists in Alabama. As the resident professional theatre of the Birmingham-Jefferson Convention Complex (BJCC), BCT operates the 150-seat Dominick Studio Theatre, the intimate 250-seat Wee Folks Theatre for students ages 3-6 and the larger 900-seat MainStage Theatre for students ages 6-up.

For the 2014-2015 season, Birmingham Children's Theatre is producing nine works including two newly commissioned scripts and an Alabama premiere. BCT On Tour will tour four productions to rural Alabama and the Southeastern United States; the Academy will offer workshops and master classes; and we will provide additional community education programming. BCT's Academy of Performing Arts workshops and camps provide individualized instruction and theatre training for students ages 4-16 each year.

BCT's ongoing *New Voices Project* has commissioned more than 50 original scripts, stories, musicals and adaptations for young audiences since 1982. BCT maintains a commitment to discovering new voices among playwrights, and the presentation and experimentation in dramatic literature for youth. It is Alabama's only ongoing new play development project that focuses specifically on theatre for young audiences.

**BIRMINGHAM CHILDREN'S THEATRE**  
**City of Mountain Brook Request for Contract of Services**

**2014-2015 Season Request for Services:**

Birmingham Children's Theatre desires to enter into a contract for services with the City of Mountain Brook thereby increasing opportunities for learning in the Mountain Brook School System. BCT is a community resource that provides the City of Mountain Brook students, parents and teachers access to live theatre within a professional theatre setting. The children benefit from the exposure, immersion and integration of arts education. At BCT, we are "education" wrapped in amazing, inspiring productions that engage your students. The productions that BCT chooses to present are relevant, fresh stories covering a variety of topics and classroom literature suggestions and requirements. Generation after generation of Mountain Brook residents have attended performances – children, parents, grandparents, great grandparents. Yearly, all four of the Mountain Brook elementary schools attend BCT with over 2,000 elementary students attending a BCT performance during the 2013-2014 season. This does not include children attending from Mountain Brook daycares, performances at the Emmett O'Neal library and public performances.

As part of BCT's mission to integrate the arts into classroom academics, BCT will provide an on-site Study Guide Live for one grade level at each Mountain Brook elementary school for a BCT production of their choice. The Study Guide Live Program is a supplement to the Study Guide offered to teachers for each show, but taken to the next level. All BCT Study Guides are tailored for each PreK-8th grade classroom and are carefully designed to include both National Arts Standards and State curriculum standards outlined by the Alabama Course of Study.

Study Guide Live focuses on the merit of language arts, its relevance in everyday life and its usefulness in the career field. It is an interactive program that seeks to educate children through the art of theatre with a focus on communication, imagination and team-work. Prior to attending the BCT production, BCT staff and teachers work together to create an age appropriate and relevant curriculum, based on state standards with focuses on subjects such as history, language arts and theatre craft. Students will participate in theatre games and warm ups, and they will also be introduced to various theatre careers, practices and etiquette. These activities will stimulate lively responses and multi-sensory explorations of concepts in order to use the theatrical event as a vehicle for cross-curriculum and language arts learning. Session will last approximately one hour at a time designated by the teacher and school.

Birmingham Children's Theatre also provides access to Study Guides that empower teachers and parents with customized lesson plans, concrete examples of cross-curriculum learning and specified arts integration techniques, while challenging students of all ages to bridge their arts experiences with current educational standards. These well researched resources will be available for all BCT productions and are sure to become a key in-school component for supporting and sustaining arts education both in and out of the classroom.

BCT instills a love of theatre while imparting important life lessons and addressing issues facing our children. This season, our productions will share messages and principles such as being polite means learning to show respect for other people, that all messes are not mistakes, nothing is ever hopeless and that any problem can be solved with a little bit of thinking. During Black History month, we will present *Play To Win*, the Jackie Robinson story, an iconic figure from American history who showed the power of determination and perseverance in the face of injustice. Also, BCT will produce a nostalgic musical about adventure, hope and the power of family, *Babes in Toyland*, and one of America's favorite stories *The Wizard of Oz*, a journey of a young girl and some unlikely friends who learn the power of friendship and the real meaning of home when meeting a magical cast of characters.

**BIRMINGHAM CHILDREN'S THEATRE**  
**City of Mountain Brook Request for Contract of Services**

**MainStage productions - A Season of Nostalgia for students in grades 2-8 include:**

<i>The Wizard of Oz+</i>	September 30 - October 10, 2014	22 performances
<i>Babes in Toyland **</i>	December 2 - 19, 2014	28 performances
<i>Play To Win+</i> (Jackie Robinson Story)	February 3 - 20, 2015	30 performances
<i>Robin Hood*</i>	April 8 - 29, 2015	30 performances

**Summer Series -productions for families:**

<i>Three Little Kittens</i>	June 3 - 14, 2014	20 performances
<i>Goldilocks and the Three Bears</i>	July 22 - Aug. 2, 2014	20 performances

**Wee Folks Productions - A Season Fit for A King for students in grades preK-1 include:**

<i>Rumpelstiltskin+</i>	Sept. 16 - Oct. 3, 2014	32 performances
<i>An Elf Tale *</i>	Nov. 24 - 25; Dec. 1 - 19, 2014	42 performances
<i>The Queen of Hearts</i> <i>and the Terrible Tarts +</i>	Feb. 2 - 20; April 13 - 24, 2015	60 performances

- \* *New commissioned work*
- \*\* *Birmingham premiere*
- + *Will also tour with BCT On Tour*

**Goals and Objectives**

Birmingham Children's Theatre strives to meet the following goals each and every season: (1) Provide ideas and tools for teachers to utilize in their existing programs along with ways to use theatre arts in other areas of study, such as history, social studies and language arts; (2) To help students gain a better understanding of theatrical arts, which research has shown brings overall improvement in their other educational studies; and (3) ) To introduce theatre arts to students who may never have attended a professional live theatre performance.

**Key Personnel**

Jack R. Lemmon (Executive Director) Jack has worked in the performing arts for over 30 years as an executive director and as a funder. He has led several large ballet companies and served at the National Endowment for the Arts as both Program Administrator and Program Specialist. He has been a panelist for the National Endowment for the Arts and the Michigan Council for Arts & Cultural Affairs. He served on the board of the Partnership for Creative Economies (KY) and chaired the board of the Arts and Cultural Attractions Council in Louisville, KY, and the Chicago Dance Alliance.

Jen Nelson Lane (Director of Production and Education) Jen has spent the past 16 years working in professional theatre, from regional companies to Broadway. Favorite credits include *The Light in the Piazza* and *The Rivals* at Lincoln Center Theatre. She spent 3 seasons as Resident Stage Manager for Cornell University, and 4 seasons as Production Stage Manager for the Alabama Shakespeare Festival. She holds a BA in Theatre from Louisiana Tech University and an MFA in Stage Management from Alabama Shakespeare Festival/University of Alabama.

**BIRMINGHAM CHILDREN'S THEATRE**  
**City of Mountain Brook Request for Contract of Services**

Staff: BCT maintains a full-time administrative and production staff of 15, and will employ over 100 professional theatre artists in 2014-2015 including actors, directors, choreographers, designers, costumers, musicians, technicians and teaching artists

**Need**

Arts education plays an important role in providing Alabama students with a well-rounded education. "The arts provide a vehicle through which to learn almost any subject currently taught in public schools today, but regretfully arts education is one of the first programs to be lost when budgets are limited," said Tommy Bice, State Superintendent of Education, in a statement. "It is imperative that we create a priority for the arts in our total school program for it is through this creative learning experience so many of our students find their 'voice' -- in its broadest sense."

U.S. Secretary of Education Arne Duncan remarks that "arts education can help build the case for the importance of a well-rounded, content-rich curriculum in at least three ways. First, the arts significantly boost student achievement, reduce discipline problems and increase the odds that students will go on to graduate from college. Second, arts education is essential to stimulating the creativity and innovation that will prove critical to young Americans competing in a global economy. And last, but not least, the arts are valuable for their own sake, and they empower students to create and appreciate aesthetic works."

Every season, BCT performs a series of shows for local school children and the general public giving children and families the opportunity to share the total theatre experience. BCT is open to all children, regardless of age, race, religion or nationality. Over 50% of the youth that attend BCT performances are from culturally and financially underserved communities. BCT seeks to expose its youth-centric audiences to new heritages, traditions and art forms by producing works that elevate the public perception of art and continue to reinforce the artistic merit of live theatre for young audiences. Regardless of the need, BCT continues to maintain a policy of ensuring that children can attend a performance and works closely with many schools and families to provide complimentary tickets or subsided tickets to the underserved communities. Through generous contributions from institutional donors and individuals, BCT makes performances available to all students in the Greater Birmingham metropolitan area.

**Project Evaluation**

BCT will evaluate the entire season by collecting standard metrics of participation including numbers of teachers served through the utilization of BCT Study Guides, number of students served through in-school theatre education workshops and overall number of schools, teachers, students and individuals reached by BCT's performances at home and on tour. Beyond these standard attendance measures, BCT's Director of Production and Education will oversee formal and informal evaluation of all education programs and activities. Both written and electronic surveys will be distributed to attendees to collect feedback regarding the quality of work presented, professionalism and instructional techniques displayed by teaching artists and staff and the overall degree to which attendees benefited and felt engaged. Additionally, both anecdotal and formal survey feedback will be sought from home season and tour performance attendees from which all formal evaluation and statistical analysis will occur, and if BCT is meeting its specific objectives by producing a long-term impact on attendees. All evaluations inform BCT staff and board committees in determining future programming.

**RESOLUTION NO. 2014-132**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that either the Mayor or the City Manager of the City is hereby authorized and directed, for and on behalf of the City, to enter into a contract with the Exceptional Foundation, subject to such minor changes as may be determined appropriate by the City Attorney, a copy of which contract is attached hereto as Exhibit A.

**ADOPTED:** This 13th day of October 2014.

\_\_\_\_\_  
Council President

**APPROVED:** This 13th day of October 2014.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk of the City of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its meeting held on October 13, 2014, as same appears in the minutes of record of said meeting.

\_\_\_\_\_  
City Clerk

STATE OF ALABAMA

JEFFERSON COUNTY

### CONTRACT FOR SERVICE

**WHEREAS** this contract entered into this 13th day of October 2014, by and between the **City of Mountain Brook, Alabama**, hereinafter referred to as "City", and **the Exceptional Foundation**, Federal ID #63-1096855, hereinafter referred to as "Contractor":

**WHEREAS**, Contractor is a duly incorporated non-profit corporation, incorporated under the laws of the State of Alabama

**WHEREAS**, Contractor has agreed to accept a General Fund appropriation from City hereinafter designated and to thereafter perform in consideration thereof, the herein described public services and the provisions of this contract:

**NOW, THEREFORE**, in consideration of the above premises and consideration of mutual covenants and agreements contained herein, the parties hereto do hereby agree, covenant and contract as follows:

1. For the fiscal year ending September 30, 2014, City will pay to Contractor the following amount: **\$7,500.**
2. That upon receipt by Contractor of the contract funds contemplated herein, Contractor shall be responsible for providing the personnel, supplies, equipment and expertise necessary to comply with all provisions, stipulations, terms and conditions of this contract.
3. Contractor is an independent contractor and none of its agents, servants or employees shall be deemed to be under control of City nor in any way shall any of its agents, servants or employees or other persons, firms or corporations conducting business for Contractor be deemed to be employees or agents, servants or employees of City.
4. Contractor shall indemnify and save City safe and harmless from any claims made by any person, firm or corporation against City for injury to property or person arising directly or indirectly out of any activity or pursuit of Contractor, which said obligation of indemnity shall include the payment by Contractor to City of any and all attorneys' fees, costs of defense and judgments rendered, if any, in favor of such person, firm or corporation.
5. Contractor shall provide to the City and to the residents of the City the following public services during the applicable fiscal year:

To provide social and recreational activities to individuals with special needs.

6. Contractor shall be responsible for providing its eligible employees medical, dental, life and disability insurance as Contractor shall deem advisable. No agents, servants or employees of Contractor shall be provided nor be eligible for medical, dental, life or disability insurance under any policy or policies offered or provided by or in the name of City or any of its agencies. No employees of Contractor will be carried as an insured on any City insurance policy nor will any Contractor employee be eligible for retirement or other benefits offered by City to City employees.
7. Contractor shall be responsible for all filing and accounting responsibilities for its corporation and its employees, including but not being limited to Social Security, all federal and state tax reporting, unemployment compensation and retirement benefits.
8. Contractor will keep complete records of all sums of money received from City and complete records of all disbursements and purchases from such funds. Contractor will submit upon request, and in no event less than quarterly, itemized statements to the City listing all purchases and expenditures from the contract funds provided by City.

9. Audit of Funds: Contractor agrees to employ accounting procedures which are appropriate to the type of operation conducted and which are customary to similar operations. All records pertaining to this agreement shall be maintained by Contractor for a period of three (3) years after termination of this contract. Contractor agrees to arrange and assume all financial obligations for required audits provided for in grant application or the grant itself, utilizing the normal City Auditing Procedures.

Contractor agrees that upon request from City, Contractor will submit to and cooperate with periodic audits by the City Auditors or other City requested audit procedures.

10. Contractor agrees that it will establish and maintain all accounting records, document all project costs and keep all invoices, checks and financial records separate, will make progress reports as required by the City or other applicable agency or governmental entity and otherwise do all things undertaken by City in connection with any such grant, payment or other contract by which such funds are supplied.
11. Contractor will retain all books, records and other documents relative to this agreement, or any part thereof, for a period of three (3) years after project termination or close out. City or any other parties entitled to such records provided in any separate grant document or contract executed by and between the City and any other supplier of funds which are ultimately paid to or for the use and benefit of Contractor, shall have full access to and right to examine any of said materials at all reasonable times during said period.
12. In the event that Contractor shall in any manner fail to comply with any provisions or requirement of any grant document or contract or provisions of this agreement, such failure will constitute a default and unless corrected by Contractor within thirty (30) days following receipt of written notice from City of such default, shall be deemed a breach of this agreement and City shall have a right to terminate this agreement by giving ten (10) days written notice of such termination.

ATTEST:

\_\_\_\_\_  
Witness

**CITY OF MOUNTAIN BROOK**

By: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Witness

**CONTRACTOR (EXCEPTIONAL FOUNDATION)**

By Tricia Kirk

As Its Executive Director

**RESOLUTION NO. 2014-133**

**WHEREAS**, the Birmingham Zoo (“Zoo”) is a regional educational and entertainment attraction located adjacent to the municipal limits of the City of Mountain Brook (“City”); and

**WHEREAS**, the Zoo serves the Mountain Brook community and its citizens through educational and informational programs, offering educational and family entertainment options, and through its cooperation in the City’s recent flood control efforts; and

**WHEREAS**, the City, as a community partner, supports the mission and purpose of the Zoo, and has provided financial commitments to the Zoo as a result of the Zoo’s commitments and service to the City; and

**WHEREAS**, the City Council of the City of Mountain Brook wishes to extend those financial commitments to the Zoo for an additional year, all as set forth in the attached Agreement.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Mountain Brook that the City’s financial commitments to the Zoo shall be and hereby is extended for an additional year as set forth in the attached Agreement.

**BE IT FURTHER RESOLVED** that the commitments between the parties expressed in the Agreement are deemed to be fair and adequate and serve a public purpose, and the Mayor is hereby authorized to execute the Agreement on behalf of the City.

**ADOPTED:** This 13th day of October 2014.

\_\_\_\_\_  
Council President

**APPROVED:** This 13th day of October 2014.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk for the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its meeting held on October 13, 2014, as same appears in the minutes of record of said meeting.

\_\_\_\_\_  
City Clerk

## AGREEMENT FOR SERVICES

THIS AGREEMENT made this 13th day of October, 2014 by and between the CITY OF MOUNTAIN BROOK, ALABAMA ("Mountain Brook"), a municipal corporation of the State of Alabama, and the BIRMINGHAM ZOO, INC. ("Zoo"), an Alabama non-profit corporation.

WHEREAS, the City desires to increase the learning opportunities for students who attend Mountain Brook City Schools; and

WHEREAS, the Zoo has developed certain programs, exhibits, and learning opportunities which, in the City's opinion, will be helpful and instructive to said students; and

WHEREAS, such programs, exhibits, and learning laboratories are not available at Mountain Brook City Schools; and

WHEREAS, the Zoo has agreed to work cooperatively with and assist the City with future public works projects; and

WHEREAS, the City has agreed to pay the Zoo the sum of Fifty Thousand Dollars (\$50,000.00), in consideration of the Zoo providing the City the services referred to in this Agreement.

NOW, THEREFORE, consideration of the premises and in consideration of the covenants and agreements contained herein, the City and the Zoo hereby agree as follows:

1. The City shall pay to the Zoo Seventy-Five Thousand Dollars (\$50,000.00) in June of 2015.
2. In consideration of the payment of the funds as provided herein, the Zoo shall provide at least the following services to the City ("Services");
  - a. The Zoo will provide guides and educational enrichment for all pre-scheduled field trips to the Zoo from Mountain Brook City Schools for one (1) year from the date of execution of this Agreement. In addition, all participants in pre-scheduled field trips from Mountain Brook City Schools to the Zoo will be eligible to participate in the Zoo's group discount admission program.
  - b. The Zoo will provide to Mountain Brook City Schools a series of educational programming and classes targeting elementary, middle, and high school students free of charge for one (1) year from the date of execution of this Agreement.
  - c. The Zoo will use its best efforts to work cooperatively with the City and provide assistance and support to the City with the City's future public works projects that are located near the Zoo.
3. The Zoo agrees to continue to allow Mountain Brook to store the soil, dirt, earth and other excavated material that was removed as a result of the City's Flood Control Project ("Materials") where the Materials are currently stored. Mountain Brook will remove the Materials on or before September 30, 2015. If Mountain Brook is unable to remove the Materials by said date, the parties agree to negotiate in good faith to extend the time period for storage of the Materials.

4. The Zoo shall provide the personnel, supplies, equipment, and expertise necessary to fulfill its obligations to Mountain Brook City Schools under the terms of this Agreement. The Zoo is an independent contractor and none of its agents or employees shall be deemed to be under the control of the City nor shall any of the agents or employees, or other persons, firms, or corporations conducting business for or on behalf of the Zoo be deemed to be agents or employees of the City.

5. The Zoo shall indemnify the City and its agents, employees, and elected officials and hold them harmless from and against all actions, causes of action, claims, demands, damages, losses and expenses of any kind, including, but not limited to attorneys' fees and court costs, which may be asserted against, or suffered by the City or its agents and employees arising out of, or in connection with: (a) the performance or attempted performance by the Zoo or its agents or employees of the Zoo's obligations under this Agreement; and (b) any claim that the payments described herein were improperly paid by the City to the Zoo.

6. The Zoo agrees to employ accounting procedures which are appropriate to the types of operation conducted by the Zoo and which are customary to similar operations. All financial records and other documents pertaining to this Agreement shall be maintained by the Zoo for a period of three (3) years after the expiration or termination of this Agreement. The City shall have full access to, and the right to examine any of such financial records and other documents at all reasonable times during the term of this Agreement and during said three-year period. The Zoo agrees that upon request from the City, the Zoo will submit to and cooperate with periodic audits by the Alabama Department of Public Examiners or other audit procedures requested by the City.

7. If the Zoo fails to comply with the provisions of this Agreement, such failure shall constitute a default under this Agreement and, unless corrected by the Zoo within thirty (30) days following receipt of written notice for the City of such default, shall be deemed a breach of this Agreement and the City shall have a right to terminate this Agreement by giving The Zoo twelve (12) days prior written notice of such termination, and the City shall not be obligated to make any additional payments to the Zoo. Such termination of this Agreement by the City shall not relieve the Zoo of any of its obligations or liabilities to the City under the provisions of paragraph 4 of this Agreement, whether such obligations or liabilities occur or accrue before or after the termination of this Agreement.

In witness whereof, the Birmingham Zoo, Inc. has caused this Agreement to be executed by its duly authorized Chief Executive Officer and the City of Mountain Brook has caused this Agreement to be executed by its duly authorized Mayor, all as of the \_\_\_ day of October, 2014.

**CITY OF MOUNTAIN BROOK**

**BIRMINGHAM ZOO, INC.**

\_\_\_\_\_  
Lawrence T. Oden  
Mayor, City of Mountain Brook

\_\_\_\_\_  
William R. Foster  
Chief Executive Officer, Birmingham Zoo, Inc.

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

Name/Title: \_\_\_\_\_

Name/Title: \_\_\_\_\_

**RESOLUTION NO. 2014-135**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, as follows:

1. That the Water Works and Sewer Board of the City of Birmingham, Alabama, be requested to install one fire hydrant to service the Grand Bohemian Hotel, at the following location:  

2655 Lane Park Road
2. That Robins & Morton will pay the Water Works and Sewer Board of the City of Birmingham, Alabama, the installation cost.
3. That the Water Works and Sewer Board of the City of Birmingham, Alabama, be authorized to charge additional rental charges for one fire hydrant to service the Grand Bohemian Hotel.
4. That the City Clerk be hereby directed to furnish the Water Works and Sewer Board of the City of Birmingham a certified copy of the resolution.

**ADOPTED:** This 13th day of October, 2014.

\_\_\_\_\_  
Council President

**APPROVED:** This 13th day of October, 2014.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

I, Steve Boone, City Clerk of the City of Mountain Brook, Alabama hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its regular meeting held on October 13, 2014, as same appears in the minutes of record of said meeting.

\_\_\_\_\_  
City Clerk

**RESOLUTION NO. 2014-136**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook ("City"), Alabama, that the City Manager is hereby authorized to offer to eligible City employees continuing health insurance benefits under the following conditions:

1. Eligibility - All currently engaged employees of the City including the Library, and Parks & Recreation departments who:
  - (a) have at least twenty (20) years of employment service with the City and are eligible to draw retirement benefits from the Retirement Systems of Alabama (RSA), or
  - (b) have at least 10 years of employment service with the City, are at least age 60, and are eligible to draw retirement benefits from the RSA, and
  - (c) retire from service during the period of January , 2015 through August 1, 2015, provided that the eligible employee gives written notice at least 31 days prior to their retirement date.
  
2. Insurance Coverage - Each eligible employee electing to retire must be enrolled in the City's group health insurance plan at the time of their retirement effective date and must meet all eligibility requirements established by the State Employees' Insurance Board (SEIB) for such coverage during retirement. Coverage under the City's group medical insurance plan will continue for the lesser period of:
  - (a) thirteen (13) years from the retirement date,
  - (b) until the Retiree becomes eligible for Medicare benefits (whether by age or disability),
  - (c) the date that the City no longer offers medical insurance to retirees, or
  - (d) until the retiree is determined to be no longer eligible for coverage under the City's group medical insurance plan.

The terms of coverage (benefits, cost for coverage, etc.) will be subject to change as the insurance plan changes for active employees under the health plan. Retirees are subject to health appraisals, lifetime aggregate health payment caps/limitations, and all other provisions currently required of all active employees and health plan participants and any that may be imposed in the future for active employees.
  
3. Premium Cost - The amount of a Retiree's premium to be paid by the City of Mountain Brook for individual or family coverage (last established by Resolution No. 2014-110 dated September 8, 2014) is subject to change at the discretion of the City Council. The retiree's share of the premium is to be paid to the City in advance on or before the first day of each month. By retiring under the provisions of this resolution, the retiree understands that coverage under the City's group medical insurance plan is a privilege contingent upon timely payment to the City of the required premium. The City reserves the right to irrevocably cancel any retiree's medical insurance contract should payment not be received by the City as prescribed above.
  
4. Employees electing to retire under the provisions of this resolution (or Resolution No. 02-072) must execute the "City of Mountain Brook Medical Insurance Memorandum of Understanding and Participant Acknowledgement" attached hereto as Exhibit A.

**ADOPTED:** This 13th day of October, 2014.

\_\_\_\_\_  
Council President

2014-136

**APPROVED:** This 13th day of October, 2014.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its meeting held on October 13, 2014, as same appears in the minutes of record of said meeting.

\_\_\_\_\_  
City Clerk

# Memorandum

**To:** Sam Gaston, City Manager  
**CC:** Mayor and members of the City Council  
**From:** Steven Boone *S. Boone*  
**Date:** 10/9/2014  
**Re:** Retirement Window Analysis

**Background**

In 2002, the City adopted a resolution (No. 02-072) which allows retirees to continue their participation in the City's group medical insurance plan provided they have at least 30 years of service with the City (any age) or at least 15 years of services if age 60 or older. Such participation is limited to the earlier date of the retiree's becoming eligible for Medicare benefits (whether by age or disability) or 13 years. At present, the monthly cost of such retiree coverage is as follows:

	City	Retiree	Total
Family	\$1,058	\$444	\$1,502
Single	\$679	\$138	\$817

Generally, annually the City Council considers extending this benefit to other employees with 20 years of service (any age) or 10 years of service if age 60 or older. The last such resolution was adopted October 14, 2013 (2013-147) which opened the retirement window from November 1, 2013 through June 1, 2014. Recently, one employee has expressed interest in retiring provided they can secure access to the City's group medical insurance plan.

The net cost (savings) to the City results from the replacement of the retiring employee ultimately with an entry level employee after considering the various internal promotions. Those retiring are generally receiving the maximum annual longevity compensation whereas their replacements are not eligible for longevity compensation for six (6) years. Longevity compensation starts at 1-1/2% of annual compensation (before applying the annual cap) and increases at the rate of 1/2% annually over the ensuing 20 years before attaining the maximum amount of 8-1/2% of annual compensation (again, before applying the annual cap). Following is an illustration of the annual savings for one police officer with family medical coverage carrying said coverage for the maximum duration of 13 years:

Year	Net Retiree Medical Premium	Longevity/ Benefit (Savings) [G17: \$57,304(8.5%)(70%)]	Net Salary/Benefit (Savings) Step 10-1 (7.65%+9.65%)	Annual (Savings)
1	\$12,108	(\$3,400)	(\$24,000)	(\$15,292)
2	12,108	(3,400)	(\$21,700)	(12,992)
3	12,108	(3,400)	(19,400)	(10,692)
4	12,108	(3,400)	(17,000)	(8,292)
5	12,108	(3,400)	(14,400)	(5,692)
6	12,108	(2,825)	(11,800)	(2,517)

*2014-135*

Year	Net Retiree Medical Premium	Longevity/ Benefit (Savings) [G17: \$57,304(8.5%)(70%)]	Net Salary/Benefit (Savings) Step 10- 1 (7.65%+9.65%)	Annual (Savings)
7	12,108	(2,600)	(9,100)	408
8	12,108	(2,400)	(6,200)	3,508
9	12,108	(2,200)	(3,200)	6,708
10	12,108	(2,000)	(0)	10,108
11	12,108	(1,800)	(0)	10,308
12	12,108	(1,600)	(0)	10,508
13	12,108	(1,400)	(0)	10,708
	\$157,404	(\$33,825)	(\$126,800)	(\$3,221)

Note: The above illustration (a police officer) represents a conservative analysis of the aggregate savings over a 13 year period. The annual savings increases for higher ranking/compensated employees. Additionally, the aggregate savings increases for employees over the age of 52 who elect to retire as their participation in the group medical insurance plan will not last for 13 years.

The above analysis takes into consideration only the annual cost (savings) from the retiring employee and their replacement. Beginning in 2008, the City was required to account for retirees' medical coverage in a manner similar to its accounting for the pension plan (namely a footnote to the annual audited financial statements). The City now "accrues" a portion of the retirees' medical cost over the life of their employment (normal cost) and amortizes the unfunded liability over 30 years. Attached are the Other Post-Employment Benefits (OPEB) balance sheet, income statement, and Note 7 from the 2013 audit report further describing the City's retiree medical insurance program.

In spite of the \$2.3 million unfunded liability for retiree medical cost, in my opinion, the City's policy of allowing its retirees to continue their participation in the City's group medical plan is justified for the following reasons:

1. Employee morale by a) increasing promotional opportunities and b) allowing employees emotionally ready for retirement the opportunity to do so
2. Reduces workers' compensation exposure especially in the more labor intensive positions

**City of Mountain Brook, Alabama**  
**Statement of Fiduciary Net Position**  
**Other Post-Employment Benefits Trust Fund**  
**September 30**

	<u>2013</u>	<u>2012</u>
<b>ASSETS</b>		
Certificates of deposit, at fair value	\$ <u>1,260,448</u>	\$ <u>925,335</u>
<b>TOTAL ASSETS</b>	<u>1,260,448</u>	<u>925,335</u>
<b>LIABILITIES</b>		
Accounts payable and accrued liabilities	<u>0</u>	<u>0</u>
<b>TOTAL LIABILITIES</b>	<u>0</u>	<u>0</u>
<b>NET POSITION HELD IN TRUST FOR OTHER POST-EMPLOYMENT BENEFITS</b>	<u>\$ 1,260,448</u>	<u>\$ 925,335</u>

See accompanying notes to basic financial statements.

**City of Mountain Brook, Alabama**  
**Statement of Changes in Fiduciary Net Position**  
**Other Post-Employment Benefits Trust Fund**  
**Year Ended September 30**

	<u>2013</u>	<u>2012</u>
<b>ADDITIONS</b>		
Contributions		
Employer	\$ 670,923	\$ 654,828
Plan members	128,202	126,308
Investment earnings	<u>15,375</u>	<u>11,762</u>
<b>TOTAL ADDITIONS</b>	814,500	792,898
<b>DEDUCTIONS</b>		
Benefits	479,125	476,136
Administrative expense	<u>262</u>	<u>5,000</u>
<b>TOTAL DEDUCTIONS</b>	<u>479,387</u>	<u>481,136</u>
<b>NET INCREASE</b>	335,113	311,762
Net position held in trust for other post-employment benefits, beginning of year	<u>925,335</u>	<u>613,573</u>
<b>NET POSITION HELD IN TRUST FOR OTHER POST-EMPLOYMENT BENEFITS, END OF YEAR</b>	<u>\$ 1,260,448</u>	<u>\$ 925,335</u>

See accompanying notes to basic financial statements.

City of Mountain Brook, Alabama

Notes to Financial Statements

**E. Additional Information**

Following is additional information obtained from the most recent actuarial valuation:

Valuation date	September 30, 2012
Actuarial cost method	Entry age
Amortization method	Level percent open
Remaining amortization period	30 years
Asset valuation method	5-year smoothed market
Actuarial assumptions:	
Investment rate of return	8.00%
Projected salary increases	3.75 - 7.25%
Includes inflation at	3.00%
Cost-of-living adjustments	None
Number of active members	216
Number of retired members and beneficiaries	93
Annual retirement allowances	\$ 3,438,573

**7. Post-employment benefits**

**Plan Description.** The City of Mountain Brook's medical benefits are provided to employees upon actual retirement through participation in the Local Government Health Insurance Plan (LGHIP) administered by the State Employees' Insurance Board (SEIB).

The employer pays a portion of the medical coverage for the retirees and dependents for a maximum of thirteen years after retirement or, if earlier, until the attainment of Medicare eligibility. Eligibility for post-retirement coverage is as follows: completion of 30 years of service at any age. Periodically, eligibility is extended to employees at 20 years of service and any age or at age 60 and completion of 10 years of service. Complete plan provisions are contained in the official plan documents.

**Contribution Rates.** Employees do not contribute to their post employment benefits costs until they become retirees and begin receiving those benefits. The plan provisions and contribution rates are contained in the official plan documents.

**Fund Policy.** Until 2006, the City of Mountain Brook recognized the cost of providing post-employment medical benefits (the City of Mountain Brook's portion of the retiree medical benefit premiums) as an expense when the benefit premiums were due and thus financed the cost of the post-employment benefits on a pay-as-you-go basis. In 2013 and 2012, the City of Mountain Brook's portion of health care funding cost for retired employees totaled \$350,923 and \$354,828, respectively.

Effective October 1, 2006, the City of Mountain Brook implemented Government Accounting Standards Board Statement Number 45, Accounting and Financial Reporting by Employers for Post employment Benefits Other than Pensions (GASB 45). This amount was applied toward the Net OPEB Benefit Obligation as shown in the following table.

**Annual Required Contribution.** The City of Mountain Brook's Annual Required Contribution (ARC) is an amount actuarially determined in accordance with GASB 45. The ARC is the sum of the Normal Cost plus the contribution to amortize the Unfunded Actuarial Accrued Liability (UAAL). A level dollar, open amortization period of 30 years (the maximum amortization period allowed by GASB 43/45) has been used for the post-employment benefits. The actuarially computed ARC is as follows:

City of Mountain Brook, Alabama

Notes to Financial Statements

	<u>2013</u>	<u>2012</u>
Normal Cost	\$ 106,399	\$ 99,532
30-year UAL amortization amount	<u>144,468</u>	<u>175,452</u>
Annual required contribution (ARC)	<u>\$ 250,867</u>	<u>\$ 274,984</u>

**Net Post-employment Benefit Obligation (Asset).** The table below shows the City of Mountain Brook's Net Other Post-employment Benefit (OPEB) Obligation for fiscal years ending September 30:

	<u>2013</u>	<u>2012</u>
Beginning Net OPEB Obligation (Asset)	\$ (1,035,347)	\$ (667,403)
Annual required contribution	250,867	274,984
Interest on Net OPEB Obligation (Asset)	(41,414)	(26,696)
ARC Adjustment	<u>59,874</u>	<u>38,596</u>
OPEB Cost	269,327	286,884
Contribution	(320,000)	(300,000)
Current year retiree premium	<u>(350,923)</u>	<u>(354,828)</u>
Change in Net OPEB Obligation	<u>(401,596)</u>	<u>(367,944)</u>
Ending Net OPEB Obligation (Asset)	<u>\$ (1,436,943)</u>	<u>\$ (1,035,347)</u>

The following table shows the City of Mountain Brook's annual post employment benefits (PEB) cost, percentage of the cost contributed, and the net unfunded post employment benefits (PEB) liability for last five years:

<u>Post Employment Benefit</u>	<u>Fiscal Year Ended September 30</u>	<u>Annual OPEB Cost</u>	<u>Percentage of Annual Cost Contributed</u>	<u>Net OPEB Obligation (Asset)</u>
Medical/Dental	2013	\$ 269,327	249.11%	\$ (1,436,943)
Medical/Dental	2012	286,884	228.26%	(1,035,347)
Medical/Dental	2011	262,390	214.95%	(667,403)
Medical/Dental	2010	287,773	182.03%	(365,777)
Medical/Dental	2009	241,244	117.00%	(129,706)

**Funded Status and Funding Progress.** In the fiscal year ending September 30, 2013 and 2012, the City of Mountain Brook contributed \$320,000 and \$300,000, respectively, to its post-employment benefits plan over and above the retiree premium costs. The plan with accrued interest and unrealized gains/losses, thus had assets of \$1,260,448 and \$925,335 as of September 30, 2013 and 2012, respectively. Based on the October 1, 2012 actuarial valuation, the most recent valuation, the Actuarial Accrued Liability (AAL) at the end of the year September 30, 2013 was \$3,560,421 which is defined as that portion, as determined by a particular actuarial cost method (the City of Mountain Brook uses the Projected Unit Credit Cost Method), of the actuarial present value of post employment plan benefits and expenses which is not provided by normal cost.

City of Mountain Brook, Alabama

Notes to Financial Statements

	<u>2013</u>	<u>2012</u>
Actuarial Accrued Liability (AAL)	\$ 3,560,421	\$ 3,155,271
Actuarial Value of Plan Assets	<u>1,260,448</u>	<u>925,335</u>
Unfunded Actuarial Accrued Liability (UAAL)	<u>\$ 2,299,973</u>	<u>\$ 2,636,156</u>
Funded Ratio (Actuarial Value of Assets/AAL)	<u>35.40%</u>	<u>29.33%</u>
Covered Payroll (active plan members)	<u>\$13,750,308</u>	<u>\$12,995,796</u>
UAAL as a percentage of covered payroll	<u>16.73%</u>	<u>17.16%</u>

**Actuarial Methods and Assumptions.** Actuarial valuations involve estimates of the value of reported amounts and assumptions about the probability of events far into the future. The actuarial valuation for post employment benefits includes estimates and assumptions regarding (1) turnover rate; (2) retirement rate; (3) health care cost trend rate; (4) mortality rate; (5) discount rate (investment return assumption); and (6) the period to which the costs apply (past, current, or future years of service by employees). Actuarially determined amounts are subject to continual revision as actual results are compared to past expectations and new estimates are made about the future.

The actuarial calculations are based on the types of benefits provided under the terms of the substantive plan (the plan as understood by the City of Mountain Brook and its employee plan members) at the time of the valuation and on the pattern of sharing costs between the City of Mountain Brook and its plan members to that point. The projection of benefits for financial reporting purposes does not explicitly incorporate the potential effects of legal or contractual funding limitations on the pattern of cost sharing between the City of Mountain Brook and plan members in the future. Consistent with the long-term perspective of actuarial calculations, the actuarial methods and assumptions used include techniques that are designed to reduce short-term volatility in actuarial liabilities and the actuarial value of assets.

**Actuarial Cost Method.** The ARC is determined using the Projected Unit Credit Cost Method. The employer portion of the cost for retiree medical care in each future year is determined by projecting the current cost levels using the healthcare cost trend rate and discounting this projected amount to the valuation date using the other described pertinent actuarial assumptions, including the investment return assumption (discount rate), mortality and turnover.

**Actuarial Value of Plan Assets.** Because of the nature of the investments in the trust, we have used actual market value as the actuarial value of assets. It is anticipated that in future valuations, should more volatile investments be used, a smoothed market value consistent with Actuarial Standards Board Actuarial Standards of Practice Number 6 (ASOP 6), as provided in paragraph number 125 of GASB Statement 45 would be used.

**Turnover Rate.** An age-related turnover scale based on actual experience has been used. The rates, when applied to the active employee census, produce a composite average annual turnover of approximately 10%.

**Post-employment Benefit Plan Eligibility Requirements.** It has been assumed that entitlement to benefits will commence three years after the earliest eligibility for retirement. Because of the variations in eligibility described under "Plan Description" above, eligibility for retirement has been assumed to be the earlier of: (1), attainment of age 60 with at least fifteen (15) years of service, and (2), completion of thirty (30) years of service at any age. Entitlement to benefits ceases upon the earlier of thirteen years after retirement and the date the retiree becomes eligible for Medicare benefits (whether by age or disability). Medical benefits are provided to employees upon actual retirement.

**Investment Return Assumption (Discount Rate).** GASB Statement 45 states that the investment return assumption should be the estimated long-term investment yield on the investments that are expected to be used to finance the payment of benefits. Since the ARC is currently being funded and invested with relatively conservative investments, we have performed this valuation using a 4% annual investment return assumption.

**City of Mountain Brook, Alabama**

**Notes to Financial Statements**

**Health Care Cost Trend Rate.** The expected rate of increase in medical cost is based on a graded schedule beginning with 8% annually, down to an ultimate annual rate of 5.0% for ten years out and later.

**Mortality Rate.** The 1994 Group Annuity Reserving (94GAR) table, projected to 2002, based on a fixed blend of 50% of the unloaded male mortality rate and 50% of the unloaded female mortality rates, was used. This is a published mortality table which was designed to be used in determining the value of accrued benefits in defined benefit pension plans. Projected future mortality improvement has not been used since it is our opinion that this table contains sufficiently conservative margin for the population involved in this valuation.

**Method of Determining Value of Benefits.** The "value of benefits" has been assumed to be the portion of the premium after retirement date expected to be paid by the employer for each retiree and has been used as the basis for calculating the actuarial present value of OPEB benefits to be paid. We have used the "unblended" rates provided as required by GASB 45 for valuation purposes.

**Inflation Rate.** Included in both the Investment Return Assumption and the Healthcare Cost Trend rates above is an implicit inflation assumption of 2.50% annually.

**Projected Salary Increases.** This assumption is not applicable since neither the benefit structure nor the valuation methodology involves salary.

**Post-retirement Benefit Increases.** The plan benefit provisions in effect for retirees as of the valuation date have been used and it has been assumed for valuation purposes that there will not be any changes in the future.

Below is a summary of OPEB cost and contributions for the last three fiscal calendar years.

	<u>2011</u>	<u>2012</u>	<u>2013</u>
OPEB Costs	\$ 262,390	\$ 286,884	\$ 269,327
Contributions			
Retiree premium	200,000	300,000	320,000
	<u>364,016</u>	<u>354,828</u>	<u>350,923</u>
Total contribution and premium	<u>564,016</u>	<u>654,828</u>	<u>670,923</u>
Change in net OPEB obligation	<u>\$ (301,626)</u>	<u>\$ (367,944)</u>	<u>\$ (401,596)</u>
Ratio of contributions to cost	<u>76.22%</u>	<u>104.57%</u>	<u>118.81%</u>
Ratio of contributions plus premium to cost	<u>214.95%</u>	<u>228.26%</u>	<u>249.11%</u>

~~8. **Commitments and contingencies**~~

~~The City is charged by the Jefferson County Commission for shared services. The assessments for shared services charged to the City during 2013 and 2012 were as follows:~~

	<u>2013</u>	<u>2012</u>
Property tax commissions	\$ 196,534	\$ 197,347
Maintenance of maps and appraisals	206,473	219,780
Jefferson County Health Department	143,620	112,401
Birmingham-Jefferson County Transit Authority	75,012	76,732
Personnel Board of Jefferson County	171,855	190,594
Birmingham Regional Planning Commission	12,350	12,350

ORDINANCE NO. 1919

AN ORDINANCE TO AMEND THE PILGRIM PLACE DEVELOPMENT  
PLAN PREVIOUSLY APPROVED BY ORDINANCE 1747

---

**BE IT ORDAINED** by the City Council of the City of Mountain Brook, Alabama, as follows:

**1. Development Standards.** The Master Development Plan and the materials submitted by the applicant, as required by Section 129-265 of the Mountain Brook City Code, as approved upon the adoption of Ordinance 1747 dated October 9, 2007 are hereby amended to include the changes as follows:

- a. Widen the entry road (private road) from 40 feet to 60 feet in order to accommodate an entry gate and walls, and a turn-around area for automobiles;
- b. Adjust the lot lines for Lots 3 and 4 in order to widen the entry road "right-of-way;"
- c. Re-plat the drainage easement and landscape easement along the sides of Lots 3 and 4 in order to accommodate the change in right-of-way width and new lot lines for these two lots;
- d. Reorient the lot lines between Lots 1-3 in order to widen the visual appeal of the shared driveway for these three lots (keeping the same number of lots);
- e. Change angle of lot line between Lots 5 and 6;
- f. Change all side yards setbacks for Lots 1-15 from 12.5 feet to 10 feet;
- g. Change the name of the subdivision from "Pilgrim Place" to "Village Place;"
- h. Change the name of the private road to "Village Place."

**2. Description of Affected Property.** The property that is the subject of the rezoning approved by this ordinance is described as follows:

Lots 1 – 15 Pilgrim Place as recorded in Map Volume 227, Page 66, in the office of the Judge of Probate, Jefferson County, Alabama.

Said Parcel contains 6.58 acres more or less.

**3. Repealer.** All ordinances or parts of ordinances heretofore adopted by the City Council of the City of Mountain Brook, Alabama that are inconsistent with the provisions of this ordinance are hereby expressly repealed.

1919

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

5. **Effective Date.** This ordinance shall become effective immediately upon adoption and publication as provided by law.

**ADOPTED:** This 13th day of October, 2014.

\_\_\_\_\_  
Council President

**APPROVED:** This 13th day of October, 2014.

\_\_\_\_\_  
Mayor

#### CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of an ordinance adopted by the City Council of the City of Mountain Brook, Alabama, as its meeting held on October 13, 2014, as same appears in the minutes of record of said meeting, and published by posting copies thereof on October \_\_, 2014, at the following public places, which copies remained posted for five (5) days as required by law.

City Hall, 56 Church Street  
Gilchrist Pharmacy, 2850 Cahaba Road

Overton Park 3020 Overton Road  
The Invitation Place, 3150 Overton Road

\_\_\_\_\_  
City Clerk

# 1922

The following changes are proposed for the Pilgrim Place PUD and are detailed in the attached letter from the applicant:

1. Widen the entry road (private road) from 40 feet to 60 feet in order to accommodate an entry gate and walls, and a turn-around area for automobiles;
2. Adjust the lot lines for Lots 3 and 4 in order to widen the entry road "right-of-way;"
3. Re-plat the drainage easement and landscape easement along the sides of Lots 3 and 4 in order to accommodate the change in right-of-way width and new lot lines for these two lots;
4. Reorient the lot lines between Lots 1-3 in order to widen the visual appeal of the shared driveway for these three lots (keeping the same number of lots);
5. Change angle of lot line between Lots 5 and 6;
6. Change all side yards setbacks for Lots 1-15 from 12.5 feet to 10 feet;
7. Change the name of the subdivision from "Pilgrim Place" to "Village Place;"
8. Change the name of the private road to "Village Place."

## **Landscape Buffer**

The original approval of the PUD required the subsequent development of a landscape plan, to be drafted by the developer's landscape architect and the City Arborist. The requirement also stated that if an agreement could not be reached by these two parties, then the matter of the landscape plan could be taken up at the council level; but not that a PUD amendment would be necessary for the initial drafting of or any changes to the landscape plan. In the seven years since the PUD approval no such landscape plan had been developed and no eradicating of evasive or non-native plants has been executed.

Over the past few months, the new owner/developer has worked with the surrounding residents and the City to formulate a landscape plan which includes how it is to be implemented (stages) and how (and by whom) it is to be maintained in the future. During the development of this landscape plan, the residents circulated and signed a petition that spelled out what they wanted in the landscape plan. This petition is attached, but as indicated in a letter from neighboring resident, Mike Byrne, the revised landscape plan incorporates the concerns addressed in the petition. So, it appears that surrounding neighborhood is satisfied with the attached Dedicated Green Space and Development

Plan Guidelines, which are not a part of the amended PUD plan, but are provided to the council as a matter of record.

Additionally, although this PUD amendment does not propose to change any previously approved requirements or recorded covenants related to the landscape buffer along the south and east of the property, *by way of reference* attachments include:

- Council minutes from October 9, 2007;
- City Attorney memo summarizing buffer improvements as approved by Council;
- Recorded covenants.

**Background**

On September 2, 2014, the Planning Commission approved a resurvey which reflects the changes outlined above (said approval was conditioned upon the approval of the amended development plan by the City Council).

On October 6, 2014, the Planning Commission recommended approval of the amended master development plan for the Pilgrim Place PUD.

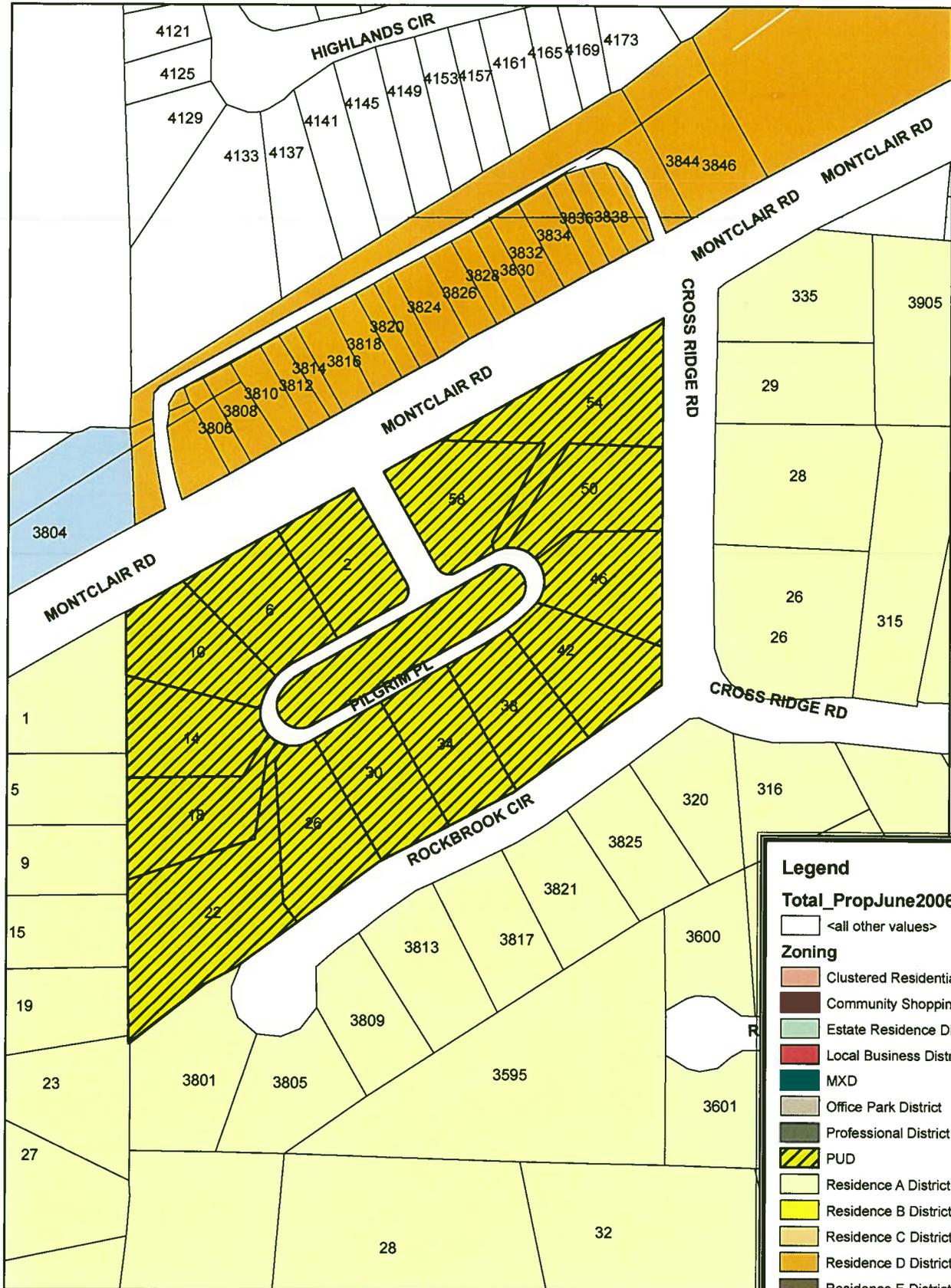
**Project Data:**

NAME: Village Place

CURRENT ZONING: PUD (Planned Unit Development)

OWNER: Wedgeworth Construction Company, Inc.

LOCATION: 1-15 Pilgrim Place



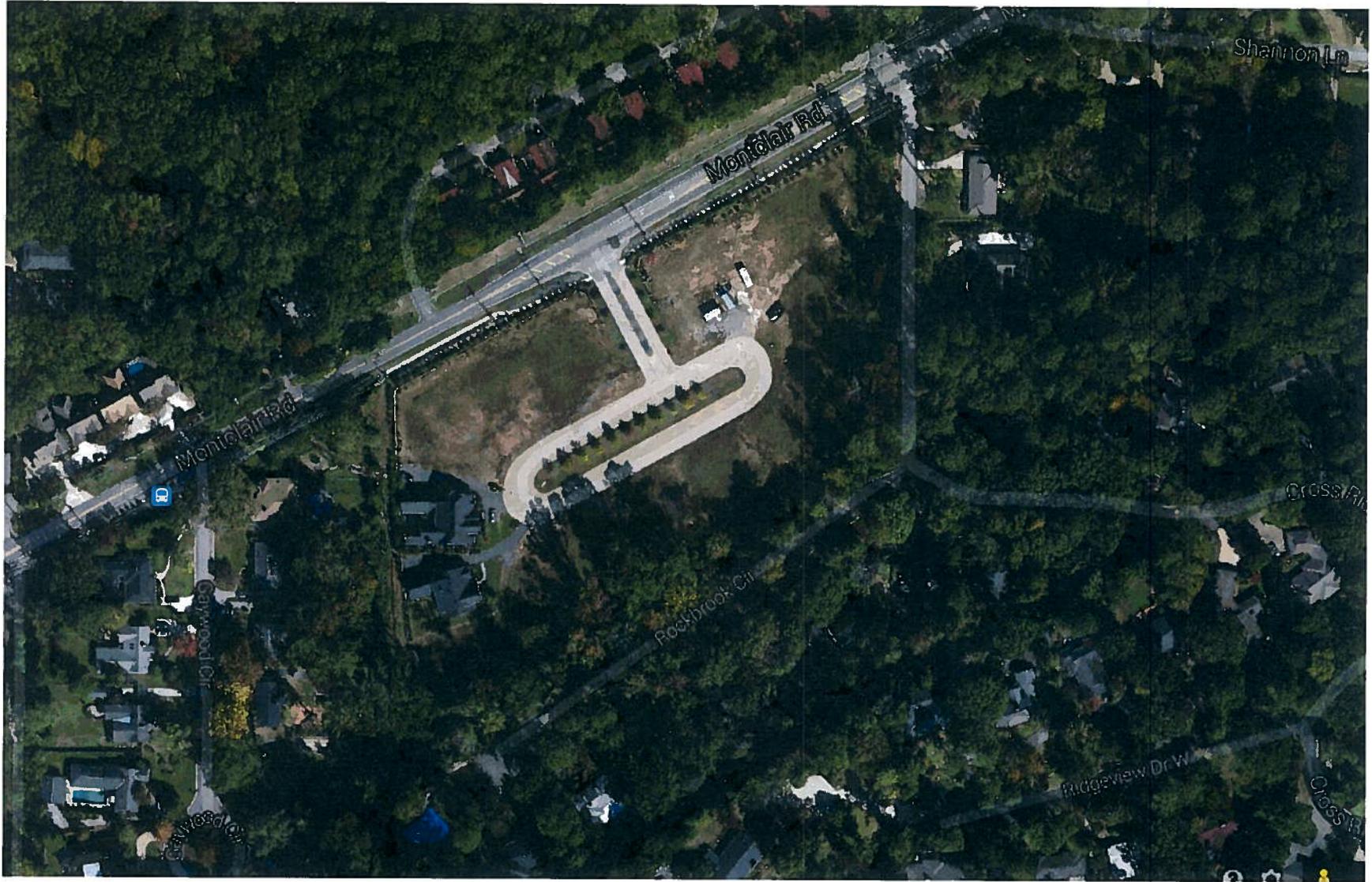
**Legend**

**Total\_PropJune2006**

<all other values>

**Zoning**

- Clustered Residential
- Community Shopping
- Estate Residence District
- Local Business District
- MXD
- Office Park District
- Professional District
- PUD
- Residence A District
- Residence B District
- Residence C District
- Residence D District
- Residence E District
- Residence F District
- Recreation District
- RID
- Rec-2



1922

# Applicant Request

9-2-14

## Summary of Work planned for Pilgrim Place:

My company has acquired the Pilgrim Place Development on Montclair Road from Bruce McClary. We are requesting changes to the plat and record map.

**Owner:** Wedgworth Construction Co., Inc  
4154 Cross haven Drive  
Birmingham, Alabama 35243  
Michael W. Wedgworth, President

### Legal

Lots 1 – 15 Pilgrim Place as recorded in Map Volume 227, Page 66, in the office of the Judge of Probate, Jefferson County, Alabama.

### Survey attached

### Overall size of parcel

6.58 Acres

### Development Schedule

We expect the other to be built out within a 3 year period.

### Artist rendering of buildings

The 2 renderings attached are representative of the styles we will build. They will be consistent with 2 existing homes constructed.

### Planning and zoning items for approval

1. Change Name of subdivision to Village Place. Change street name to Village Place
2. Add gate to entry. This will include providing space to turn around. This requires a 60.0 right of way in lieu of the required 40.0 right of way.
3. Roadway increased from 40.0 feet to 60.0 feet reducing SF of Lots 3 and 4
4. Add 11.0 landscape easement to lots 3 and 4
5. Add 10.0 drainage easement to lots 3 and 4
6. See property lines shown on lots 1, 2 and 3 for new property lines. This will change lot area enabling us to do a better of the planting and acclimation of each home.
7. Move front corner of lot 6 8.0 feet toward lot 5. Rear corner between lots 6 and 5 will remain the same.

**PUD Changes for City Council**

1. Subdivision amenities
  - a. Extend entry wall along each side of lots 3 and 4 with brick to match existing wall.
  - b. Construct a center median
  - c. Redo roadway between gate and Montclair road with asphalt in lieu of pavers to withstand heavy trucks braking downhill. Roadway at entry has not held up well
2. Change all side yard requirements to 10.0 in lieu of 12.5
3. Be sure to note 20.0 water line easement. This is important since it effectively makes the front setbacks 16.5. This increase green areas for front and back yards.
4. Rendering of proposed plan style to be consistent with outer homes.

Page 6 of Restrictive Covenants*(no changes)*

grounds of such Lot which shall tend to decrease the beauty and aesthetics of the Property or the neighborhood as a whole. No Lot Owner shall permit a garage or other type of public or private sale or auction on the Lot Owner's Lot or in the Green Space.

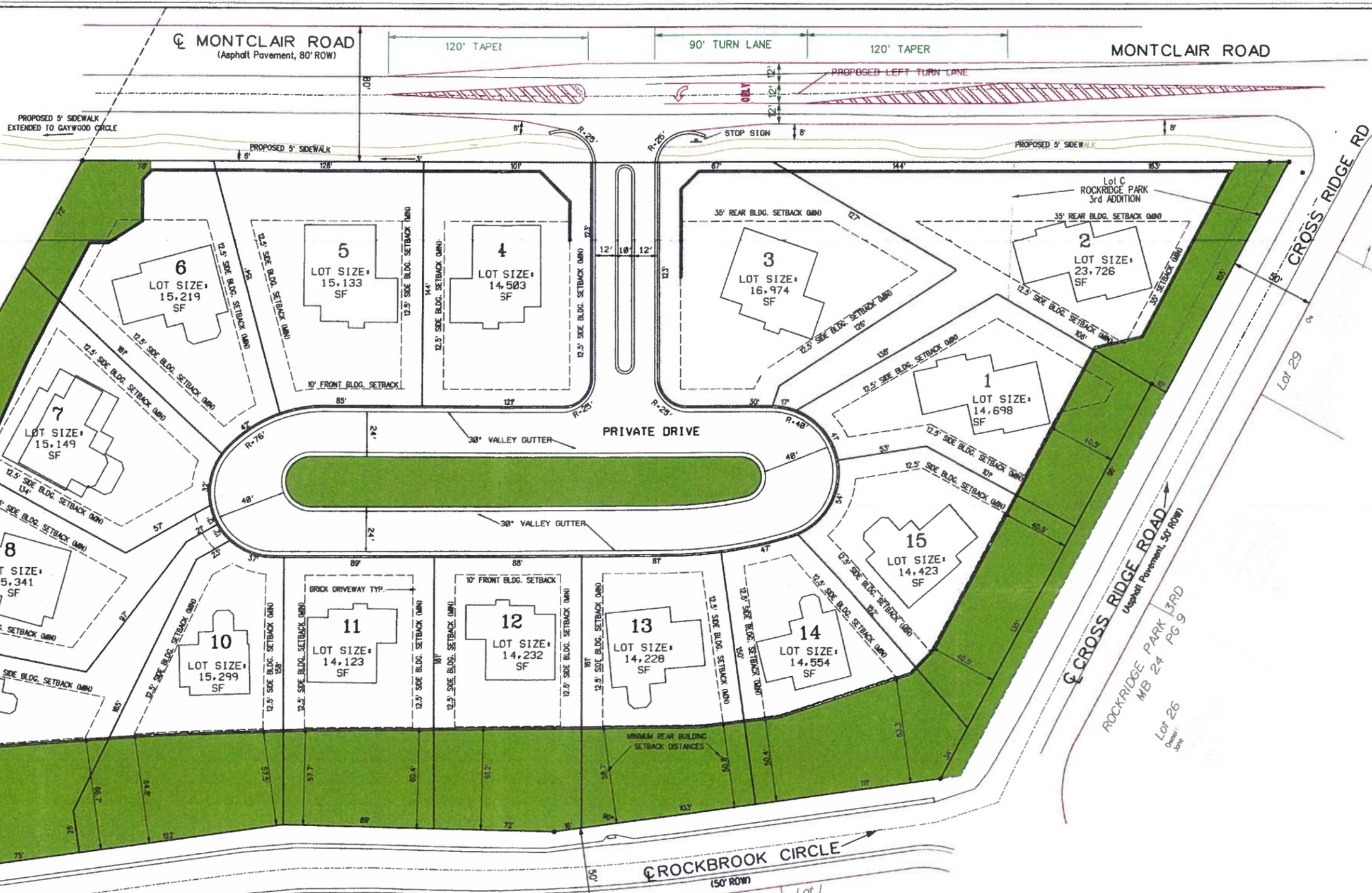
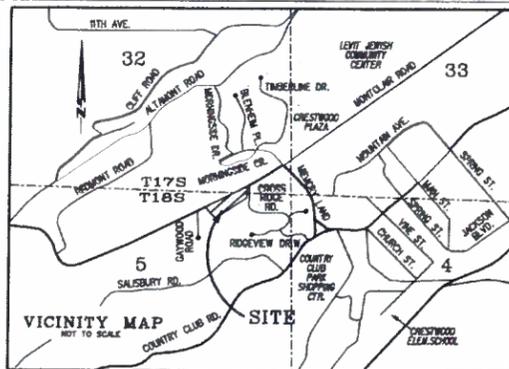
11. **Green Space Areas.** The green space surrounded by the circular private drive (the "Private Drive") and the green space located within the median at the entrance into the Property from Montclair Road, as shown on the Development Plan (the "Green Space Areas") are for the use and enjoyment of all Lot Owners. Developer will plant in the Green Space Areas, and the Association will maintain, the plants, and trees and grass within the Green Space Areas.

12. **Buffer Area.** Except as provided in paragraph 13 of this ARTICLE II, the buffer area (the "Buffer Area") shown on the Development Plan along the east, west and south perimeters of the Property shall be left in its natural condition, including the plants and trees which currently exist within the Buffer Area. The exact placement of the retaining wall along the interior boundary of the Buffer Area shall be determined by the Developer in cooperation and consultation with the City's arborist, in an effort to protect any large trees which are within the Buffer Area and also immediately adjacent to the retaining wall. The Association shall have the authority to prune or remove any diseased, dying or dead trees, or trees which are leaning or are in a condition which poses a risk of falling, within the Buffer Area.

13. **Restrictions Within Green Space Areas and Buffer Area.** No personal property of any Lot Owner shall be placed or stored on the Green Space Areas or the Buffer Area, except that automobiles may park in the spaces adjacent to the Green Space Area within the circular drive, as shown on the Development Plan. No alterations, additions, or improvements of any kind whatsoever shall be made to the Green Space Areas or the Buffer Area except as shown on the Development Plan or as permitted herein. Any Lot Owner who is responsible for any damage, defacement, or destruction to the Green Space Areas or the Buffer Area will be responsible for the repair, clean up, replanting or reconstruction thereof, the cost of which may be expended by the Association and assessed against the Lot Owner as an additional assessment. Provided, within the Buffer Area, Developer will perform selective cutting of any privet, mimosa, ivy, or other such non-native or invasive plants not located within the banks of the creek (which meanders through the Buffer Area) and the replanting of additional shrubs and trees which are native to the area. All such selective cutting and replanting shall be accomplished in accordance with a landscape plan which has been approved by both the City's arborist and the Developer's landscape architect. The said landscape plan shall include the standards by which the Buffer Area shall be maintained. The Buffer Area shall be maintained by and at the expense of the Association in accordance with said plan. If the City's arborist and the Developer's landscape architect cannot agree upon the landscape plan, then the landscape plan shall be submitted to the City Council for its determination and approval at a hearing about which notice has been given as provided in Section 3 of Article VII hereof.

ARTICLE III  
PILGRIM PLACE HOME OWNERS' ASSOCIATION

1. **Establishment.** Operation and administration of the Property shall be performed by Pilgrim Place Home Owners' Association, an unincorporated association (the "Association"). The powers and duties of the Association shall include the following:



**Paragon Engineering**  
A Division of Hatch Mott MacDonald  
Engineer  
2320 Highland Avenue  
Suite 175  
Birmingham, Alabama 35205  
Phone 205-939-1119  
Fax 205-939-1382

**Owner**  
Pilgrim  
Congregational  
Church  
3701 Montclair Road  
Mountain Brook, AL 35213

**Developer**  
Bruce MacClary  
P.O. Box 530502  
Birmingham, AL 35253

Located in the NE 1/4 of Section 5 Township 18 South, Range 2  
West and SE 1/4 of Section 32, Township 17 South, Range 2 West  
Jefferson County, Alabama

- Notes:
1. Total impervious area per lot shall not exceed 40% of lot size.
  2. Houses will not exceed one and a half stories and 35 feet in height.
  3. House footprints shown on this plan represent typical layouts built by the owner. Each home will custom designed to meet individual requirements and the zoning restrictions

**Master Development Plan**  
**Pilgrim Place**  
3701 Montclair Road  
Mountain Brook, Alabama

Parcel ID\*: 23-00-32-4-011-001.000

Current Zoning Classification: R-A  
Proposed Zoning Classification: Residence B, PUD  
Total Area - 6.58 Ac., Total Lots- 15, 2.3 Units/Ac.  
Total Dedicated Green Space - 1.92 Ac.

19261

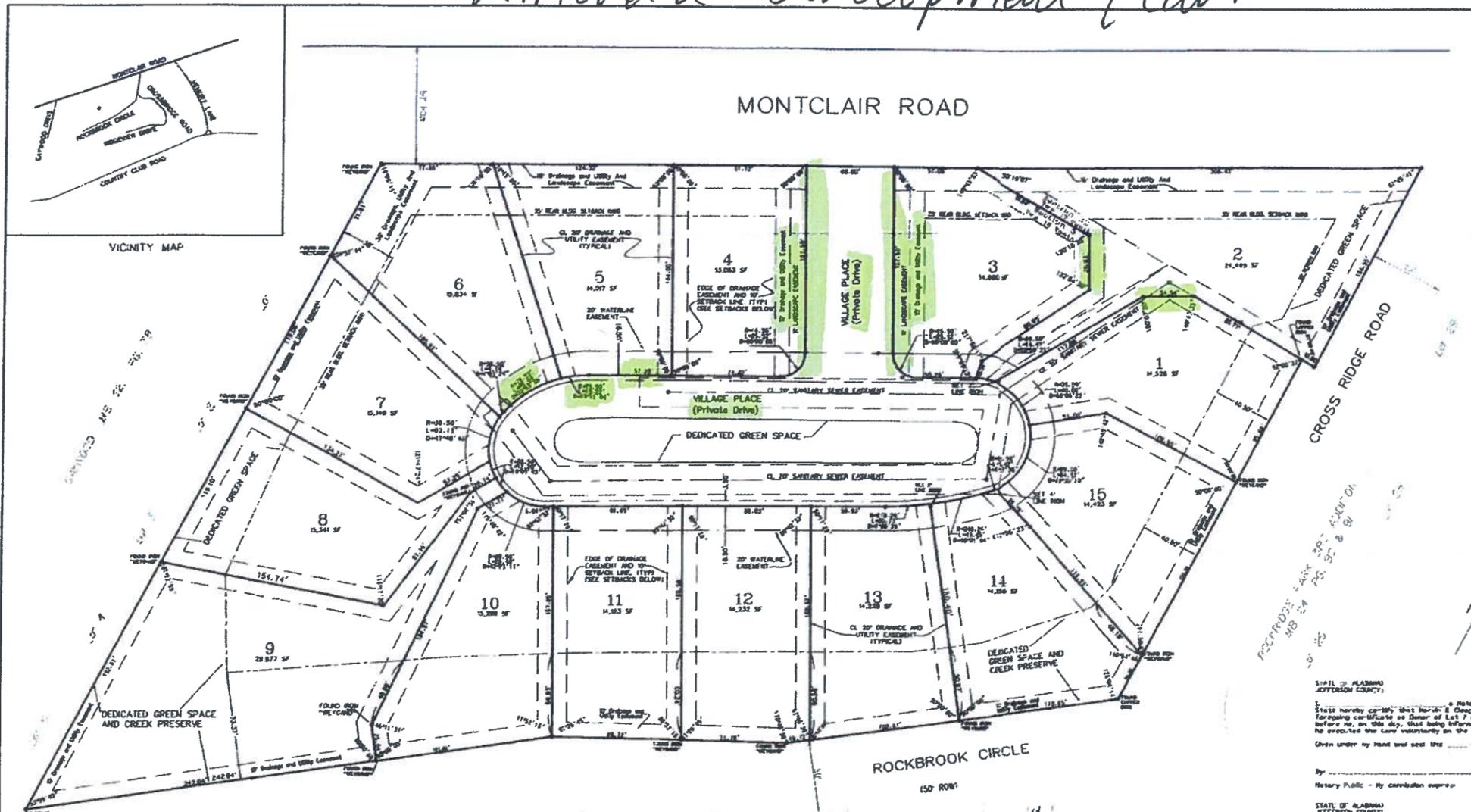
10/9/07 APPROVED PUD PLAN 10

# Amended Development Plan

1923

## VILLAGE PLACE MOUNTAIN BROOK JEFFERSON COUNTY - ALABAMA

NOTES:  
ALL EASEMENTS ON THIS MAP ARE FOR PUBLIC UTILITIES, SANITARY SEWERS, STORM SEWERS, STUMP REMOVAL, PRIVATE TELEVISION CABLE SYSTEMS AND MAY BE USED FOR SUCH PURPOSES TO SERVE PROPERTY BOTH WITHIN AND WITHOUT THIS SUBDIVISION UNLESS OTHERWISE NOTED. NO FOUNDATION STRUCTURE OR OTHER OBSTRUCTION SHALL BE LOCATED WITHIN THE LIMITS OF A DESIGNATED EASEMENT.  
BUILDER IS RESPONSIBLE FOR THE BRACING OF EACH LOT AND IN ALL AREAS EACH BUILDING.  
BUILDER WILL BE RESPONSIBLE FOR ADJUSTING THE LOTS OR TOP ELEVATION FOR ALL BRACKLES AND YARD HEETS ON EACH LOT.  
THE LOT OWNER/BUILDER SHALL USE APPROPRIATE METHODS, WHETHER PILES, UNDERPINNING, BRICKS, GRADING OR OTHER MEANS, TO PROVIDE A BUILDING SITE FREE OF SURFACE OF SUBSURFACE BRACKLES WITHOUT ADVERSELY AFFECTING ADJACENT LOTS.  
THE LOT OWNER/BUILDER SHALL VERIFY THE LOCATION AND ELEVATION OF SANITARY SEWER SERVICE LINE OF EXISTING TANK LOCATION PRIOR TO CONSTRUCTION OF BUILDING FOUNDATIONS.  
ELEVATION OF ALL SANITARY SEWER LATERALS TO EACH LOT SHOULD BE VERIFIED BY BUILDER PRIOR TO SETTING LOWEST FLOOR OF RESIDENCE TO BE SERVICE.  
NO HOUSE SHALL HAVE A FINISHED FLOOR ELEVATION LESS THAN TWO FEET ABOVE TOP OF ANY ADJACENT STORM SEWER WITHOUT ENGINEER'S APPROVAL.  
NO FORCE SHALL IMPURE THE FLOW OF WATER IN ANY BRANCHING WAY.  
VEGETATION SURVEYS, ETC. IS NOT RESPONSIBLE FOR COR. CORRECTIONS AND BEYOND CORRECT SURFACE OR SUBSURFACE INVESTIGATIONS.  
NORTH ARROW SHOWN ON THIS MAP IS NOT TRUE NORTH AND SHOULD ONLY BE CONSIDERED AS APPROXIMATE.  
FOOTING WILL NOT EXCEED ONE AND ONE HALF STORES AND 35 FEET BY (EOM).



STATE OF ALABAMA  
JEFFERSON COUNTY

I, \_\_\_\_\_ a Notary Public in and for said County and State hereby certify that \_\_\_\_\_ whose name is signed to the foregoing certificate as Owner of Lot 1, and who is known to me, acknowledged before me, on this day that, being informed of the contents of the certificate he executed same voluntarily on the day the same bears date.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

By \_\_\_\_\_  
Notary Public - My commission expires \_\_\_\_\_

STATE OF ALABAMA  
JEFFERSON COUNTY

I, \_\_\_\_\_ a Notary Public in and for said County and State hereby certify that \_\_\_\_\_ whose name is signed to the foregoing certificate as Owner of Lot 2, and who is known to me, acknowledged before me, on this day that, being informed of the contents of the certificate he executed same voluntarily on the day the same bears date.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

By \_\_\_\_\_  
Notary Public - My commission expires \_\_\_\_\_

STATE OF ALABAMA  
JEFFERSON COUNTY

I, \_\_\_\_\_ a Notary Public in and for said County and State hereby certify that \_\_\_\_\_ whose name is signed to the foregoing certificate as Owner of Lot 3, and who is known to me, acknowledged before me, on this day that, being informed of the contents of the certificate he executed same voluntarily on the day the same bears date.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

By \_\_\_\_\_  
Notary Public - My commission expires \_\_\_\_\_

STATE OF ALABAMA  
JEFFERSON COUNTY

I, \_\_\_\_\_ a Notary Public in and for said County and State hereby certify that \_\_\_\_\_ whose name is signed to the foregoing certificate as Owner of Lot 4, and who is known to me, acknowledged before me, on this day that, being informed of the contents of the certificate he executed same voluntarily on the day the same bears date.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

By \_\_\_\_\_  
Notary Public - My commission expires \_\_\_\_\_

STATE OF ALABAMA  
JEFFERSON COUNTY

I, \_\_\_\_\_ a Notary Public in and for said County and State hereby certify that \_\_\_\_\_ whose name is signed to the foregoing certificate as Owner of Lot 5, and who is known to me, acknowledged before me, on this day that, being informed of the contents of the certificate he executed same voluntarily on the day the same bears date.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

By \_\_\_\_\_  
Notary Public - My commission expires \_\_\_\_\_

NOTES:  
1. DIMENSIONS SHOWN ARE AS MEASURED UNLESS OTHERWISE SHOWN.  
2. CORNERS NOT LABELED ARE BEYOND ADJACENT SET.  
3. NO DIMENSIONS LOCATED OTHER THAN SHOWN.

**SETBACKS**  
CURRENT ZONING CLASSIFICATION: PUD  
FRONT 10' SETBACK  
REAR VARIES  
SIDE 10' SETBACK

STATE OF ALABAMA  
JEFFERSON COUNTY

The undersigned, Jay Veyrand, Registered Land Surveyor, State of Alabama, and Michael E. Wedgworth, President of Wedgworth Construction Co., Inc. Owner, whose name is signed to this certificate, do hereby certify that this 1982 is a true and correct map of a survey made by Jay Veyrand, Land Surveyor, of the property shown on this map with the dimensions of the lots together with the streets, avenues, alleys and other public ways shown thereon and giving the name and width of each street, avenue and the number and dimensions of each lot and block and showing the relation of the land as partitioned in the map of Village Place, MS 24-2422-04, to the government survey of Section 5, Township 18 South Range 2 West and Section 28, (Range 2 West Range 2 West 1), Jay Veyrand, hereby states that all parts of this survey and drawings have been conducted in accordance with the current requirements of the Standards of Practice for Surveying in the State of Alabama. Said survey also certifies that they are the owner of said land and that the same is not subject to any mortgage.

IN WITNESS WHEREOF, we have hereunto set our hands this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

By \_\_\_\_\_  
Jay Veyrand Reg. L.S. 284473

By \_\_\_\_\_  
Michael E. Wedgworth  
President of Wedgworth Construction Co.  
(Owner)

By \_\_\_\_\_  
Marko J. Palko, P. Eng.  
Title President

By \_\_\_\_\_  
Stephen J. Hamberger  
(Surveyor)

By \_\_\_\_\_  
Crawford B. Palko  
(Surveyor)

By \_\_\_\_\_  
Harvin A. Chapp  
Owner of Lot 7)

By \_\_\_\_\_  
FBO of R.C. Cobb Trust, dated October 23, 1988  
(Owner of Lot 8)

By \_\_\_\_\_  
Stephen C. Eggers  
Owner of Lot 12)

By \_\_\_\_\_  
Paul Hudson Whaley, Jr.  
Owner of Lot 13)

By \_\_\_\_\_  
D. Bruce MacDary  
Owner of Lot 14)

STATE OF ALABAMA  
JEFFERSON COUNTY

I, \_\_\_\_\_ a Notary Public in and for said County and State hereby certify that \_\_\_\_\_ whose name is signed to the foregoing certificate as Owner of Lot 1, and who is known to me, acknowledged before me, on this day that, being informed of the contents of the certificate, he executed same voluntarily on the day the same bears date.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

By \_\_\_\_\_  
Notary Public - My commission expires 7-7-18

STATE OF ALABAMA  
JEFFERSON COUNTY

I, \_\_\_\_\_ a Notary Public in and for said County and State hereby certify that \_\_\_\_\_ whose name is signed to the foregoing certificate as Owner of Lot 2, and who is known to me, acknowledged before me, on this day that, being informed of the contents of the certificate, he executed same voluntarily on the day the same bears date.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

By \_\_\_\_\_  
Notary Public - My commission expires 7-7-18

STATE OF ALABAMA  
JEFFERSON COUNTY

I, \_\_\_\_\_ a Notary Public in and for said County and State hereby certify that \_\_\_\_\_ whose name is signed to the foregoing certificate as Owner of Lot 3, and who is known to me, acknowledged before me, on this day that, being informed of the contents of the certificate, he executed same voluntarily on the day the same bears date.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

By \_\_\_\_\_  
Notary Public - My commission expires \_\_\_\_\_

STATE OF ALABAMA  
JEFFERSON COUNTY

I, \_\_\_\_\_ a Notary Public in and for said County and State hereby certify that \_\_\_\_\_ whose name is signed to the foregoing certificate as Owner of Lot 4, and who is known to me, acknowledged before me, on this day that, being informed of the contents of the certificate, he executed same voluntarily on the day the same bears date.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

By \_\_\_\_\_  
Notary Public - My commission expires \_\_\_\_\_

STATE OF ALABAMA  
JEFFERSON COUNTY

I, \_\_\_\_\_ a Notary Public in and for said County and State hereby certify that \_\_\_\_\_ whose name is signed to the foregoing certificate as Owner of Lot 5, and who is known to me, acknowledged before me, on this day that, being informed of the contents of the certificate, he executed same voluntarily on the day the same bears date.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

By \_\_\_\_\_  
Notary Public - My commission expires \_\_\_\_\_

STATE OF ALABAMA  
JEFFERSON COUNTY

I, \_\_\_\_\_ a Notary Public in and for said County and State hereby certify that \_\_\_\_\_ whose name is signed to the foregoing certificate as Owner of Lot 6, and who is known to me, acknowledged before me, on this day that, being informed of the contents of the certificate, he executed same voluntarily on the day the same bears date.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

By \_\_\_\_\_  
Notary Public - My commission expires \_\_\_\_\_

STATE OF ALABAMA  
JEFFERSON COUNTY

I, \_\_\_\_\_ a Notary Public in and for said County and State hereby certify that \_\_\_\_\_ whose name is signed to the foregoing certificate as Owner of Lot 7, and who is known to me, acknowledged before me, on this day that, being informed of the contents of the certificate, he executed same voluntarily on the day the same bears date.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

By \_\_\_\_\_  
Notary Public - My commission expires \_\_\_\_\_

STATE OF ALABAMA  
JEFFERSON COUNTY

I, \_\_\_\_\_ a Notary Public in and for said County and State hereby certify that \_\_\_\_\_ whose name is signed to the foregoing certificate as Owner of Lot 8, and who is known to me, acknowledged before me, on this day that, being informed of the contents of the certificate, he executed same voluntarily on the day the same bears date.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

By \_\_\_\_\_  
Notary Public - My commission expires \_\_\_\_\_

STATE OF ALABAMA  
JEFFERSON COUNTY

I, \_\_\_\_\_ a Notary Public in and for said County and State hereby certify that \_\_\_\_\_ whose name is signed to the foregoing certificate as Owner of Lot 9, and who is known to me, acknowledged before me, on this day that, being informed of the contents of the certificate, he executed same voluntarily on the day the same bears date.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

By \_\_\_\_\_  
Notary Public - My commission expires \_\_\_\_\_

STATE OF ALABAMA  
JEFFERSON COUNTY

I, \_\_\_\_\_ a Notary Public in and for said County and State hereby certify that \_\_\_\_\_ whose name is signed to the foregoing certificate as Owner of Lot 10, and who is known to me, acknowledged before me, on this day that, being informed of the contents of the certificate, he executed same voluntarily on the day the same bears date.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

By \_\_\_\_\_  
Notary Public - My commission expires \_\_\_\_\_

STATE OF ALABAMA  
JEFFERSON COUNTY

I, \_\_\_\_\_ a Notary Public in and for said County and State hereby certify that \_\_\_\_\_ whose name is signed to the foregoing certificate as Owner of Lot 11, and who is known to me, acknowledged before me, on this day that, being informed of the contents of the certificate, he executed same voluntarily on the day the same bears date.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

By \_\_\_\_\_  
Notary Public - My commission expires \_\_\_\_\_

STATE OF ALABAMA  
JEFFERSON COUNTY

I, \_\_\_\_\_ a Notary Public in and for said County and State hereby certify that \_\_\_\_\_ whose name is signed to the foregoing certificate as Owner of Lot 12, and who is known to me, acknowledged before me, on this day that, being informed of the contents of the certificate, he executed same voluntarily on the day the same bears date.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

By \_\_\_\_\_  
Notary Public - My commission expires \_\_\_\_\_

STATE OF ALABAMA  
JEFFERSON COUNTY

I, \_\_\_\_\_ a Notary Public in and for said County and State hereby certify that \_\_\_\_\_ whose name is signed to the foregoing certificate as Owner of Lot 13, and who is known to me, acknowledged before me, on this day that, being informed of the contents of the certificate, he executed same voluntarily on the day the same bears date.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

By \_\_\_\_\_  
Notary Public - My commission expires \_\_\_\_\_

STATE OF ALABAMA  
JEFFERSON COUNTY

I, \_\_\_\_\_ a Notary Public in and for said County and State hereby certify that \_\_\_\_\_ whose name is signed to the foregoing certificate as Owner of Lot 14, and who is known to me, acknowledged before me, on this day that, being informed of the contents of the certificate, he executed same voluntarily on the day the same bears date.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

By \_\_\_\_\_  
Notary Public - My commission expires \_\_\_\_\_

STATE OF ALABAMA  
JEFFERSON COUNTY

I, \_\_\_\_\_ a Notary Public in and for said County and State hereby certify that \_\_\_\_\_ whose name is signed to the foregoing certificate as Owner of Lot 15, and who is known to me, acknowledged before me, on this day that, being informed of the contents of the certificate, he executed same voluntarily on the day the same bears date.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

By \_\_\_\_\_  
Notary Public - My commission expires \_\_\_\_\_

STATE OF ALABAMA  
JEFFERSON COUNTY

I, \_\_\_\_\_ a Notary Public in and for said County and State hereby certify that \_\_\_\_\_ whose name is signed to the foregoing certificate as Owner of Lot 1, and who is known to me, acknowledged before me, on this day that, being informed of the contents of the certificate, he executed same voluntarily on the day the same bears date.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

By \_\_\_\_\_  
Notary Public - My commission expires \_\_\_\_\_

STATE OF ALABAMA  
JEFFERSON COUNTY

I, \_\_\_\_\_ a Notary Public in and for said County and State hereby certify that \_\_\_\_\_ whose name is signed to the foregoing certificate as Owner of Lot 2, and who is known to me, acknowledged before me, on this day that, being informed of the contents of the certificate, he executed same voluntarily on the day the same bears date.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

By \_\_\_\_\_  
Notary Public - My commission expires \_\_\_\_\_

STATE OF ALABAMA  
JEFFERSON COUNTY

I, \_\_\_\_\_ a Notary Public in and for said County and State hereby certify that \_\_\_\_\_ whose name is signed to the foregoing certificate as Owner of Lot 3, and who is known to me, acknowledged before me, on this day that, being informed of the contents of the certificate, he executed same voluntarily on the day the same bears date.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

By \_\_\_\_\_  
Notary Public - My commission expires \_\_\_\_\_

STATE OF ALABAMA  
JEFFERSON COUNTY

I, \_\_\_\_\_ a Notary Public in and for said County and State hereby certify that \_\_\_\_\_ whose name is signed to the foregoing certificate as Owner of Lot 4, and who is known to me, acknowledged before me, on this day that, being informed of the contents of the certificate, he executed same voluntarily on the day the same bears date.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

By \_\_\_\_\_  
Notary Public - My commission expires \_\_\_\_\_

STATE OF ALABAMA  
JEFFERSON COUNTY

I, \_\_\_\_\_ a Notary Public in and for said County and State hereby certify that \_\_\_\_\_ whose name is signed to the foregoing certificate as Owner of Lot 5, and who is known to me, acknowledged before me, on this day that, being informed of the contents of the certificate, he executed same voluntarily on the day the same bears date.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

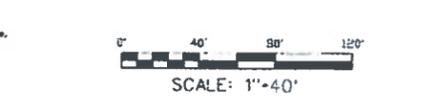
By \_\_\_\_\_  
Notary Public - My commission expires \_\_\_\_\_

APPROVED: \_\_\_\_\_  
Chairman, Mountain Brook Planning Commission

APPROVED: \_\_\_\_\_  
Secretary, Mountain Brook Planning Commission

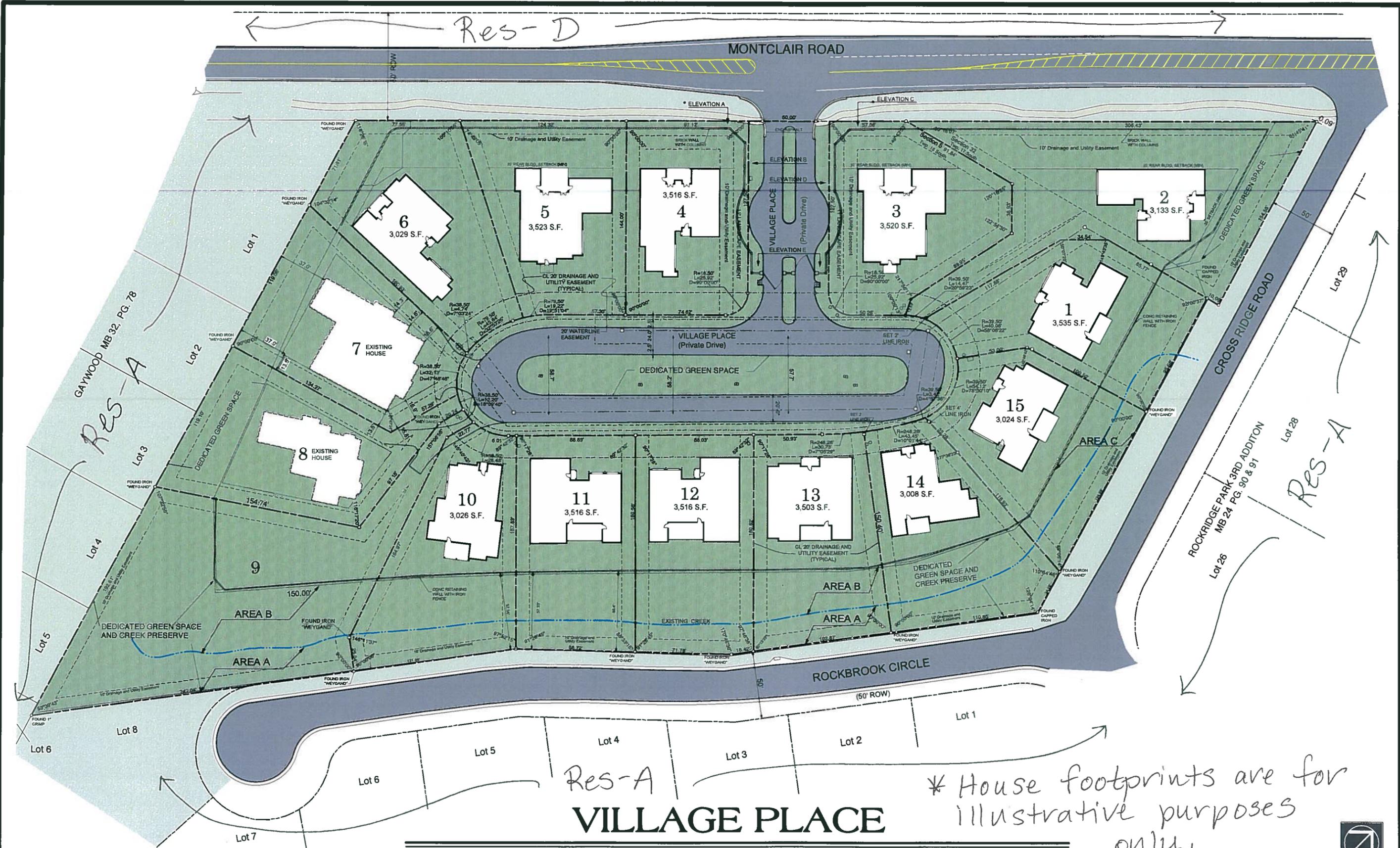
NOTE:  
ENVIRONMENTAL SERVICES DEPARTMENT APPROVAL INDICATES THAT EASEMENTS HAVE BEEN DESIGNATED FOR FUTURE JEFFERSON COUNTY SANITARY SEWERS. HOWEVER, THIS DOES NOT MEAN SANITARY SEWERS HAVE BEEN BUILT OR WILL BE BUILT IN THE FUTURE. ANY CHANGE IN THE RIGHT OF WAY OR EASEMENT BOUNDARIES AFTER THIS DATE MAY VOID THIS APPROVAL.

DIRECTOR OF ENVIRONMENTAL SERVICES



Plat approved by P/C 9/2/14

1972

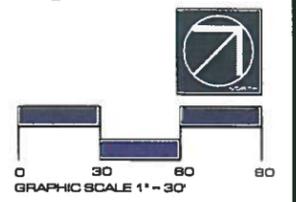


# VILLAGE PLACE

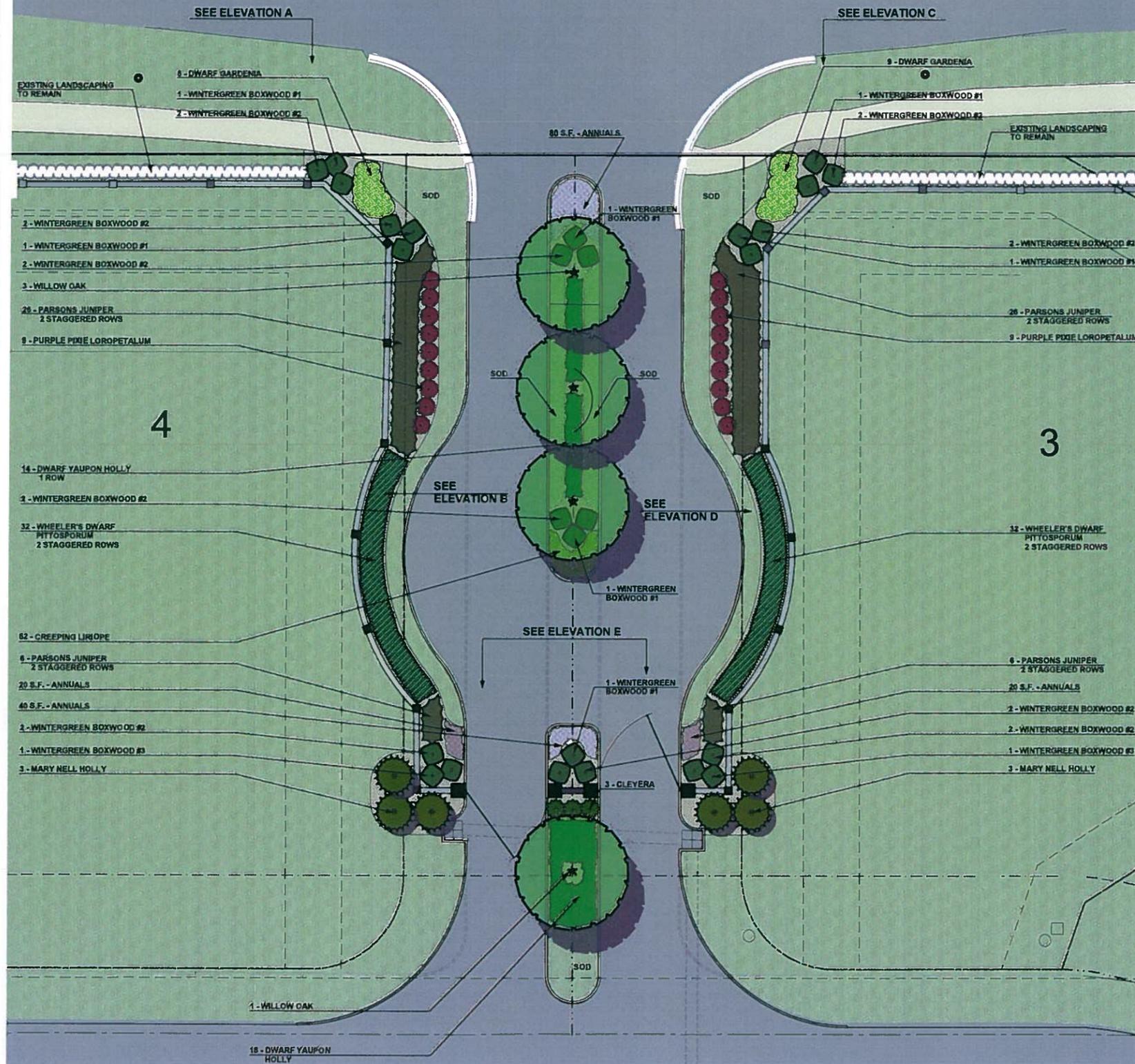
## MASTER RE-DEVELOPMENT PLAN WEDGWORTH CONSTRUCTION

OCTOBER 6, 2014

\* House footprints are for illustrative purposes only.



# MONTCLAIR ROAD



## PLANT MATERIAL SCHEDULE

QTY.	BOTANICAL NAME	COMMON NAME	SIZE	ROOT	REMARKS
4	TREES <i>Quercus phellos</i>	Willow Oak	3"-3 1/2" c.	B&B	Strong Central Leader
7	SHRUBS <i>Buxus microphylla koreana</i> 'Wintergreen' #1	Wintergreen Boxwood #1	24" x 24"	B&B	As Shown
18	<i>Buxus microphylla koreana</i> 'Wintergreen' #2	Wintergreen Boxwood #2	30" x 30"	B&B	As Shown
2	<i>Buxus microphylla koreana</i> 'Wintergreen' #3	Wintergreen Boxwood #3	36" x 36"	B&B	As Shown
3	<i>Cleyera japonica</i>	Cleyera	30"-36" ht.	Cont.	3" O.C.
17	<i>Gardenia jasminoides</i> 'Radicans'	Dwarf Gardenia	15"-18" sp.	Cont.	As Shown
32	<i>Ilex vomitoria</i> 'Nana'	Dwarf Yaupon Holly	15"-18" sp.	Cont.	3" O.C.
6	<i>Ilex</i> x 'Mary Nell'	Mary Nell Holly	7"-8" ht.	Cont.	As Shown
64	<i>Juniperus davurica</i> 'Parsonii'	Parsons Juniper	15"-18" sp.	Cont.	3" O.C.
18	<i>Loropetalum chinensis</i> 'Purple Pixie'	Purple Pixie Loropetalum	12"-15" sp.	Cont.	3" O.C.
64	<i>Pittosporum tobira</i> 'Wheeler's Dwarf'	Wheeler's Dwarf Pittosporum	15"-18" sp.	Cont.	3" O.C.
160 S.F.	GROUNDCOVER Annuals		Flats	Flats	6" O.C.
62	<i>Liriope spicata</i>	Creeping Liriope	2 1/4" pot	Cont.	12" O.C.
As Req'd.	GRASSES <i>Cynodon dactylon</i>	Common Bermuda	Seed		
As Req'd.	<i>Zoysia emerald</i>	Emerald Zoysia	Sod		

## PLANTING NOTES:

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- GRAFFED PLANT MATERIAL IS NOT ACCEPTABLE.
- DUE TO MODIFICATIONS MADE DURING CONSTRUCTION, SITE CONDITIONS MAY VARY FROM THOSE SHOWN. CONTRACTOR TO VERIFY ALL SUCH CONDITIONS TO HIS SATISFACTION. NO CHANGE IN CONTRACT PRICE WILL BE GRANTED FOR FAILURE TO OBSERVE THIS REQUIREMENT.
- THE CONTRACTOR SHALL, FOR HIS OWN PROTECTION, VERIFY THE PRESENCE AND LOCATION OF ALL UTILITIES PRIOR TO COMMENCING ANY CONSTRUCTION.
- FLAG ALL TREE LOCATIONS AND PAINT ALL BEDLINES FOR LANDSCAPE ARCHITECT'S ON-SITE REVIEW AND APPROVAL PRIOR TO BEGINNING PLANTING OPERATIONS.
- ALL PLANTED AREAS SHALL RECEIVE SHREDDED PINE BARK MULCH TO A DEPTH OF 3" AFTER SETTLEMENT.
- PLANTED SLOPES GREATER THAN 3:1 TO RECEIVE PINE STRAW MULCH TO 3" DEPTH AFTER SETTLEMENT.
- ALL SHRUB AREAS SHALL RECEIVE TOPSOIL TO A MINIMUM DEPTH OF 8". ALL SODDED AREAS SHALL RECEIVE TOPSOIL TO A MINIMUM DEPTH OF 4", UNLESS DIRECTED OTHERWISE.
- FERTILIZATION SCHEDULE: AMEND PLANTING MIX OF EACH PLANT WITH FERTILIZER AS FOLLOWS:  

PLANTING	AMOUNT PER PLANT	TYPE
#1 POT	1/4 CUP	6-12-12 OR 5-10-10
#2 POT	1/2 CUP	6-12-12 OR 5-10-10
#3 POT	3/4 CUP	6-12-12 OR 5-10-10
FLOWERING/ SHADE TREE	1 CUP PER 1/2" CAL.	6-12-12 OR 5-10-10
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- NO PLANT MATERIAL WILL BE SET WITH ROOT CROWN LOWER THAN SURROUNDING GRADE. SET TREES WITH ROOT CROWN 2" TO 4" ABOVE SURROUNDING GRADE; SET SHRUBS WITH ROOT CROWN 1"-2" ABOVE SURROUND GRADE.
- DE-WEED ALL EXISTING BED AREAS TO REMAIN ALONG MONTCLAIR ROAD AND ADD SHREDDED MULCH AS REQUIRED.
- BACKFILL NEW ISLAND AREAS WITH TOPSOIL. MOUND TOPSOIL TO A HT. OF 1/12" FT. (MEASURED FROM CENTER OF ISLAND TO BACK OF CURB). ADD TOPSOIL AS REQUIRED TO ALL EXISTING ISLAND AREAS TO REMAIN TO CREATE A MOUND OF MATCHING HEIGHT.



HNP  
landscape architecture  
1814 28th Avenue South  
Birmingham, Alabama 35206  
Phone: 205.870.8838  
Fax: 205.871.8874

VILLAGE PLACE RENOVATION  
WEDGWORTH CONSTRUCTION  
BIRMINGHAM, AL



REVISIONS:
ISSUED: OCTOBER 6, 2014
SHEET TITLE: PLANTING PLAN
DRAWN: CMP CHECKED: TRH SHEET L-6
SEQUENCE: 5 OF 6 PROJECT No: C14638

1988

13



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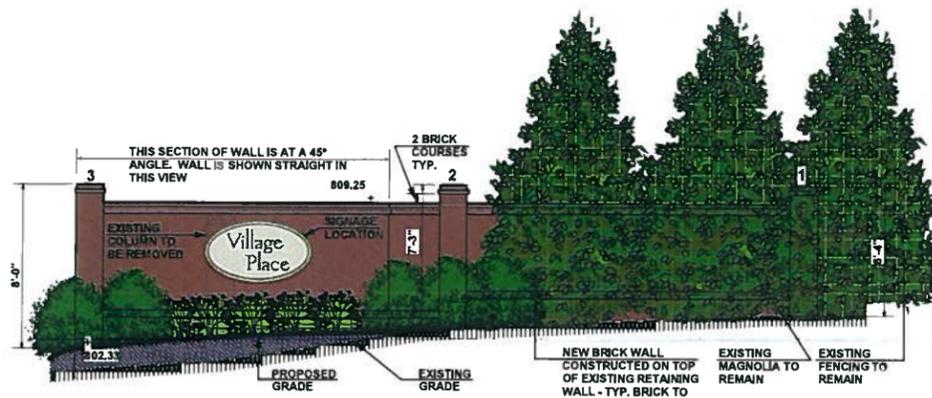
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2261

VILLAGE PLACE RENOVATION  
WEDGWORTH CONSTRUCTION  
BIRMINGHAM, AL

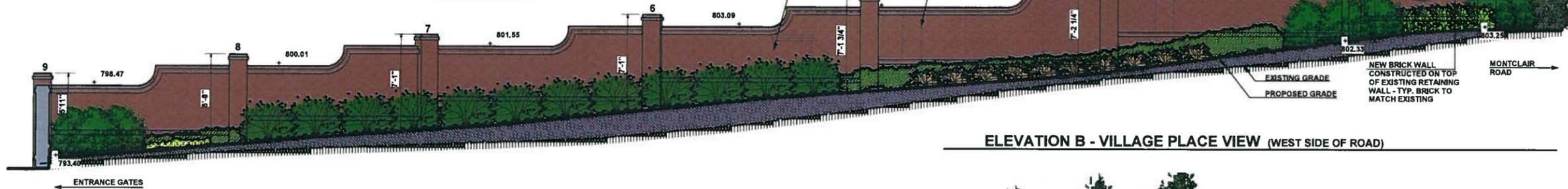


REVISIONS:
ISSUED: OCTOBER 6, 2014
SHEET TITLE: WALL ELEVATIONS
DRAWN: CMP CHECKED: TRH
SHEET <b>L-3</b>
SEQUENCE: 3 OF 5
PROJECT No: 014938

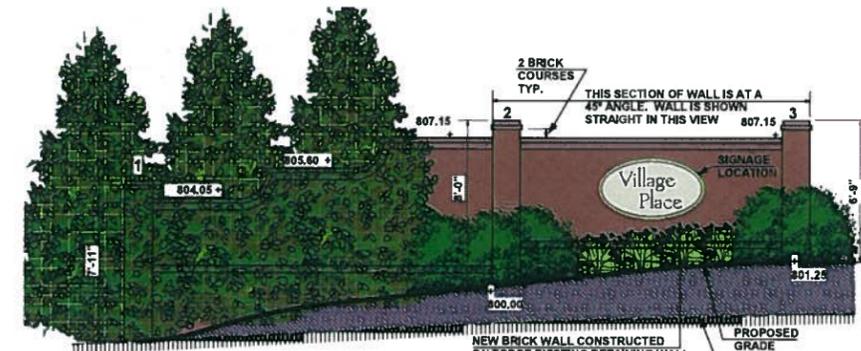
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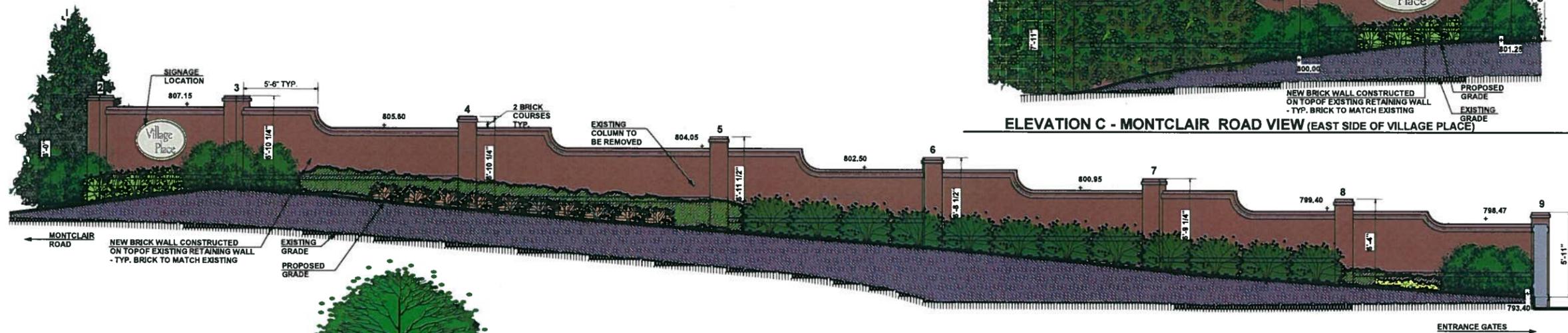
ELEVATION A - MONTCLAIR ROAD VIEW (WEST SIDE OF VILLAGE PLACE)



ELEVATION B - VILLAGE PLACE VIEW (WEST SIDE OF ROAD)



ELEVATION C - MONTCLAIR ROAD VIEW (EAST SIDE OF VILLAGE PLACE)



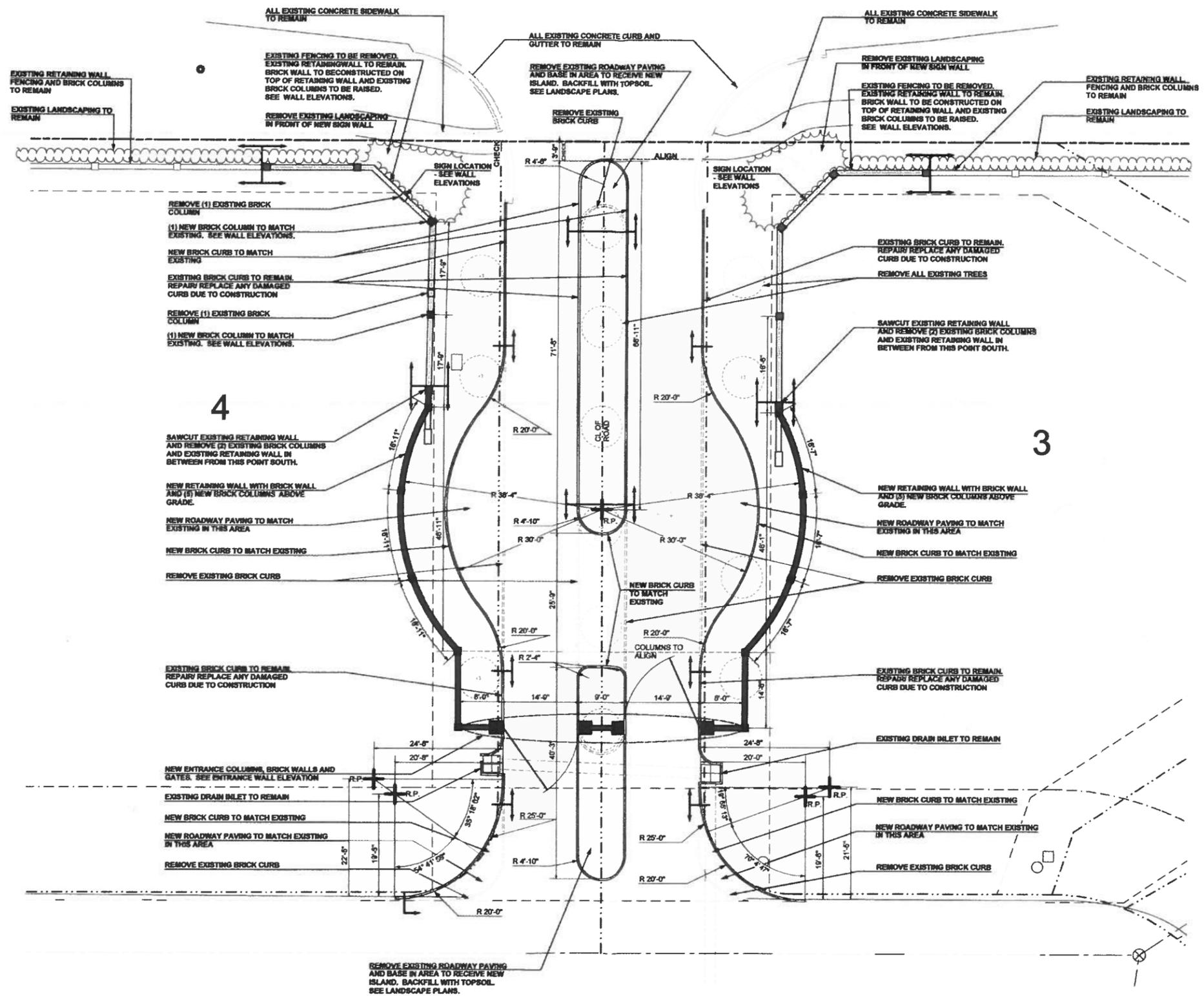
ELEVATION D - VILLAGE PLACE VIEW (EAST SIDE OF ROAD)



ELEVATION E - ENTRANCE GATES (BOTTOM OF ENTRANCE ROAD)



# MONTCLAIR ROAD



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PH: 205.970.8836  
FX: 205.971.8874

**PILGRIM PLACE RENOVATION**

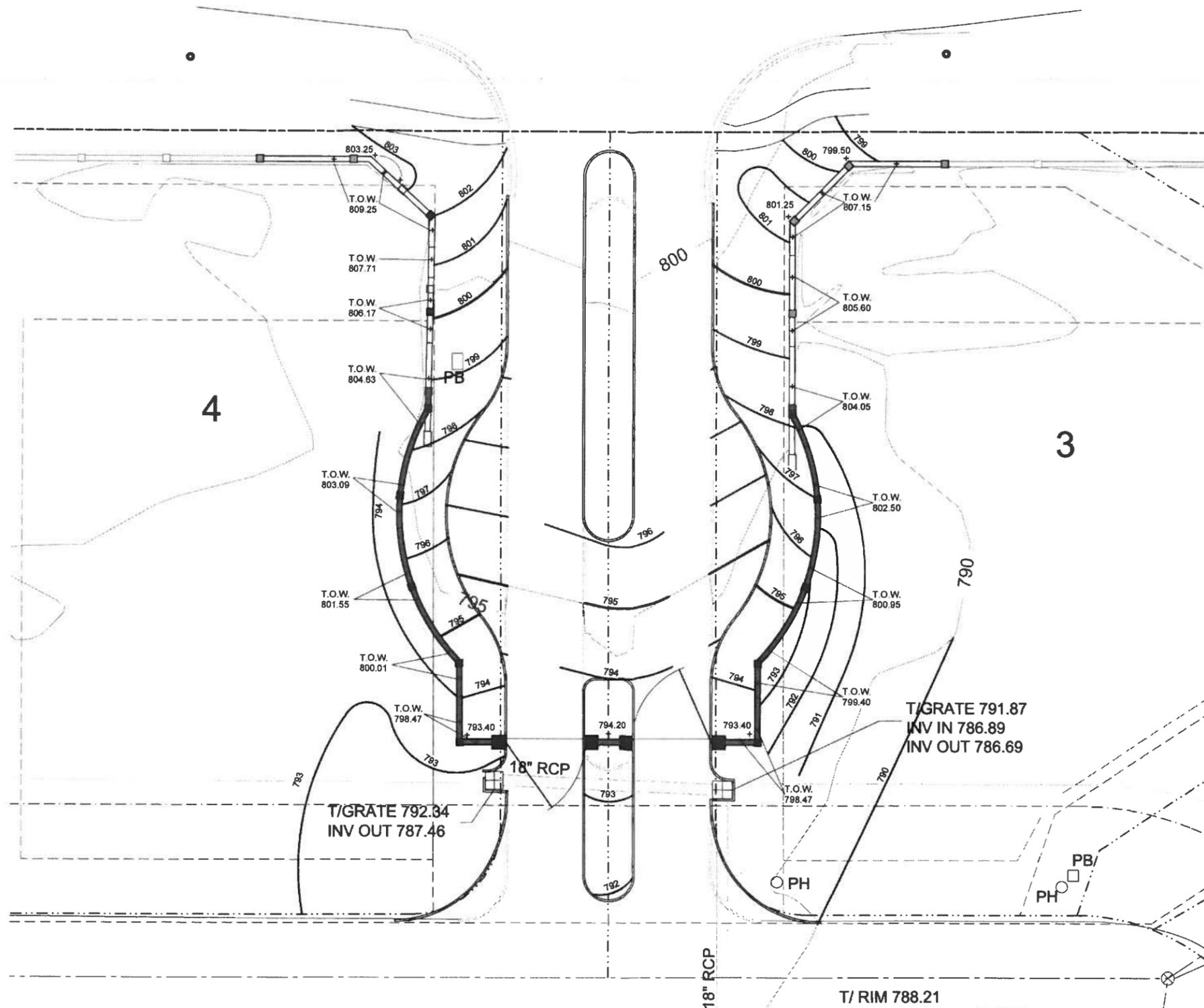
**WEDGWORTH CONSTRUCTION**  
BIRMINGHAM, AL



ISSUED:	JULY 01, 2014
SHEET TITLE:	MATERIAL AND DIMENSIONAL LAYOUT PLAN
DRAWN: CAP	CHECKED: TRH
SHEET:	L-1
SEQUENCE:	1 OF 5
PROJECT No:	C1406

1922

# MONTCLAIR ROAD



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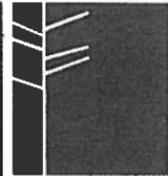
**PILGRIM PLACE RENOVATION**  
**WEDGWORTH CONSTRUCTION**  
 BIRMINGHAM, AL



REVISIONS:
ISSUED: JULY 01, 2014
SHEET TITLE: <b>GRADING PLAN</b>
DRAWN: CMP CHECKED: TRH SHEET <b>L-2</b>
SEQUENCE: 2 OF 5 PROJECT No: C14036

1922

14



**HNP**  
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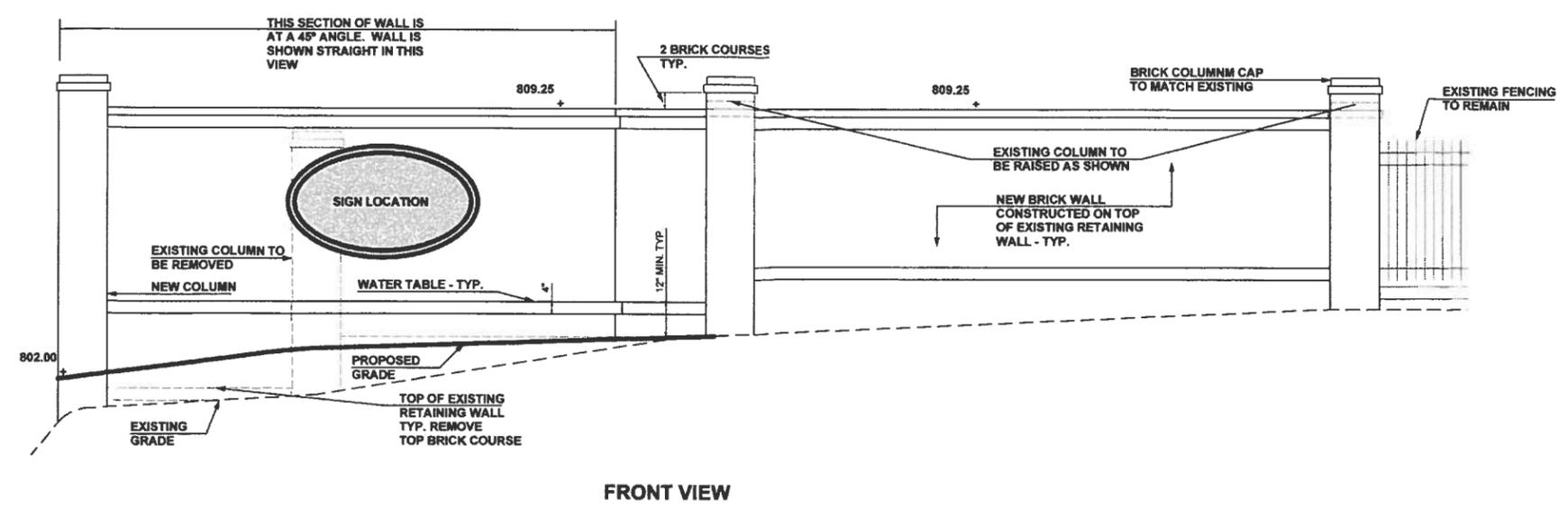
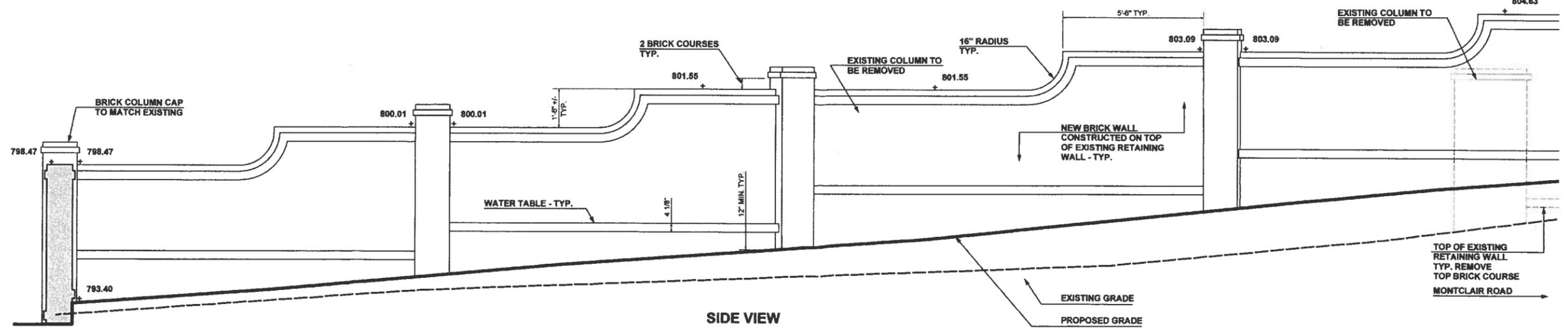
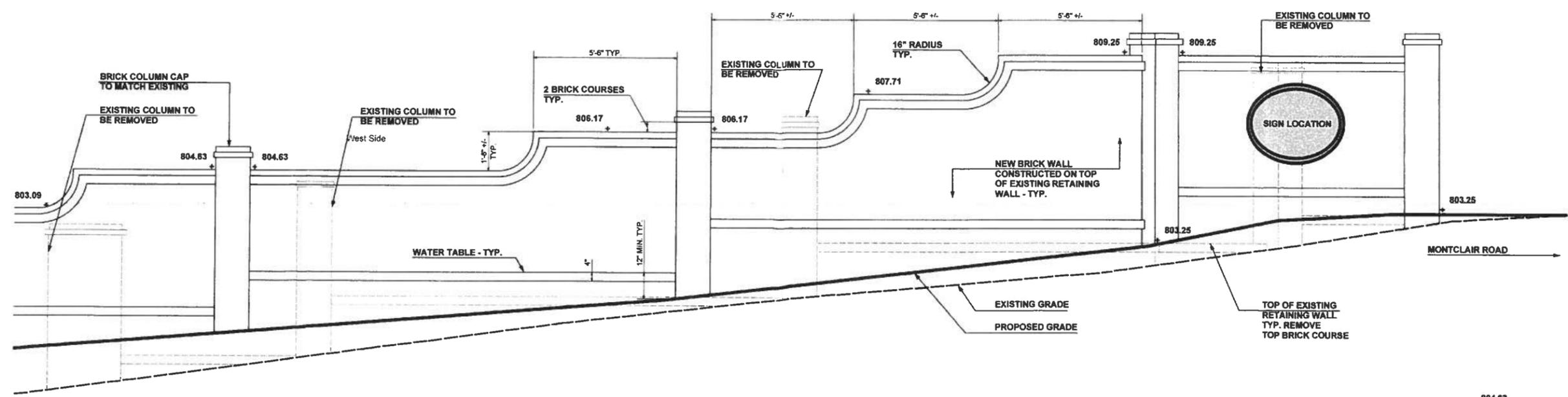
**PILGRIM PLACE RENOVATION**  
WEDGWORTH CONSTRUCTION  
BIRMINGHAM, AL

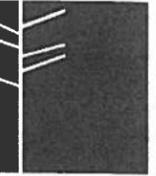


REVISIONS:
ISSUED: JULY 01, 2014
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DRAWN: CMP CHECKED: TRH SHEET
<b>L-3</b>
SEQUENCE: 3 OF 5 PROJECT No C14036

1922

17





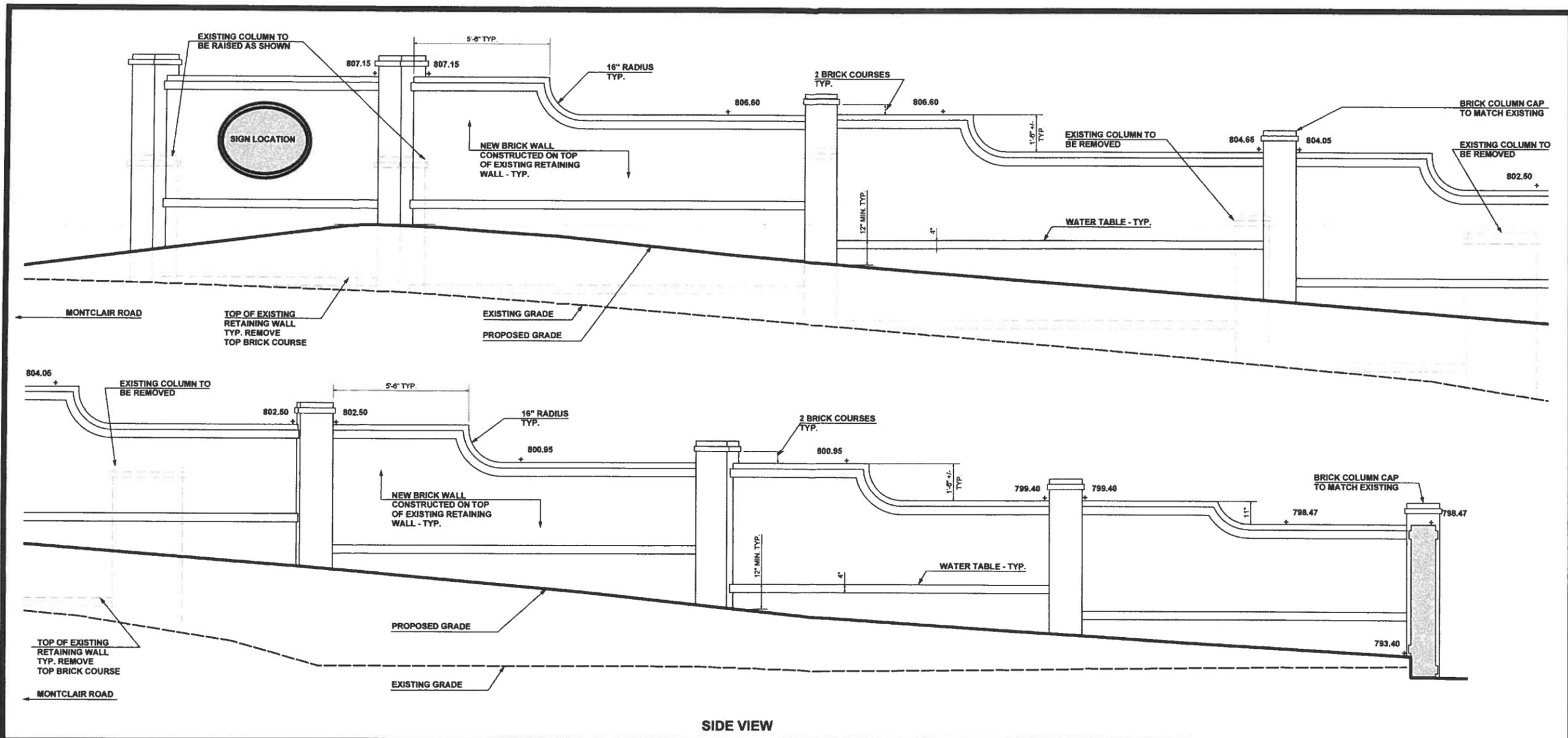
**HNP**  
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1914 28th Avenue South  
Birmingham, Alabama 35209  
Phone 205.873.9939  
Fax 205.871.8974

**PILGRIM PLACE RENOVATION**  
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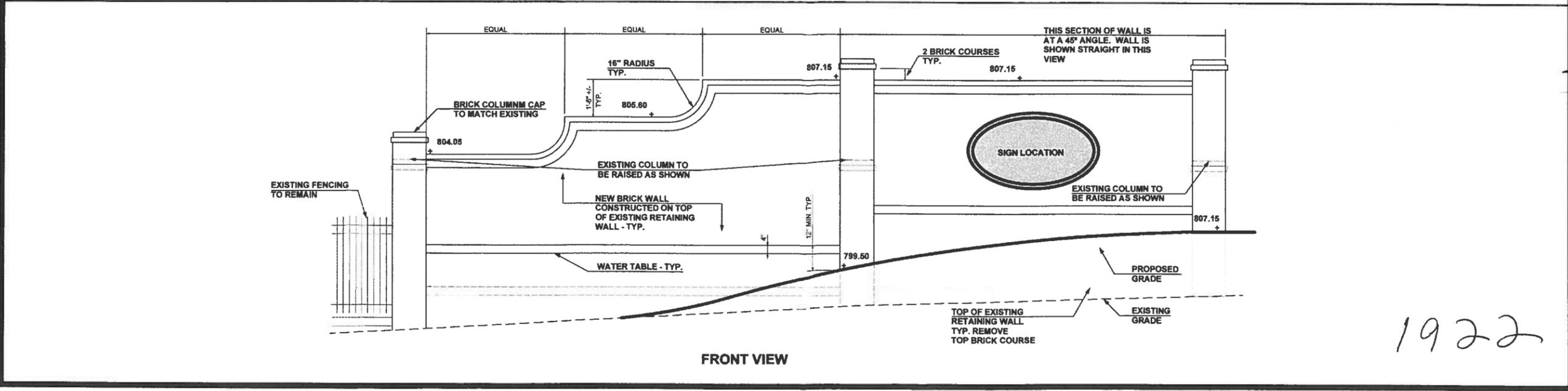


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ISSUED: JULY 01, 2014
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SEQUENCE: 4 OF 5 PROJECT No: C14006

18



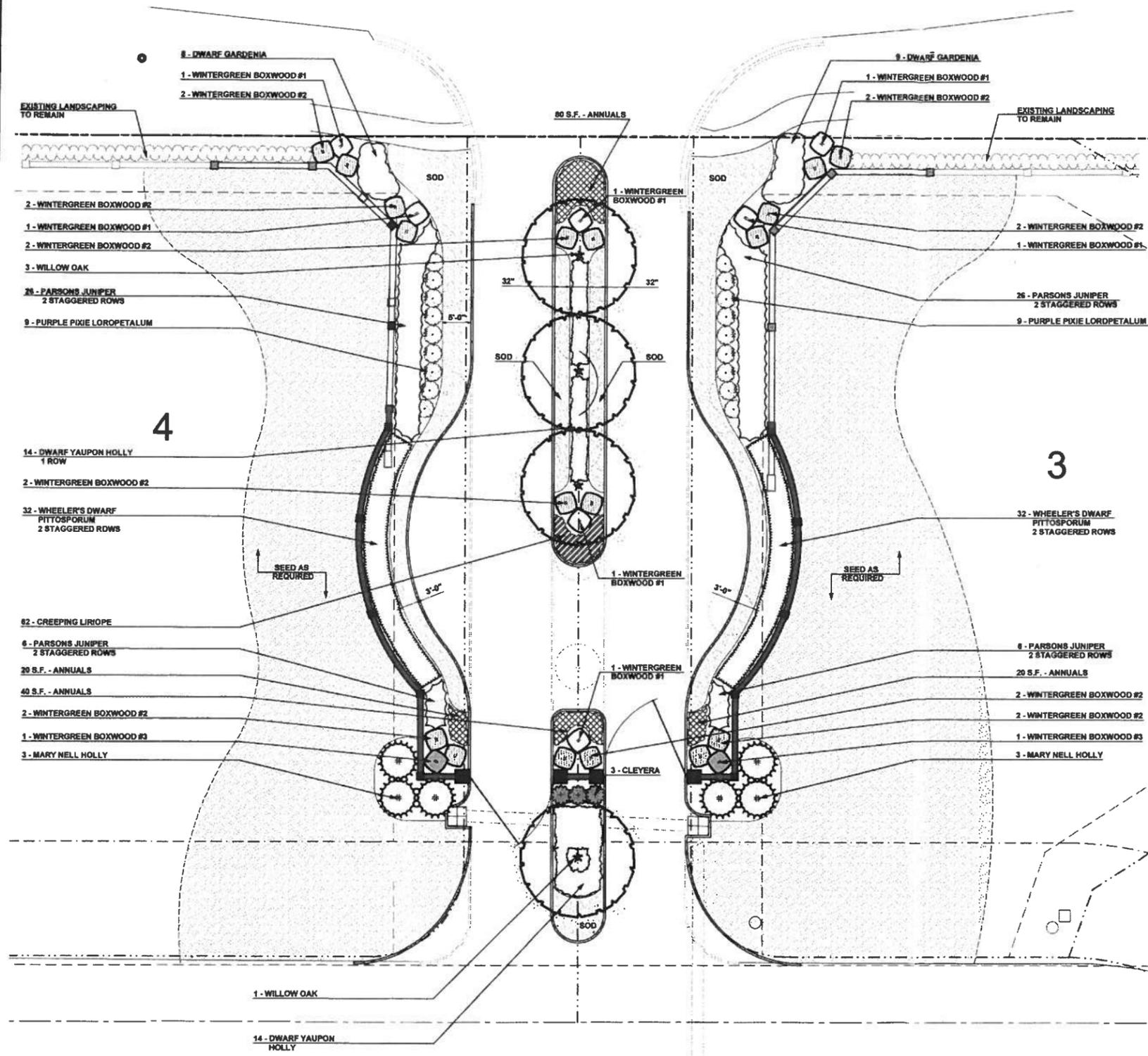
SIDE VIEW



FRONT VIEW

1922

# MONTCLAIR ROAD



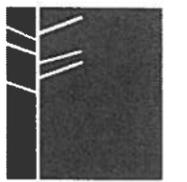
## PLANT MATERIAL SCHEDULE

QTY.	BOTANICAL NAME	COMMON NAME	SIZE	ROOT	REMARKS
4	<b>TREES</b> <i>Quercus phellos</i>	Willow Oak	3'-3 1/2' c.	B&B	Strong Central Leader
7	<b>SHRUBS</b> <i>Buxus microphylla koreana</i> 'Wintergreen' #1	Wintergreen Boxwood #1	24" x 24"	B&B	As Shown
18	<i>Buxus microphylla koreana</i> 'Wintergreen' #2	Wintergreen Boxwood #2	30" x 30"	B&B	As Shown
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17	<i>Gardenia jasminoides</i> 'Radicans'	Dwarf Gardenia	15'-18" sp.	Cont.	3' O.C.
49	<i>Ilex vomitoria</i> 'Nana'	Dwarf Yaupon Holly	15'-18" sp.	Cont.	3' O.C.
6	<i>Ilex</i> x 'Mary Nell'	Mary Nell Holly	7'-8" ht.	Cont.	As Shown
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180 S.F.	<b>GROUND COVER</b> Annuals		Flats	Flats	8" O.C.
62	<i>Liriope spicata</i>	Creeping Liriope	2 1/4" pot	Cont.	12" O.C.
As Req'd.	<b>GRASSES</b> <i>Cynodon dactylon</i>	Common Bermuda	Seed		
As Req'd.	<i>Zoysia emerald</i>	Emerald Zoysia	Sod		

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**PILGRIM PLACE RENOVATION**  
**WEDGORTH CONSTRUCTION**  
 BIRMINGHAM, AL



REVISIONS:
ISSUED: JULY 01, 2014
SHEET TITLE: PLANTING PLAN
DRAWN: CMP CHECKED: TRH SHEET
<b>L-5</b>
SEQUENCE: 3 OF 5 PROJECT NO: C14038

1922

19

# Letter from Mike Byrne

Letter To The Mountain Brook City Council and Mayor  
October 8, 2014

In 2007, the Pilgrim Place PUD was approved. In Article II, Paragraph 13 of Pilgrim Place's Covenants, which were approved during the PUD process, the developer was required to selectively remove the invasive plants in the buffer areas (those areas outside of the walls other than along Montclair Road) and replant using native trees and shrubs. Article II, Paragraph 13 also said, "All such selective cutting and replanting shall be accomplished in accordance with a landscape plan which has been approved by both the City's arborist and the Developer's landscape architect. The said landscape plan shall include the standards by which the Buffer Area shall be maintained." Unfortunately, seven years later, no such landscape plan was ever agreed upon and, at least along Cross Ridge Road and Rockbrook Circle with which I am very familiar, not a single invasive plant has been removed nor native plant planted, other than by one of the neighbors who, growing weary of the trashy appearance of Pilgrim Place and at her own expense, had the folks that work in her yard go plant some shrubs along Cross Ridge Road. The buffer areas along Cross Ridge Road and Rockbrook Circle now resemble a jungle and are an unsightly mess. It is exactly the kind of neglect of property maintenance outside of Pilgrim Place's walls that the neighbors feared when the PUD was approved.

Now, however, is a new day. When Mr. Wedgworth purchased Pilgrim Place's unsold properties, he set out immediately to work with the neighbors to address their concerns. The neighbors have met on-site with Mr. Wedgworth and have had numerous emails and phone calls with him. While we didn't initially agree upon everything, and still have minor differences, Mr. Wedgworth has accommodated our major issues. Not insignificantly, as part of his request to the City Council, he is submitting the landscape plan long ago called for under the Covenants.

During the first weekend of this month, a petition was circulated among the neighbors of Pilgrim Place stating their position regarding maintenance of the buffer areas. As of the date of this writing, almost 40 neighbors have signed the petition, including my wife and me. Our goal was to present this petition to the City Council to assist in the formulation of a landscape plan, which was not yet in a form acceptable to many of the neighbors as of that first weekend.

While I cannot, and do not, speak for all of my neighbors, my wife and I wish to thank Mr. Wedgworth for continuing to work through our differences. Based upon the landscape plan he emailed me and several of my neighbors on the morning of October 8, a copy of which is attached, my wife and I fully support his request to the City Council. We wish him success in his development of what he is now calling Village Place.

While we are impressed by Mr. Wedgworth's willingness to listen to our needs

and find common ground, we are still uncertain as to the enforcement mechanism should the landscape plan not be followed. Our concern is not with Mr. Wedgworth, but years down the road when he has built all of the homes in Village Place and is no longer actively engaged. What is the enforcement mechanism against an HOA that has the responsibility under their Covenants, which were agreed upon as part of a PUD, to maintain the area? Our strong preference, given the last seven years, is for the City to have the authority to enforce the obligation to maintain the buffer area. What we would like to avoid is for an individual citizen near the buffer area having to personally sue the HOA should the landscape plan not be followed.

Thank you for your consideration.

Sincerely,

Mike and Gayle Byrne  
308 Cross Ridge Road

Attachment: Mr. Wedgworth's landscape plan as of October 8, 2014

# Landscape Plan

October 8, 2014

## **Dedicated Green Space and Development Plan Guidelines**

The dedicated green space and development plan is the landscape plan standards as set out in Article II, paragraph 13 of the declaration of protective covenants, restrictions, easements and agreements for Pilgrim Place recorded on 1-15-2008 in map book LR200801, page 18027. Prepared by Landscape Architect, Tommy Holcombe (Holcombe Norton Partners) and Mike Wedgworth, Developer. Reviewed by Don Cafaro, Mountain Brook City Arborist.

### **Winter 2014-2015**

***See Master Re-Development Plan which denotes Areas "A," "B" & "C."***

**Area A:** Southeast side of Property located between the existing creek and Rockbrook Circle. This area is bordered by Cross Ridge Road to the east and end of cul-de-sac on Rockbrook Circle.

*Perform selective cutting of privet, mimosa, ivy, bamboo and other non-native, invasive plants. The intent and goal is the removal of non-native and invasive plants. The work of cutting and removing the non-native and invasive plants will be mostly performed by hand and will avoid the removal of native and otherwise desirable plant material.*

**Area B:** Area bordered by Cross Ridge Road to the east and end of cul-de-sac on Rockbrook Circle to the west located between the creek and existing retaining wall.

*The majority of the area between the creek and the existing retaining wall has experienced explosive growth of mostly brushy understory plants. This is due to the increase in sunlight reaching the ground when the area was cleared for the construction of the wall. This brushy understory growth is predominantly non-native and invasive plant material with a density that makes it impractical to remove these species selectively and by hand in all cases. In the most of this area, a mechanical brush cutter will be employed to mulch the existing plant material into an organic layer of chips and shavings to be left on site. This layer of mulch will reduce the ability of the plant material to regenerate itself. Where possible, the area on the Village Place side of the creek and closer to the creek will be selectively cut of any privet, mimosa, ivy and other invasive plants. No excavation or disturbance of the earth will be performed. The brush cutter will convert the brush to mulch to be used for ground cover. Once the non-native and invasive plants are removed, in the spring of 2015, the area will be treated with herbicide. This treatment will be repeated as necessary to eradicate the non-desirable material. Once the non-native and invasive species are under control (which should be in the fall of 2015) the remaining native trees will be augmented with additional plantings of a mix of native tree species such as red maple, oaks, poplars and spruce pine. These native species will be planted based on a standard reforestation density, with an overall density based on a 10'x10' spacing. The new plantings will occur throughout the areas where the undesirable material has been removed and where no native trees remain. The replacement trees will be 4 to 5 feet in height.*

**Area C:** Area located between creek and existing retaining wall along Cross Ridge Road. This area has fewer large native trees due to the presence of an overhead power line. The density of the non-native and invasive plants is greater and the concrete retaining wall is considerably taller. The concern is that the concrete retaining wall will look worse than the invasive plants.

*This area is so thick and out of control, removal of the undesirables will require use of the brush cutter, which will expose much of the concrete wall. To the greatest extent possible, the few larger native trees will be saved as well as smaller native trees. The intent will be to eliminate the non-native and invasive plants in the back portion of the area nearest the retaining wall leaving the front portion of the area immediately adjacent to the creek vegetated more or less as-is to serve as a visual buffer between Village Place and the existing homes along Cross Ridge Road. The area where the non-native and invasive plants are removed will be revegetated with a mix of native tree species such as red maple, oaks, poplars and spruce pine once the herbicide has effectively eradicated the undesirable plants. The remaining portion of this area will be cleared of non-native and invasive plants and revegetated with a mix of native shrubs and, to the extent that they would not interfere with power lines, a mix of native trees as described above in this Area C. This remaining portion will be completed in stages. Wedgworth will meet with the 4 residents directly across the street, and one representative of the remainder of the Cross Ridge neighborhood (to be selected by the 4 residents directly across the street), to review the staging options, and the area will be cleared and revegetated consistent with the staging preferences expressed by the 4 residents and the representative.*

#### **Spring/Summer 2015**

Spray all areas with herbicide or other chemicals to selectively kill invasive plants emerging from the mulch layer. This spraying will continue as required until the non-native, invasive species are under control.

#### **Winter 2015-2016**

*Plant native trees as described above, in areas where the undesirable species were removed to restore the woodland look between the creek and retaining walls. These trees will eventually provide the shade that will discourage the return of the non-native, invasive species and restore a sustainable wooded area.*

#### **Maintenance**

*Continue with selective removal of invasive plants and treatment with herbicide as required to maintain natural woodland.*

### **General and clarifications**

See Declaration of Protected Covenants Recorded on 1-18-08 in Jefferson County Map Book LR200801 Page 18027. Page 6 paragraph 11, 12 and 13 are attached hereto.

Wedgworth will meet with residents and be available to residents to be sure all understand.

We are also concerned about the safety of our workers selectively pruning the extremely thick brush area on the Village Place side of the retaining wall. It would be impossible to avoid snakes that do like this type of environment.

Additionally the winter months will have less foliage so will be more accessible and less volume mulch.

Mulch left on site will help the soil condition as well as to kill smaller weeds off.

"MAINTENANCE OF GREEN SPACES OUTSIDE THE PERIMETER WALL BY VILLAGE PLACE HOA - Upon completion of the initial eradication of unwanted, invasive vegetation, and planting of desirable plants and trees in the green spaces on the exterior of the Village Place perimeter wall (as described in the landscaping plan herein), the subject green spaces shall be maintained by Village Place HOA in a manner which reasonably will control and further eradicate non-native, invasive vegetation (e.g., privet, bamboo, ivy, climbing vines, mimosas, weeds, etc.) and conform to City laws, ordinances, and regulations in a reasonably attractive state consistent with neighborhood standards."

# Neighborhood Petition

Petition From The Neighbors Of Pilgrim/Village Place  
October 6, 2014

## Background

In 2007, the Mountain Brook City Council approved a PUD application for the Pilgrim Place development bordering on Montclair Road, Cross Ridge Road, Rockbrook Circle, and Gaywood Circle. There is a wall around the development with the planned houses inside the development facing inward, i.e., away from the wall and the surrounding neighbors. On all of the roads except Montclair, the wall is above ground level, i.e., is visible from the neighbors' yards. Furthermore, the walls were not constructed on the perimeter of the Pilgrim Place property. Thus, the owners of lots in Pilgrim Place bordering Cross Ridge Road and Rockbrook Circle will have title to land on both sides of the walls. The neighbors of the development expressed concern that since the property outside of the raised walls would not be visible to the homeowners within the development that the maintenance of those areas would not be up to standard. Furthermore, during the time when the developer first purchased the land and the construction of the walls, the Pilgrim Place property outside of the walls had started to become overgrown with invasive plants. Based upon much input from the neighbors of Pilgrim Place, the PUD required the developer to work with the City's Arborist to develop a plan to eradicate the invasive plants and to plant and maintain native shrubs and trees in a manner to generally hide the raised walls from the view of the neighbors. The plan was to be provided to the neighbors for review and input before work commenced.

To our knowledge, the developer never presented a plan to the Arborist or the neighbors, nor was any effort made to eradicate the invasive plants or plant native shrubs and trees. The situation now is exactly what the neighbors feared at the time—as they look out their front yards and drive or walk through the area, they face an unkempt jungle of invasive plants and weeds.

## Current Situation

Mike Wedgworth recently purchased Pilgrim Place from the prior developer. He and his landscape architect met on-site with some of the neighbors to hear our concerns and our objectives. We have also had a significant amount of email communication with him. Mr. Wedgworth seems to understand our concerns, and has expressed a willingness to work with us. We thank him for that. And, from our perspective, a successful Pilgrim/Village Place development is in our best interest. Thus, we wish him well.

To clarify our position to the Planning Commission and the City Council regarding the upkeep of the property outside of the walls, we request the following be included in some form within the amended PUD. We believe each of these points is consistent with our discussions with Mr. Wedgworth. Furthermore, with the inclusion of the items below in the amended PUD, we fully support and endorse the amended PUD application.

- The Pilgrim/Village Place developer and subsequently the HOA has the obligation to clear invasives from areas between the walls and Cross Ridge Road and Rockbrook Circle and from areas between the walls and private property on Gaywood Circle. This obligation
  - Applies to property directly owned by lot owners of Pilgrim Place as well as the public rights of way that extend from those property lines to Cross Ridge Road and Rockbrook Circle
  - Includes property both inside of and outside of the creek that borders Cross Ridge Road and Rockbrook Circle

- Is to be satisfied with selective removal by hand. In the instances in which the invasives are so large and well established as to not be feasible to remove by hand, they shall be cut followed by painting of the stem(s) with a herbicide, not large scale mechanical removal
  - Within and along the banks of the streams (and in those places where storm water comes over the top of the walls), invasives must be cut, and not pulled, and the herbicide should be suitable for wetland or streamside application. Further the person applying the herbicide should be certified for herbicide or pesticide application.
- Must be begun as soon as possible, but no later than November 1, 2014 and end no later than September 30, 2017
  - The goal is to remove small areas at a time with native shrubs and trees planted in their stead
- The Pilgrim/Village Place developer and subsequently the HOA has the obligation to plant native trees and shrubs to, over time, generally shield the view of the raised wall from the neighbors on Cross Ridge Road and Rockbrook Circle. We expect new plantings to be not mature trees or shrubs, but to be smaller plantings that will grow over time.
- The Pilgrim/Village Place HOA has the on-going obligation to keep invasive plants to a minimum and have native trees and shrubs generally shield the view of the raised walls from the neighbors on Cross Ridge Road and Rockbrook Circle.
  - This is to be accomplished with periodic pulling, and where appropriate cutting, and planting at a frequency not less than 3 times per year

**4. CONSIDERATION OF AN ORDINANCE (NO. 1748) LOWERING THE SPEED LIMIT ON SIMS AVENUE TO 15 MILES PER HOUR AND PROVIDE FOR PUNISHMENT FOR SPEEDING VIOLATIONS THEREOF (EXHIBIT 12)**

Council President Smith introduced the ordinance in writing and invited questions and comments. There being none, she invited a motion.

Motion for the unanimous consent for the immediate consideration of the ordinance made by: Council member Clark.

Motion seconded by: Council member Pritchard.

Council President Smith then called for a vote on the motion with the following results:

Those who voted in favor of the motion: Thomas C. Clark, Jr., Bob Moody, William S. Pritchard, III, Virginia C. Smith, and Jesse S. Vogtle, Jr.

Those who voted against the motion: None.

Council President Smith thereupon declared that the motion carried by a vote of 5—0 and called for a motion regarding the ordinance.

Motion for approval made by: Council member Clark.

Motion seconded by: Council member Pritchard.

Council President Smith then called for a vote on the motion with the following results:

Those who voted in favor of the motion: Thomas C. Clark, Jr., Bob Moody, William S. Pritchard, III, Virginia C. Smith, and Jesse S. Vogtle, Jr.

Those who voted against the motion: None.

Council President Smith thereupon declared that the ordinance is hereby approved by a vote of 5—0.

**5. CONTINUATION OF PUBLIC HEARING(S) TO CONSIDER ORDINANCE(S) (NOS. 1746 AND 1747) TO REZONE THE REAL PROPERTY LOCATED AT 3701 MONTCLAIR ROAD (PILGRIM CHURCH) FROM 1) RESIDENCE A DISTRICT TO RESIDENCE B DISTRICT AND 2) RESIDENCE B DISTRICT TO PLANNED UNIT DEVELOPMENT (PUD) DISTRICT (EXHIBITS 13 AND 14, APPENDIX 11)**

Council President Smith introduced the ordinance(s) in writing and asked that participants in the public hearing refrain from repeating comments in the interest of time. She then called on representatives of the applicant to make their opening remarks.

Charlie Beavers, legal counsel for Bruce MacClary, applicant:

- Two (2) revised plans/drawings were distributed to the Mayor and City Council which reflect changes in the proposed development plan since the that last public hearing.
- The landscape architectural plans have yet to be revised to incorporate the most recent changes.
- Lots 1, 2, and 3 have been reconfigured in order to comply with a restrictive covenant imposed in a deed in 1952. This matter was addressed during the previous hearings before the Planning Commission and City Council. The applicant thought that the matter had been appropriately resolved, however, it was determined since the last hearing before the City Council that the parcel in question was in fact subdivided. Therefore, the reconfiguration of Lots 1, 2, and 3 is necessary in order to leave the parcel in question in tact wholly within Lot 1. A letter from Tom Crawford with the title insurer has been obtained and delivered to the City Attorney which affirms that the new plan does not violate the covenant and that his firm will underwrite the title insurance. There are some arguments as to whether these [11] covenants are even enforceable, however, the developer thought it easier and best to comply with the covenants.
- The number of lots within the development and the average size of the lots within the

development have not changed as a result of this reconfiguration.

- While Lots 1 and 9 are larger than the other lots within the development, none of the lots are less than 14,000 square feet in area and most are above 15,000 square feet in area.
- All of the changes being presented tonight are in response to issues raised by Mike and Gayle Byrne.
- The retaining wall at Lot 1 has been closed where previously some drainage flowed directly into the creek. By closing the retaining wall, all drainage from the development and beyond is now directed toward the center of the development where the storm drainage management system is located.
- The width of the buffer was slightly under 25 feet at one section. The buffer has been adjusted so that it is at least 25 feet wide (as measured from the bank of the creek) all of the way around the development [with the exception of the Montclair Road frontage area].
- The west perimeter wall extended toward the creek a little at two locations to add style and curve. At the request of the Byrnes, the developer will straighten the wall in order to stay off of the creek as far as possible.
- These are all of the changes to the plan itself. All other changes involve provisions of the covenants which, at present, are recorded in the form of handwritten notes. Accordingly, these changes must be formalized and will be delivered to the City Attorney for final review. These changes include:

1. The covenants have always run with the land. This provision has been bolded in the covenants to make it more apparent to the reader.
2. Paragraph 11 of Article 2 has been revised to make it clear that the green space area includes the center area of the development where the storm water management system is located.
3. All green areas are common areas and will be maintained by the Association.
4. Homeowners may not alter these areas except for maintenance in their natural states and for some parking as illustrated in the plans.
5. A buffer area paragraph was added to:
  - a) specifically identify the green buffer area,
  - b) that it will be left in its natural condition except as provided in another section that will be discussed later,
  - c) the buffer area cannot be used by the homeowners for personal use,
  - d) the wall placement will be determined at the time of construction in consultation with the City's Arborist as there are a number of trees within the buffer that are close to the wall that must be considered if they are to be saved,
  - e) the Association will have authority and responsibility to remove dead or diseased trees within the buffer area,
  - f) [at the request of the Byrne's] within the buffer area, the developer will perform selective cutting of any privet, mimosa, ivy or other such non-native, invasive plants (including bamboo) within the buffer area but not within the banks of the creek and the replanting of native trees and shrubs all [cutting and replanting] shall be accomplished in consultation with the City's Arborist and the developer's landscape architect. The re-plantings of native species shall be maintained by the property owners that about the area where such plants have been installed. If a homeowner fails to perform such maintenance, the Association has the authority to perform the maintenance and then assess the homeowner for the costs of such maintenance.

[In response to an inquiry by Council member Vogtle, Mr. Beavers stated that a specific budget for buffer plantings has not been established. The developer believes that the request will be reasonable and fair and has committed that he will comply with the requests. In addition, a bond as required by the City's ordinance, will be provided to the City in an amount to determined by the City's Building Inspection Superintendent based on the landscape plan prepared upon the completion of the consultation with the City's Arborist and the developer's landscape architect].

6. An irrigation system at the entrance way has been added in the provision of common areas to be maintained by the Association.
7. The wall is also to be maintained by the Association.
8. The entrance including lighting, planting and irrigation shall be maintained by the Association.

9. The pruning of dead and/or diseased trees within the buffer area shall be a responsibility of the Association.
  10. Regarding the amendment provision, the amendment provision cannot be amended without approval of the City Council.
  11. The general maintenance obligations of the Association have been expanded to include the right-of-way along Montclair Road (Article 9).
- The discussion last meeting about the possible need for a chain link fence, the developer will install silt fencing and hay bails, then construct the retaining wall, then backfill. There is no need for a chain link fence as the wall will provide all of the protection necessary.
  - Regarding the request last meeting about the need for another 10 foot buffer in addition to the 25 foot buffer, there was some misunderstanding about the storm water run-off. The Arborist misunderstood that there would be sheet run-off over the development. This is not the case as all run-off will be diverted to the center of the development making the additional buffer unnecessary.
  - The request for best management practices is already a requirement of local law.
  - If the Council sees fit to vote in favor of this application, Mr. Beavers requests that it do so under the condition that the final, recorded covenants be subject to review and approval by the City Attorney for compliance with representations made tonight as well as any other changes that may be deemed appropriate as the project goes back before the Planning Commission for the subdivision map approval and the final engineering plans approval by the Building Inspections Superintendent.

Council President Smith then invited questions and comments from proponents of the proposed rezoning and development plan. There being none, the floor was opened for opponents of the project.

Howard Downey of 3805 Rockbrook Circle:

- Regarding the buffer, it affects 12 of the 15 lots, it does not make sense to make individual property owners maintain their portions.
- Up until 6 or 7 years ago, someone maintained the grassy areas along Rockbrook Circle and Cross Ridge Road. Over the last 5 years, this area has not been maintained and as a result it has become overgrown.
- Suggests that maintenance of the buffer be assigned to the Association as has been done with the right-of-way along Montclair Road.

In response to an inquiry by Council President Smith, Mr. Beavers stated that the idea was for individual property owners to maintain native plantings installed pursuant the Arborist's recommendation as those property owners would have a vested interest in seeing those plantings survive.

Mr. Downy:

- With regard to the wall, wants to be sure everyone understands that the wall will be at least 25 feet from the inner creek bank.
- The building materials and design (poured concrete with brick veneer columns and stone cap) is also very important to the neighborhood.
- Regarding removal of undergrowth and the replanting of native species, wants the neighbors to be part of the discussions between the developer, Arborist and landscape architect.

Council member Vogtle:

- Is concerned about everyone's understanding of exactly what this buffer is expected to become.
- Believes that a budget should be established in order to gain a better understanding of what work will be done in the buffer and what can be expected in return.

Con Cafaro, City Arborist:

- Once the decision is made as to how the buffer will be constructed, the issue involves more of a matter of time and maintenance as opposed to money. Time for the native species to grow in and maintenance to prevent the invasive species from overtaking the planted natives plants.
- On the other hand, if a more heavily landscaped plan is pursued, then dollars for larger plant materials does become an issue.

Council President Smith:

- Expressed concern that the plan of leaving the buffer as is as was discussed at the last meeting has now changed so that the buffer will be cleaned-out and replanted.

Mr. Beavers:

- His understanding at the last meeting was that the neighbors wanted the buffer to be left as is. Since then, it appears that they want the buffer to be selectively cleaned and replanted with the expectation that the buffer will ultimately remain natural but without the invasive plants that are there now.

Council member Pritchard:

- Understood that the Association was going to maintain the common areas.
- Asked whether the developer or the Association would be responsible for trees that die as a result of construction. Mr. Beavers responded that the developer would take care of trees lost due to construction and that the Association would be responsible for the removal of trees in the buffer area once the development is complete.
- Believes that the Association should be responsible for the limited maintenance within the buffer area including the native plantings introduced as this is common area that cannot be used by the individual homeowners.

Mr. Beavers stated that the maintenance issues can be changed.

Council member Vogtle restated his concern that a planting budget should be developed in order for everyone to determine just how dense the buffer is going to be.

Council member Clark stated that it will be difficult to determine just how much planting will be necessary until after the wall is constructed.

Mr. Beavers:

- Agreed that developing a planting budget at this time would be difficult.
- Wants to make sure that everyone understands that the developer is not going to install a thick green wall around the development.
- Neighbors will see through the buffer inside the development.
- The view now is a big blue roof and a tin building. Once developed, the neighbors will see the backs of high-end, single-family dwellings.

Mr. Vare, landscape architect:

- The wall will be located roughly where the mowed area is located at present which should give some perspective of the depth of the buffer [before the wall is installed].
- In response to an inquiry from Council President Smith, the cleaning and replanting will be done immediately after the wall is constructed.

Council member Vogtle recounted an experience in his neighborhood where the budget for planting a buffer was woefully inadequate and, as a result, this neighborhood can now see houses where they could not before. With this in mind, feels a budget should be developed so everyone understands what is expected of the buffer.

Council member Pritchard stated that this will be the first project approved that will require a bond. Because a complete plan is not available right now, the budget cannot readily be determined. With a bond in place, there is some protection for the area.

Mr. Beavers:

- The bond will be required to pull the permit.
- To pull the permit, the landscape plans will have to be finalized which will be done after consultation with the City Arborist and landscape architect.
- The bond amount can be determined from the final landscape plan.

Mr. Vare:

- The landscape plan has not been done because the issue of whether to leave the buffer alone or to make improvements has been in flux.

Mr. Beavers:

- Knows of few homes where property owners do not see their neighbors' homes.

Council member Vogtle:

- The plans with respect to the buffer are 180° different from what was discussed at the last

- council meeting.
- Expressed concern that there may be some misunderstandings of what the buffer is going to look like.
- Once this plan is approved, sorting out misunderstandings about the buffer will become a more complicated issue.

**Mr. Beavers:**

- The wall will be sited in consultation with the City Arborist.
- At that time, it will also be determined what invasive plants are to be cut, poisoned, and removed and the type and location of replacement native plants.
- After that work has been done, a final landscape plan will be developed which will be presented to the Building Inspection Superintendent as a condition of pulling the permit.
- If agreement cannot be reached between the neighbors and developer as to the landscape plan, then the matter will likely come back before the City Council for review and instructions.
- The feeling is that the parties will be able to work this matter out.

Council President Smith confirmed with Mr. Beavers that the buffer is 25 feet in width as measured from the inner bank of the creek and the construction design and materials of the wall [issues raised by Mr. Downey]. After Mr. Beavers read from the covenants the description of the wall which included planting of ivy, a question arose why plant ivy along the wall if ivy is to be removed from the buffer area.

Mr. Beavers said the language about planting ivy along the wall can be deleted from the covenants.

**Mr. Vare:**

- There is a lot of ivy in the buffer.
- The vast majority of the creek bed is being held in place by ivy and should therefore not be removed.

**Mr. Beavers:**

- Originally, there was not going to be any removal of vegetation in the buffer.
- The language to clean-up the buffer was added only today.

**Mr. Vare:**

- Probably, some other material besides ivy should be planted along the wall and no ivy shall be removed from the buffer area.

**Mr. Cafaro:**

- A ground cover is not as big of an issue to the native plants as are a mid-level plants such as privet which will shade out the native plants that are to be introduced.
- If privet and other mid-level plants are to be replaced over time, the sooner the conversion can start, the more time the new native plants will have to establish themselves.

Mr. Beavers stated that he will remove the language referring to the removal of ivy.

**Mr. Downey:**

- If the houses were facing the neighborhood, the buffer would not be such an important issue.
- In his meeting with Mr. Cafaro, he believes that Mr. Cafaro's ideas about the buffer are consistent with what the neighborhood has expressed.
- Regarding the covenants, he wants there to be provision that the adjacent homeowners should receive notice of any meeting before the City Council where changes to the covenants are to be considered.
- None of the neighbors expect the buffer to be regularly pruned and maintained by the Association, however, it is important that what maintenance is required be the responsibility of the Association.

**Laura Cotlin of 28 Cross Ridge Road:**

- Still does not understand how the property can be re-zoned from A to B and then from B to PUD when this development does not conform to the requirements of Residence B.
- Would prefer to see the number of homes reduced.
- Would prefer to be facing houses. Because this is not the case, the buffer is critical and is concerned with the language proposed in the revise covenants which describes "selective cutting".
- Wants the buffer to be left in tact, especially during the construction phase.
- If cleaning is to occur, thinks that it should be done after the development is complete.

Mr. Cafaro:

- Thinks that any cutting would be done by hand and drug out as opposed to heavy equipment.

Mr. Beavers:

- Recognizes that some folks don't want anything done and others want the buffer cleaned-up.
- The developer is pleased to handle the buffer either way.
- Mr. Cafaro is correct in that any clearing will be done by hand.

Council member Clark:

- Thinks the Arborist will be looking out for the best interests of the City and is comfortable with his recommendations with respect to selective cleaning and re-planting.

Council member Vogtle:

- Asked whether the City Council will see the final landscaping plan to which Mr. Beavers said likely not unless there are some disagreements that cannot be resolved.

Gayle Byrne of 308 Cross Ridge Road:

- Is a member of the Cahaba River Society and asked them to comment on the plans when they were originally proposed.
- Mr. Cafaro's ideas are in sync with those of the Cahaba River Society which is to carefully cut back non-native invasives without disturbing their roots, paint with a herbicide, wait to see if the plants are dead, and then re-introduce natives—the area can be improved. She and her husband have been calling for this type of plan all along.

Council President asked whether the Council was prepared to vote on this matter now.

Council member Vogtle stated that he was ready to vote and noted that this application was debated at length by the Planning Commission.

Council member Pritchard:

- Agrees with Council member Vogtle.
- Commends the efforts of Mr. Beavers and his client in their efforts over the past two weeks to accommodate the neighbors' requests.
- Questions whether everything that has been agreed to is written down and whether the Council is clear on exactly what is being voted on.

City Attorney Colvin:

- Wants to be sure that the Council understands everything that is being voted on considering the numerous changes made tonight.
- Wants any action to be contingent upon a final review by the City Attorney of the final documents.

Mr. Beavers:

- The changes were read from my [Mr. Beavers'] notes.
- Feels comfortable that all of the changes have been clearly articulated during this meeting.
- Is okay for the approval to be conditioned upon final review and approval by the City Attorney.

Council member Clark:

- Wants the City Attorney to report back at the next meeting of the City Council and, if everything is not in order, the ordinances can be repealed.

There being no further discussion, Council President Smith called for a motion regarding the proposed ordinance rezoning the property from Residence A District to Residence B District.

Motion for approval: Council member Clark.

Motion seconded by: Council member Vogtle.

After inviting questions or comments, Mr. Downey requested that he be allowed to review the final documents as well. It was determined that the final documents would be e-mailed to Mr. Downey by the City Attorney and that Mr. Downey would be welcome to attend the next Council meeting to hear the City

Attorney's report on his review of said documents. There being no further discussion, Council President Smith then called for a vote on the motion with the following results:

Those who voted in favor of the motion: Thomas C. Clark, Jr., Bob Moody, William S. Pritchard, III, Virginia C. Smith, and Jesse S. Vogtle, Jr.

Those who voted against the motion: None.

Council President Smith thereupon declared that the Ordinance rezoning the property from Residence A District to Residence B District is hereby adopted by a vote of 5—0.

Council President Smith then called for a motion regarding the proposed ordinance rezoning the property from Residence B District to Planned Unit Development (PUD) District.

Council member Clark made a motion for approval subject to a review and approval by the City Attorney of the final documents which shall include the various changes discussed at this meeting and, if the City Attorney is not satisfied with said documents, a report shall be made to the City Council on October 22, 2007, at which time the City Council shall take appropriate action to ensure the changes are recorded development plan documents.

Motion seconded by: Council member Pritchard.

Mayor Oden asked of Mr. Beavers whether 15 homes could be situated on this parcel in accordance with the Residence B District zoning requirements.

Mr. Beavers:

- The PUD requirement is that the density cannot exceed that which would have been allowed in the zoning immediately prior to the PUD rezoning.
- These lots all exceed 10,000 square foot minimums which is the Residence B District lot size requirement.
- Believes that more homes could be situated on the parcel under the Residence B regulations.

Mayor Oden:

- The Building Inspection Superintendent, who is not in attendance, told the Mayor that this configuration would not meet the Residence B regulations.
- Requests that this matter be continued until Mr. Weems gets back in town to confirm this statement.
- If 15 houses cannot fit in this area under the Residence B regulations, then the request is in direct violation of the PUD density requirement.
- In response to questions as to whether the PUD restriction was in the aggregate, the Mayor stated that the City Code does not say in the aggregate and read aloud from the PUD section of the zoning ordinance [emphasis on "other requirements" (aside from density) of the zoning district immediately prior to the PUD rezoning].

Mr. Beavers:

- Residence B regulations call for a minimum lot size of 10,000 square feet.
- This particular configuration would not meet all of the technical requirements of Residence B which is one of the reasons the applicant is requesting a PUD zoning. Another reason for requesting the PUD zoning is to lock in the development plan and prohibit future subdividing of lots.
- These lots are much larger than the 10,000 square feet Residence B requirements.
- The City Council has the authority to make a determination to approve this application.
- Is confident that this application meets the requirement of the City's ordinance.
- Understands the Mayor's question.

City Attorney Colvin stated that while the configuration would certainly be different if this development were proposed in a Residence B District, he is comfortable that the application meets the PUD requirements.

There being no further comments, Council President Smith then called for a vote on the motion with the following results:

Those who voted in favor of the motion: Thomas C. Clark, Jr., Bob Moody, William S. Pritchard, III.

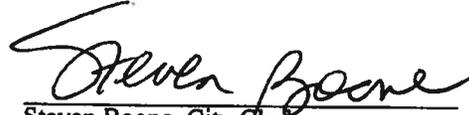
Virginia C. Smith, and Jesse S. Vogtle, Jr.

Those who voted against the motion: None.

Council President Smith thereupon declared that the Ordinance rezoning the property from Residence B District to Planned Unite Development (PUD) District is hereby adopted by a vote of 5—0.

**6. ADJOURNMENT**

There being no further business to come before the City Council at this time, Council President Smith adjourned the meeting. The next meeting of the City Council will be Monday, October 22, 2007.

  
Steven Boone, City Clerk

**EXHIBIT 1**

**RESOLUTION 07-144**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the Mayor or City Manager are hereby authorized and directed, for and on behalf of the City, to execute the purchase agreement between the City and The Stewart Organization, in the form as attached hereto as Exhibit 1, with respect to the purchase of a color copier for the Fire Department.

[See Appendix 2]

**EXHIBIT 2**

**RESOLUTION 07-145**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby recommends to the State of Alabama, Alcoholic Beverage Control Board, the issuance of an 040 - Retail Beer - (On or Off Premises) and an 060 - Retail Table Wine - (On or Off Premises) licenses to CKJ Eateries, LLC (dba Newk's Express Cafe) located at 2800 Cahaba Village Plaza, Suite 130, 35243.

**BE IT FURTHER RESOLVED** that the City Clerk is hereby instructed to forward a copy of this resolution to the State of Alabama, Alcoholic Beverage Control Board.

[See Appendix 3]

**EXHIBIT 3**

**RESOLUTION NO. 07-146**

**WHEREAS**, the Fire Department of the City of Mountain Brook, Alabama has certain personal property which is no longer needed for public or municipal purposes, specifically, a 1986 Pierce Fire Pumper; and

**WHEREAS**, Section 11-43-56 of the Code of Alabama of 1975 implicitly authorizes the municipal governing body to dispose of unneeded personal property; and

## MEMORANDUM

**To:** Lawrence T. "Terry" Oden Mayor  
Ms. Virginia Carruthers Smith  
Mr. Jesse S. Vogtle  
Mr. Thomas C. Clark, Jr.  
Mr. William S. Pritchard, III  
Mr. Bob Moody

**From:** Whit Colvin

**Date:** November 8, 2007

**Subject:** Pilgrim Place

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Over the last several weeks, I have been working toward finalizing the covenants relating to Pilgrim Place, primarily to ensure they comport with the Council's action of October 9, 2007, approving the Planned Unit Development application. The applicant has made a number of changes as requested, and I attach a copy of the latest version of the covenants and the Development Plan narrative for your review. I have also attached a "blackline" copy of page 9 of the covenants showing the most significant changes to the covenants, and a "blackline" copy of one minor change to the narrative included in the application.

My efforts have been focused on the buffer area and what exactly will be expected of the Developer and then the Association in terms of initial clearing, replanting and the maintenance. After a number of drafts, I am satisfied that the current covenants capture the letter and spirit of the Council's approval. Under the covenants, the Developer has agreed to develop a landscape plan with the input and participation of the City's Arborist. The plan will address the conditions in the Buffer Area, the material to be removed, the areas and details concerning planting of new vegetation and the plans for maintenance. If an understanding cannot be reached between the Developer and the Arborist, the matter will be resolved by the Council. I believe this provision will protect the City and the neighbors without unduly or arbitrarily restricting discretion to review site conditions and make reasonable adjustments accordingly.

There is one remaining issue I feel necessary to bring to the Council's attention, and enclose the latest correspondence from Howard Downey to illuminate the issue. There is an area outside the buffer area on the south side of the property which lies in the right-of-way of Rockbrook Circle and Cross Ridge Road and outside the church property line. The Development Plan submitted does not include that strip of right-of-way in the

Buffer Area, and I cannot recall a discussion with the Council about the Developer maintaining that strip. Accordingly, there is nothing in the documents which requires maintenance on that strip of right-of-way. I believe this to be consistent with the Plan that was presented and approved.

I have discussed this with Mr. Downey, and he understands the situation. He has asked that, as the landscape plan is developed, some consideration be given to planting screening trees or shrubs (i.e., wax myrtles) within the area on the neighborhood side of the creek. By copy of this memorandum to Mr. Cafaro, Charlie Beavers, and to Mr. Downey, I would respectfully ask that Mr. Downey's request be given appropriate consideration as the landscape plan is developed.

If you have any questions, please do not hesitate to contact my office.

cc : Mr. Sam Gaston, City Manager [gastons@mtnbrook.org](mailto:gastons@mtnbrook.org)  
Mr. Steve Boone, City Clerk [boones@mtnbrook.org](mailto:boones@mtnbrook.org)  
Mr. Don Cafaro  
Mr. Howard Downey  
Charles A. J. Beavers, Esq.

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## **Covenants**

**DECLARATION OF PROTECTIVE COVENANTS,  
RESTRICTIONS, EASEMENTS AND AGREEMENTS  
FOR  
PILGRIM PLACE**

**TABLE OF CONTENTS  
DECLARATION OF PROTECTIVE COVENANTS,  
RESTRICTIONS AND AGREEMENTS FOR  
PILGRIM PLACE**

**ARTICLE I**

**LAND USE AND BUILDING TYPE; DRAINAGE SYSTEM**

1. Development Plan.....	1
2. Land Use .....	1
3. Exterior Design.....	2
4. Temporary Structures.....	2
5. Other Building Structures .....	2
6. Garage Enclosure .....	2
7. Fences, Walls, and Hedges .....	2
8. Utilities, Wiring and Antennas .....	3
9. Mailboxes and Lamp Posts .....	3
10. Landscaping .....	3
11. Lighting.....	3
12. Air Conditioning Units .....	4
13. Subdivision .....	4
14. Drainage and Detention System.....	4

**ARTICLE II**

**USE OF THE PROPERTY**

1. Signs.....	4
2. Animals .....	5
3. Garbage and Refuse .....	5
4. Outside Burning .....	5
5. Pipes.....	5
6. Oil and Mining.....	5
7. Nuisance.....	5
8. Storage of Boats and Trailers.....	5
9. Clothes Lines .....	5
10. General; Garage Sales.....	5
11. Green Space Areas .....	6

12. Buffer Area .....	6
13. Restrictions Within Green Space Areas and Buffer Area.....	6

ARTICLE III

PILGRIM PLACE HOME OWNERS' ASSOCIATION

1. Establishment.....	6
2. Members .....	7
3. Government of the Association .....	7
4. Right to Use .....	8

ARTICLE IV

ARCHITECTURAL CONTROL

1. Approval by Architectural Control Committee .....	8
2. Appointment of Architectural Control Committee.....	8
3. Basis for Disapproval of Proposed Plans.....	9
4. Failure to Obtain Approval .....	9
5. Waiver of Liability.....	10

ARTICLE V

COMMON PROPERTY

1. Common Property.....	10
-------------------------	----

ARTICLE VI

ASSESSMENTS

1. Agreement to Pay.....	11
2. Annual Assessment.....	11
3. Additional Assessments .....	11
4. Payment.....	11
5. Certificate.....	11
6. Enforcement/Lien .....	12

ARTICLE VII

GENERAL

1. Grantee's Acceptance .....	13
2. Severability .....	13
3. Amendment/Right of Developer to Modify Restrictions.....	13
4. Captions .....	13
5. Effects of Violations on Mortgage Liens.....	13

6.	No Reverter .....	14
7.	Duration .....	14
8.	Enforcement .....	14
9.	No Waiver .....	14

**ARTICLE VIII**

**EASEMENTS**

1.	Street Easements .....	14
2.	Utility Easements .....	15

**ARTICLE IX**

**GENERAL MAINTENANCE**

1.	General Maintenance Obligations.....	15
2.	No Obligation of Municipal Zoning Authority.....	15

**ARTICLE X**

**CITY RESPONSIBILITY**

1.	City Responsibility.....	15
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STATE OF ALABAMA     )  
                                          :  
JEFFERSON COUNTY     )

**DECLARATION OF PROTECTIVE  
COVENANTS, RESTRICTIONS, EASEMENTS  
AND AGREEMENTS FOR  
PILGRIM PLACE**

This Declaration is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by **D. BRUCE MACCLARY**, an individual (“Developer”), for the purpose of establishing certain easements, covenants, restrictions, and limitations to run with the land.

**WITNESSETH**

WHEREAS, Developer has acquired fee simple title to certain real property situated in Jefferson County, Alabama, and has subdivided said property into fifteen (15) lots (the “Lots”), as shown and described on the Map and Survey of Pilgrim Place, as recorded in Map Book \_\_\_\_\_, Page \_\_\_\_\_, in the Office of the Judge of Probate of Jefferson County, Alabama (the “Property”); and

WHEREAS, Developer desires to develop the Property into a residential subdivision to be known as Pilgrim Place, subject to the protective covenants, restrictions, easements, agreements and limitations forth in this Declaration of Protective Covenants, Restrictions, Easements and Agreements for Pilgrim Place (“this Declaration”).

NOW, THEREFORE, upon the recording of this Declaration, Developer does declare and make the Property and each of the Lots included in the Property subject to the covenants, easements, restrictions, conditions, uses, limitations, and affirmative obligations set forth in this Declaration, all of which are declared to be in furtherance of a plan for the improvement of the Property in a desirable and uniform manner, and all of which shall run with the land and shall be binding upon all parties having or acquiring right, title or interest in the Property, and shall inure to the benefit of and shall be binding upon each successor in interest and to the owners thereof.

**ARTICLE I  
LAND USE AND BUILDING TYPE; DRAINAGE SYSTEM**

**1. Development Plan.** The Property shall be developed in substantial compliance with the Master Development Plan, the Landscape Plan and the Grading and Utility Plan (collectively the “Development Plan”) approved by the City of Mountain Brook, Alabama (the “City”), a reduced copy of which is attached hereto as cumulative *Exhibit A*.

**2. Land Use.** All Lots in the Property will be used for residential purposes only, and no trade or business use will be permitted on the Property. No building or structure other than a one-family dwelling house shall be erected on the Property except as otherwise permitted herein. Further, no building, structure, or improvement shall be erected on any Lot in the Property other than the building situated on the Property at the time of purchase, if any, without

the prior written approval of the Committee (as hereinafter defined) and without compliance with the requirements of zoning (the "Zoning") of the Property by the City.

**3. Exterior Design.** The original exterior design, and any change in the exterior design, of the structure on any Lot shall be subject to final approval by the Committee. All structures on the Lots shall be designed so as to be aesthetically pleasing and compatible with the surrounding properties and shall be subject to the following:

(a) The exterior materials on the sides of the residential dwellings shall be primarily brick and wood. Other outside materials may be used, provided that they are expressly approved by the Committee.

(b) Exterior painting will be compatible and will blend aesthetically with other colors used on the structures located on the Lots in the Property.

(c) Roofs on all structures must have a minimum 6/12 pitch on the front portion of the structure. No gambrel or mansard roofs will be permitted. Shingles or roof tiles must be of a natural or slate color. No white roofing materials of any kind will be permitted.

(d) All stack pipes, exhaust fans, and other roof projections, including permitted satellite dishes, shall be located on the building roofs in such a way as to be hidden from sight, to the extent possible, from properties surrounding the Property, unless prior written consent is obtained from the Committee and is in compliance with the Zoning requirements.

**4. Temporary Structures.** No mobile home, motor home, trailer, tent, shack, or barn shall be placed or erected on any Lot within the Property. This provision shall not prohibit a construction trailer or portable building during the development of the Property, provided that Developer has approved the same.

**5. Other Building Structures.** No servant house, garage, carport, or other building shall be erected on any Lot without the prior written consent of the Committee.

**6. Garage Enclosure.** No Lot Owner (as hereinafter defined) shall enclose and finish as living area any garage on any Lot in the Property without the prior written consent of the Committee.

**7. Fences, Walls, and Hedges.** No fences or walls shall be constructed on any Lot in the Property unless first approved in writing by the Committee. The approval of the Committee shall be governed by the following:

(a) No fences or walls may protrude beyond the front edge of the structure located on the Lot.

(b) No chain link, wire, or metal fencing of any kind may be used in construction. (wrought iron or materials which have the appearance of wrought iron, such as aluminum, may be allowed).

(c) No fence or hedge which is visible from the front of the residential structure may exceed six (6) feet in height, unless approved officially by the Committee.

(d) If built as a part of the exterior wall around the Property, such fence or wall must be made of wrought iron or made to have the appearance of wrought iron.

**8. Utilities, Wiring and Antennas.**

(a) No facilities, including poles or wires for the transmission of electricity, telephone messages, and the like shall be placed or maintained above the surface of the ground on any Lot, and no external or outside antennas of any kind shall be allowed other than satellite dishes approved by the Committee and placed in accordance with Section 3(d) above.

(b) No Lot Owner will cause to be erected or grant to any person, firm, or corporation a right, license, or privilege to erect or permit the use of overhead wires or overhead facilities of any kind for electrical or telephone service on the Property (except such poles and overhead facility as may be required at those places where distribution facilities enter and leave the particular area) without the prior written consent of the Committee.

(c) All Lot Owners agree to connect utility service lines (including, but not limited to gas, water, sewer, cable television and electricity) at points designated by Developer or as approved by the Committee.

**9. Mailboxes and Lamp Posts.** All mailboxes, lamp posts, street lighting, and posts must be constructed and located according to Developer's specifications or as approved by the Committee.

**10. Landscaping.**

(a) All front and side yards will be landscaped with solid sod and shall be attractively maintained. The front yard of each Lot shall have at least one (1) tree with a minimum caliper of four inches (4"), preferably of native Alabama origin. Should any Lot Owner desire to develop any natural areas, such proposal must be approved by the Committee and any approved natural areas must be regularly and attractively maintained.

(b) Individual homeowners' landscaping shall incorporate buffering in such a way as to reduce the visibility of the residence from surrounding property. Such buffering shall consist of a mix of large deciduous and evergreen trees and shrubs such as (but not limited to): Leyland cypress, cherry laurel, eastern red cedar, crape myrtle, magnolia, American, Nellie Stevens, and Foster's holly. Each yard oriented toward the exterior shall consist of at least two (2) permanent large trees such as oak, maple, and/or magnolia. The trees shall be placed no further than 30 feet apart, measuring four (4) calipers each.

**11. Lighting.** Yard lighting shall be such that it is not directed toward other Lot Owners or surrounding properties. All exterior lighting of houses shall be of said same character. Seasonal or holiday lighting that is out of character with the general subdivision or becomes a nuisance as determined by the Committee shall be removed within two (2) days' notice of the Committee's finding.

**12. Air Conditioning Units.** Outside air conditioning units may not be located so as to be visible from the street in front of any home, and no window or through the wall air conditioning units will be permitted on any Lot in the Property.

**13. Subdivision.** No Lot may be subdivided or reduced in size by voluntary alienation, judicial sale, or other proceeding except with written consent of Developer or the Committee.

**14. Drainage and Detention System.** Developer and its successors, assigns, and/or transferees shall construct, enclose, and permanently maintain at their sole expense a storm water control, drainage, and detention system ("the System") on the Property that conforms to the System and specifications therefor approved by the City in conjunction with re-zoning of the Property to its Residence B and Planned Unit Development ("PUD") classification. The System shall comply with all applicable federal, state, and local laws, ordinances, regulations, conditions, standards, and requirements applicable thereto. No modification to the System shall be permitted or installed unless said modification is approved by the City and City Engineer and unless the modification is shown to meet or exceed then applicable legal or regulatory requirements applicable to the Property. Upon the completion of the installation of the System by Developer and the establishment of the Association, the maintenance of the System shall be by and at the expense of the Association. At a minimum, system maintenance shall include the following:

(a) Care of grass and landscaping above the System as part of the normal landscape maintenance, said care and maintenance to include regular mowing and trash and debris removal;

(b) Regular inspection, repair, clearance, and maintenance of control structures and other inlets to the System and removal of sediment deposits and other debris that may accumulate in the control structure and other inlets;

(c) Control, stabilization, or correction of erosion that may occur at the inlet or exit point for discharges to and from the System; and

(d) Repair, replacement, or restoration of deteriorated, defective, worn, non-operative, or non-functioning components, elements, or features of the System.

The City may inspect the System from time to time, at its discretion, and may require the Association to take such actions as are necessary to cause the System to be in compliance with the provisions of this Section 14.

## **ARTICLE II USE OF THE PROPERTY**

**1. Signs.** No sign of any kind shall be displayed to the public view except signs of not more than five (5) square feet to advertise a home for sale and builder's signs during construction and prior to the sale of the Lots by Developer. Nothing contained herein shall be construed to prevent the erection or maintenance by Developer or its duly authorized agents or

assigns of structures, improvements, or signs necessary or convenient to the development, sale, operation, or other disposition of the Lots.

**2. Animals.** No animals, birds, livestock, or insects shall be kept or maintained on any Lot of the Property, except that each Lot Owner may keep not more than two (2) dogs and two (2) cats as domestic pets on any Lot, provided that such domestic pets are confined to the Lot of the owner of such pets and provided that such pets do not constitute a disturbance and nuisance to surrounding Lot Owners. It shall be within the sole authority of the Committee to determine what constitutes a "disturbance and nuisance." No animal shall be allowed to roam the Property, other than its owner's Lot, without a leash, cord, or chain held by the animal's owner, possessor, or keeper or an agent, servant, or member of the immediate family thereof (the "Keeper"). Additionally, the Keeper shall immediately remove the animal's excrement from the Property, including the Keeper's Lot.

**3. Garbage and Refuse.** No lumber, metal, or bulk materials shall be kept, stored, or allowed to accumulate on any Lot within the Property, except building materials during the course of construction of any approved structure or improvement. No refuse or trash shall be kept, stored, or allowed to accumulate. If trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis, such trash or refuse must be placed in sanitary containers. Such sanitary containers should be placed in the open only on the day that a pickup is to be made at such place on the Lot as to provide access to the person making such pickup. At all other times, such containers shall be stored in such manner so they cannot be seen from other Lots or the street.

**4. Outside Burning.** Burning of trash, refuse, or other materials on any Lot within the Property, except during construction of the structures, is prohibited.

**5. Pipes.** No water pipes, gas pipe, sewer pipe, or drainage pipe shall be installed or maintained above the surface of the ground of any Lot within the Property except for hoses and movable irrigation pipes.

**6. Oil and Mining.** No Lot within the Property shall be used for the purpose of boring, mining, quarrying, or exploring for or removing oil or other hydrocarbons, minerals, gravel, or earth.

**7. Nuisance.** No obnoxious, offensive, or illegal activity shall be carried on upon any Lot within the Property nor shall anything be done on any Lot within the Property which may become an annoyance or nuisance to other Lot Owners or which may cause any increase in the cost of insurance obtained by the Association.

**8. Storage of Boats and Trailers.** Storage of boats, boat trailers, campers, recreational vehicles, or other similar equipment or vehicles in the open on any Lot is prohibited.

**9. Clothes Lines.** No clothes lines of any kind will be permitted on any Lot in the Property.

**10. General; Garage Sales.** It shall be the responsibility of each Lot Owner to prevent the development of any unclean, unsightly, or unkempt conditions of structures on

grounds of such Lot which shall tend to decrease the beauty and aesthetics of the Property or the neighborhood as a whole. No Lot Owner shall permit a garage or other type of public or private sale or auction on the Lot Owner's Lot or in the Green Space.

**11. Green Space Areas.** The green space surrounded by the circular private drive (the "Private Drive") and the green space located within the median at the entrance into the Property from Montclair Road, as shown on the Development Plan (the "Green Space Areas") are for the use and enjoyment of all Lot Owners. Developer will plant in the Green Space Areas, and the Association will maintain, the plants, and trees and grass within the Green Space Areas.

**12. Buffer Area.** Except as provided in paragraph 13 of this ARTICLE II, the buffer area (the "Buffer Area") shown on the Development Plan along the east, west and south perimeters of the Property shall be left in its natural condition, including the plants and trees which currently exist within the Buffer Area. The exact placement of the retaining wall along the interior boundary of the Buffer Area shall be determined by the Developer in cooperation and consultation with the City's arborist, in an effort to protect any large trees which are within the Buffer Area and also immediately adjacent to the retaining wall. The Association shall have the authority to prune or remove any diseased, dying or dead trees, or trees which are leaning or are in a condition which poses a risk of falling, within the Buffer Area.

**13. Restrictions Within Green Space Areas and Buffer Area.** No personal property of any Lot Owner shall be placed or stored on the Green Space Areas or the Buffer Area, except that automobiles may park in the spaces adjacent to the Green Space Area within the circular drive, as shown on the Development Plan. No alterations, additions, or improvements of any kind whatsoever shall be made to the Green Space Areas or the Buffer Area except as shown on the Development Plan or as permitted herein. Any Lot Owner who is responsible for any damage, defacement, or destruction to the Green Space Areas or the Buffer Area will be responsible for the repair, clean up, replanting or reconstruction thereof, the cost of which may be expended by the Association and assessed against the Lot Owner as an additional assessment. Provided, within the Buffer Area, Developer will perform selective cutting of any privet, mimosa, ivy, or other such non-native or invasive plants not located within the banks of the creek (which meanders through the Buffer Area) and the replanting of additional shrubs and trees which are native to the area. All such selective cutting and replanting shall be accomplished in accordance with a landscape plan which has been approved by both the City's arborist and the Developer's landscape architect. The said landscape plan shall include the standards by which the Buffer Area shall be maintained. The Buffer Area shall be maintained by and at the expense of the Association in accordance with said plan. If the City's arborist and the Developer's landscape architect cannot agree upon the landscape plan, then the landscape plan shall be submitted to the City Council for its determination and approval at a hearing about which notice has been given as provided in Section 3 of Article VII hereof.

### **ARTICLE III PILGRIM PLACE HOME OWNERS' ASSOCIATION**

**1. Establishment.** Operation and administration of the Property shall be performed by Pilgrim Place Home Owners' Association, an unincorporated association (the "Association"). The powers and duties of the Association shall include the following:

(a) The Association shall have the right to make assessments against the Lot Owners.

(b) The Association shall have the right and authority to place liens against the Lot of any Lot Owner who fails to pay any annual or additional assessment or any amount owed pursuant to any provision hereof, together with penalties, interest or attorneys' fees assessed.

(c) The Association shall have the authority to borrow funds to pay for such expenditures as may be authorized by the provisions of this Declaration upon written approval of the majority of the Lot Owners.

(d) The Association shall have the authority to appoint the Committee which will consider and approve, if acceptable, in its sole discretion, changes, modifications, additions, and improvements to the Property.

(e) The Association shall have the authority to enforce the covenants and restrictions contained herein in any manner available in law or equity.

(f) The Association shall have any other authority granted to it by a vote of the majority of the Lot Owners.

**2. Members.** The members of the Association shall consist of all record owners of the Lots (the "Lot Owners"). Change in membership in the Association shall be established by recording the deed or other instrument establishing record title to a Lot in the public records of Jefferson County, Alabama, the owner designated by such instrument thereby becoming a record owner and a member of the Association. Membership of the prior owner shall thereby be terminated. The vote of a member for a Lot shall be cast by the record owner thereof or the duly authorized proxy of the record Lot Owner. Each Lot Owner shall be entitled to one (1) vote for each Lot owned, and Developer shall retain one (1) vote for each unsold Lot.

### **3. Government of the Association.**

(a) The business and affairs of the Association shall be managed by or under the direction of its Board of Directors. The number of directors of the Association shall consist of not less than three (3) or more than five (5) directors with the exact number to be fixed from time to time by the members holding a majority of the votes of the Association. The initial Board of Directors shall consist of three (3) directors. The directors shall serve for a period of two (2) years and shall be replaced by calling and holding a meeting for such purpose at the end of such two-year term. A majority of the members of the Association shall constitute a quorum.

(b) Notwithstanding the provisions set forth above, Developer, its successors and assigns, shall elect the members of the Board of Directors of the Association until such time as all Lots in the Property are sold to Lot Owners. This period shall be known as "Developer Control." Developer may, at its option, however, elect to terminate control of the Association prior to the sale of all Lots in the Property.

(c) A regular meeting of the Board of Directors shall be held at least annually, at which time the Board of Directors shall determine the amount of the annual assessment to be paid by the Lot Owners to the Association. Any vacancy occurring in the Board of Directors may be filled by a majority of the remaining directors until the next meeting regularly scheduled to elect a new board of directors.

(d) The Board of Directors shall appoint at least three (3) members of the membership to serve on the Committee after the period of Developer Control terminates. Any member of the Board of Directors may also serve on the Committee, provided the other members of the board of directors agree to such appointment. During the period of Developer Control, Developer shall serve as the Committee.

**4. Right to Use.** Every Lot Owner shall have a right and easement of enjoyment in and to the Common Property (hereinafter defined) which shall be appurtenant to pass with the title to each Lot, subject to the following:

(a) The right of the Association to suspend the voting rights and right to use of the Common Property by any Lot Owner for any period during which any assessment against such Lot Owner's Lot remains unpaid, and for a period not to exceed thirty (30) days for the violation of any rule or regulation respecting the right to use the Common Property which may be now or hereinafter adopted by the Association.

(b) Such other reasonable rules and regulations respecting the use and enjoyment of the Common Property as may be adopted by the Association.

#### **ARTICLE IV ARCHITECTURAL CONTROL**

**1. Approval by Architectural Control Committee.** No structure, building, or fence shall be commenced, erected, placed, moved onto, or permitted to remain on any Lot within the Property, nor shall any existing structure upon any Lot within the Property be altered in any way which changes the exterior appearance thereof, unless plans and specifications thereof shall have first been submitted to and approved by the Architectural Control Committee (the "Committee"). Such plans and specifications shall be in such form and shall contain such information as may be required by the Committee and shall include, but not necessarily be limited to, a site plan of the Lot showing the location, height, and exterior design (including a summary of all proposed materials together with samples of exterior materials and paint colors) of all building and improvements proposed to be constructed or altered on the Lot. The plans shall be submitted to the Committee at least thirty (30) days prior to the date of the proposed construction, rehabilitation, or alteration of the structure on the Property. All plans and construction shall be controlled by Developer during the period of Developer Control.

**2. Appointment of Architectural Control Committee.** The Committee shall be composed of Developer during the period of Developer Control or three (3) individuals designated from time to time by the board of directors after the period of Developer Control terminates. The affirmative vote of a majority of the members of the Committee shall be

required in order to issue any permit, authorization, or approval pursuant to the directives or authorization set forth herein.

**3. Basis for Disapproval of Proposed Plans.**

(a) The scope of review by the Committee shall be limited to appearance only. The Committee does not assume or accept any responsibility or authority to review plans and specifications for structural soundness, compliance with building or zoning codes or standards, or any other factors.

(b) The Committee shall have the right to disapprove any plans and specifications submitted for approval for any reason it deems appropriate, including but not limited to, the following:

- (1) failure to comply with the Development Plan or any other of the covenants and restrictions set forth herein;
- (2) objection to exterior design, appearance, color scheme, finish, proportions, or materials of any proposed structure or improvement;
- (3) objection to the site plan, clearing plan, or drainage plan for any Lot;
- (4) incompatibility of any proposed structure or improvement or use thereof with the existing structures or uses upon other Lots in the Property;
- (5) any other matter which in the judgment of the Committee would render the proposed structure, improvement, or use inharmonious with the general plan and improvements of the Property or with structures, improvements, or uses located upon other Lots in the Property.

**4. Failure to Obtain Approval.** If any structure or improvement shall be altered, erected, placed, or maintained upon any Lot or any new use commenced on any Lot otherwise than in accordance with plans and specifications approved by the Committee pursuant to provisions of this Article, such alteration, erection, maintenance, or use shall be deemed to have been undertaken in violation of this covenant and without the approval required herein and, upon written notice from the Committee, any structure or improvement so altered, erected, placed, or maintained upon any Lot in violation hereof shall be removed or re-altered and any such use shall be terminated so as to extinguish such violation.

If, within fifteen (15) days after the notice of such violation, the Lot Owner of the Lot upon which such violation exists shall not have taken reasonable steps toward removal or termination of the same, Developer or the Association shall have the right to enter upon such Lot and to take such steps as may be necessary to extinguish such violations, and the cost thereof shall be a binding, personal obligation of such Lot Owner as well as a lien (enforceable in the

same manner as a mortgage ) upon the Lot in question. The lien provided herein shall not be valid as against a bona fide purchaser (or bona fide mortgagee) of the Lot in question unless a suit to enforce said lien shall have been filed in a court in Jefferson County, Alabama, prior to the recordation in the Office of the Judge of Probate of Jefferson County, Alabama, of the deed (or mortgage) conveying the Lot in question to such purchaser (or subjecting the same to such mortgage).

**5. Waiver of Liability.** Neither the Committee nor any architect or agent thereof, nor Developer, nor any partner, agent or employee of any of the foregoing shall be responsible in any way for any failure of structures or improvements to comply with the requirements of this Declaration, any defects in any plans and specifications submitted, revised, or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications. All persons submitting any such plans and specifications and all persons relying thereon shall be deemed to have agreed not to sue or claim against the Committee nor any architect or agent thereof, nor Developer nor any partner, agent, or employee thereof, for any cause arising out of the matters referred to, and further shall be deemed to and do hereby agree to and do hereby release said entities and persons from any and every such cause.

## **ARTICLE V COMMON PROPERTY**

**1. Common Property.** "Common Property" shall mean and refer to all real property (including any improvements thereon and appurtenances thereto) owned by or conveyed to the Association for the common use and enjoyment of the Lots or to be managed by the Association, including but not limited to the following:

- (a) The Private Drive and the Green Space Areas.
- (b) All installations for the furnishing of electricity, telephone, natural gas, sanitary sewer, water service and television cable not immediately appurtenant to any dwelling house.
- (c) All outdoor and exterior lighting not situated within the boundaries of any Lot.
- (d) Landscaping, trees, irrigation systems and walkways not situated within the boundaries of any Lot.
- (e) The System, as more particularly defined elsewhere in this Declaration.
- (f) The entrance walls at the entrance into the Property from Montclair Road, including any landscaping, lighting, irrigation systems and other such improvements related thereto.
- (g) Any and all other property deeded to the Association.

## ARTICLE VI ASSESSMENTS

1. **Agreement to Pay.** Developer, for each Lot owned with the Property, hereby covenants, and each Lot Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments of charges, and (ii) special assessments for capital improvements, such assessments to be established and collocated as hereinafter provided. The annual and additional assessments shall be fixed at a uniform rate for all Lots. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be made, and shall further be a personal obligation of the person or persons who were the owner or owners of such Lot at the time such assessments were made. The personal obligation is for delinquent assessment and shall not pass to the successor in title of any Lot Owner unless expressly assumed by such successor, although the lien for such assessment shall be an encumbrance upon the title to the Lot, as hereinafter provided.

2. **Annual Assessment.** The annual assessment shall commence as to any Lot at the time of closing the sale of such Lot, which annual assessment will be prorated for the year in which the closing occurs. Until \_\_\_\_\_, the maximum annual assessment shall be \$\_\_\_\_\_ per Lot. Thereafter, the board of directors of the Association shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of the due date of each annual assessment. Written notice of the annual assessment shall be sent to every Lot Owner subject thereto, and the due dates thereof shall be established by the board of directors.

3. **Additional Assessments.** In addition to the annual assessments authorized herein, the Association may impose additional assessments for the purpose of deferring or funding in whole or in part any cost incurred or to be incurred for the common benefit of all Lot Owners provided that such additional assessment shall first have been approved by the vote of two-thirds (2/3rds) of the Lot Owners entitled to vote at the time in person or by proxy, at any regular or special meeting called for the purpose of voting on such assessment and approval in accordance with the terms of the Bylaws.

4. **Payment.** The annual assessment shall be made January 1st of each year and shall be paid in advance. The annual assessment may be paid in such installments as determined by the board of directors and shall be delinquent if not paid within fifteen (15) days of the date the assessment is due. Delinquent assessments will accrue interest at the rate of twelve percent (12%) per annum, and penalties may be imposed by the Association if the assessment is over ninety (90) days delinquent.

5. **Certificate.** The Association shall, upon demand, for a reasonable fee or charge, furnish a certificate signed by an officer of the Association, setting forth whether the assessments on a specified Lot have been paid or the amount due thereon at any given time. Any such certificate, when properly executed by an officer of the Association as to the status of or amounts of the assessments on a Lot, shall be binding upon the Association as of the date of the issuance of such certificate.

**6. Enforcement/Lien.** The Association may bring an action at law against any Lot Owner or person obligated to pay the same or may foreclose its lien against the Lot by the commencement of a civil litigation. No Lot Owner may waive or otherwise avoid or escape liability for the assessment provided herein by non-use of the Common Property or abandonment of such Lot Owner's Lot. The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage. Any conveyance, whether voluntarily, involuntarily, or by operation of law, shall not affect the lien of assessment; provided, however, the sale or transfer of any Lot pursuant to a mortgage foreclosure or any judicial proceeding in lieu thereof shall extinguish the lien of such assessment as to any assessment or part thereof which became due prior to such sale or transfer. In any event, no sale or transfer will relieve any Lot Owner from personal liability for any assessments becoming due prior to such sale or transfer.

**7. Purposes.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Lot Owners and shall cover the following:

- (a) Maintenance of sanitary sewer system;
- (b) Maintenance of the System;
- (c) Any fees incurred for the employment of an engineer licensed by the State of Alabama and selected by the Association to inspect any of the aforesaid devices and systems at such times as may be determined by the Association;
- (d) Maintenance of the Common Property;
- (e) Maintenance of the retaining wall, as constructed by Developer, which extends around or parallel to the perimeter boundaries of the Property as shown by the Plan;
- (f) Any electrical cost to run all common lighting, sewer pump, and any other electrical device necessary to the Common Property;
- (g) Water bills and sprinkler systems for use on the Common Property;
- (h) Any common insurance required;
- (i) Any management fees, accounting fees, and legal expenses incurred by the Association;
- (j) The pruning or removal of diseased, dying or dead trees, or trees which are leaning or are in a condition which poses a risk of falling, within the Buffer Area and the maintenance of the Buffer Area; and;
- (k) Such other matters which involve the Common Property as determined by the Association.

## ARTICLE VII GENERAL

1. **Grantee's Acceptance.** The grantee of any Lot subject to the coverage of this Declaration, by acceptance of the deed or other instrument conveying an interest in or title to, or the execution of a contract for the purchase thereof, whether from Developer or a subsequent owner of such Lot, shall accept such deed or other contract upon and subject to each and all of the restrictions herein contained.

2. **Severability.** Every one of the provisions and restrictions is hereby declared to be independent of and severable from the rest of the provision and restrictions and of and from every combination of the provisions and restrictions. Invalidation by any court of any provision or restriction in this Declaration shall in no way affect any of the other provisions or restrictions which shall remain in full force and effect.

3. **Amendment/Right of Developer to Modify Restrictions.** Until Developer has sold all of the Lots, Developer may, without the consent of any Lot Owner, amend or modify this Declaration in Developer's discretion by recording an amendment hereto in the Office of the Judge of Probate of Jefferson County. After Developer has sold all of the Lots, this Declaration may not be amended in any respect except by the execution of an instrument signed by not less than two-thirds (2/3rds) of the Lot Owners, which instrument shall be filed in the Office of the Judge of Probate of Jefferson County, Alabama, or in such other place of recording as may be appropriate at the time of the execution of such instrument. Other provisions herein notwithstanding, the provisions of ARTICLE I, Sections 1 and 14, ARTICLE II, Sections 11, 12 and 13, ARTICLE IX, and ARTICLE X of this Declaration, and of this Section 3 of ARTICLE VII, shall not be amended without the approval thereof by the City Council of the City, except with respect to amendments that would be deemed minor under the provisions of the Planned Unit Development District under the City's Zoning Ordinance. No such approval by the City Council shall be requested until at least fifteen (15) days prior written notice of the request has been given by the Association to the owners of lands within five hundred (500) feet of the Property, which notices shall be deemed to have been received when placed in the United States mail, postage prepaid, addressed to the owners of said lands as indicated by the then current tax assessments for said lands in the office of the Jefferson County Tax Assessor.

4. **Captions.** The captions preceding the various paragraphs and subparagraphs of this Declaration are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provision of this Declaration. Whenever and wherever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

5. **Effects of Violations on Mortgage Liens.** No violation of any of this Declaration shall defeat or render invalid the lien of any mortgage made in good faith and for value upon any portion of the Property; provided, however, that any mortgagee in actual possession or any purchaser at any mortgagee's or foreclosure sale shall be bound by and subject to this Declaration as fully as any other Lot Owner of any portion of the Property.

6. **No Reverter.** No restriction herein is intended to be or shall constitute a condition subsequent or to create a possibility of reverter.

7. **Duration.** The covenants and restrictions contained in the Declaration shall **run with the land** and bind the Property and shall inure to the benefit of and shall be enforceable by Developer, the Association, the Committee, the City and any Lot Owner, their respective legal representatives, heirs, successors and assigns.

8. **Enforcement.** In the event of a violation or breach of any of these restrictions or any amendments hereto by any Lot Owner or family member, guest employee, agent, or lessee of such Lot Owner, any other Lot Owner, Developer, the Association, the City, the Committee, their successors or assigns or any party to whose benefit these covenants and restrictions inure shall have the right to proceed at law or in equity to compel compliance with the terms and conditions hereof, to prevent the violation or breach of said restrictions, to sue for and recover damages or other amounts, or take all such courses of action at the same time, or such other legal remedy it may deem appropriate including undertaking to have a violation corrected, with the cost thereof being considered an additional assessment against the violating Lot Owner. No delay or failure on the part of an aggrieved party to initiate an available remedy set forth herein shall be held to be a waiver of that party or an estoppel of that party or of any other party to assert any right available to him upon the recurrence or continuation of said violation or the occurrence of a different violation.

Damages shall not be deemed adequate compensation for any breach or violation of any provision hereof, but any person or entity entitled to enforce any provision hereof shall be entitled specifically to relief by way of injunction as well as any other available relief either at law or in equity.

Any party to a proceeding who succeeds in enforcing a restriction or enjoining the violation of a restriction against a violating Lot Owner may be awarded a reasonable attorney's fee and costs of such action against such violating Lot Owner, which may be considered an additional assessment against the violating Lot Owner which may be secured by a lien against his Lot.

9. **No Waiver.** The failure of any party entitled to enforce any of the covenants and restrictions herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such a violation or breach occurring prior or subsequent thereto; provided, however, that approval of plans pursuant to ARTICLE IV shall be binding on any and all parties as a conclusive determination that such plans are in conformity with these covenants and restrictions.

## **ARTICLE VIII EASEMENTS**

1. **Street Easements.** The Private Drive shall be subject to cross easements for the benefit of all other Lot Owners in the Property. The Private Drive, the Green Space, the landscaping in and around the Green Space and any other public areas constituting a part of the Property, whether or not property over which the City, Jefferson County, or any utility company

has an easement, drainage facilities, and ditches shall be maintained and repaired as needed by the Association, and the costs thereof shall be paid from the annual or additional assessments collected from all Lot Owners. It is hereby agreed and understood that the Private Drive is a private road owned by the respective Lot Owners with cross easements in favor of all other Lot Owners and which will be maintained by the Association. It is further understood that the City is in no way responsible or obligated for maintaining or repairing the Private Drive.

**2. Utility Easements.** Utility easements are reserved throughout the whole of the Property, including Lots, as may be required for utility services (including, without limitation, water, sewer, gas, electricity, telephone, and cable television) in order to adequately serve the Lots and the Green Space.

## **ARTICLE IX GENERAL MAINTENANCE**

**1. General Maintenance Obligations.** Anything in these covenants to the contrary notwithstanding, the Association, shall assume full and sole responsibility for the repair, replacement, or maintenance of all Common Property or improvements installed or constructed on any Common Property, including, but not limited to, roads, streets, sidewalks, lighting, landscaping (including, but not limited to, the removal and replacement of dead or diseased plants and trees), drainage, detention, and like installations, utilities, or other infrastructure designed to serve and benefit the Property. Said obligation shall extend to and include maintenance and replacement of landscaping within the portion of the right-of-way of Montclair Road which is immediately adjacent to the Property, notwithstanding the fact that said area is outside the boundary of the Property itself. It is understood and agreed that these covenants are and shall be enforceable by the City in order to ensure compliance with its zoning requirements, laws, ordinances, and regulations, or for any other purpose authorized by law.

**2. No Obligation of Municipal Zoning Authority.** Nothing herein and no amendment hereof shall be construed or applied to defeat, impair, or destroy the authority of the City to enforce these covenants as they existed on the date of rezoning approval, or the terms, limitations, and conditions imposed by the City through its authority to rezone the Property.

## **ARTICLE X CITY RESPONSIBILITY**

**1. City Responsibility.** The City of Mountain Brook will not maintain the Private Drive now or in the future and will not be obligated to honor any request to perform such maintenance.

IN WITNESS WHEREOF, Developer has executed this Declaration on the date written above.

\_\_\_\_\_  
D. Bruce MacClary

STATE OF ALABAMA     )  
                                  :  
JEFFERSON COUNTY    )

I, the undersigned, a Notary Public in and for said County in said State hereby certify that D. Bruce MacClary, whose name is signed to the foregoing Declaration and who is known to me, acknowledged before me on this day that, being informed of the contents of the Declaration, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

\_\_\_\_\_  
Notary Public

[NOTARIAL SEAL]

My commission expires: \_\_\_\_\_

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## **Development Plan Narrative**

DEVELOPMENT PLAN NARRATIVE  
FOR  
PILGRIM PLACE

The following is submitted to the City of Mountain Brook as a part of the request for the rezoning of the Pilgrim Place development to the Planned Unit Development classification for a residential PUD. The following are hereby incorporated into the request for rezoning and shall be deemed part of any such rezoning approval by the City of Mountain Brook:

1. The Master Development Plan for Pilgrim Place, prepared by Paragon Engineering, a division of Hatch Mott McDonald, dated 10/9/07, is hereby acknowledged to be the Master Development Plan to which the rezoning to PUD will be subject;
2. The Preliminary Grading and Utility Plan for Pilgrim Place prepared by Paragon Engineering, a division of Hatch Mott McDonald, dated 10/9/07, is hereby acknowledged to be the Preliminary Grading and Utility Plan to which the rezoning to PUD will be subject;
3. The Site Landscape Plan for Pilgrim Place prepared by Alexander Vare, Landscape Architect, dated 10/9/07, is hereby acknowledged to be the Site Landscape Plan to which the rezoning to PUD will be subject;
4. The Declaration of Protective Covenants, Restrictions, Easements and Agreements for Pilgrim Place (the "Declaration"), is presented as a part of the application for the rezoning of Pilgrim Place to the PUD classification;
5. The Grasscrete Parking Spaces depicted on the Site Landscape Plan referenced above shall be installed as a part of the development;
6. The residential dwellings to be constructed within Pilgrim Place shall be limited to thirty-five (35) feet in height and one and one-half (1 ½) stories;
7. The total of impervious area as the result of the development of each lot shall not exceed forty (40) percent of the size of the lot;
8. The first floor footprints of the residential dwellings shown on the Master Development Plan, Preliminary Grading and Utility Plan, and Site Landscape Plan, are for illustration purposes only and may vary in configuration, location and size; the calculated square footages of the footprints as presently shown on said plans range from 1,340 square feet on Lot 9; 2,035 square feet on Lot 12; 2,264 square feet on Lot 13; 2,420 square feet on Lot 3; to 2,700 square feet on Lots 4 and 5;
9. The sidewalks along Montclair Road, as shown on the Master Development Plan, shall be installed prior to the issuance of any certificate

of occupancy with respect to Pilgrim Place or the residences constructed therein, and said sidewalks shall be installed with the approval and supervision of the Mountain Brook Public Works Department;

10. A Reclamation Bond as required by the applicable ordinances of the City of Mountain Brook shall be secured, and the costs of land disturbance and the costs of the installation of the landscaping shall be provided to the City of Mountain Brook Building Inspector, in order to calculate the amount of said bond;
11. The private drive within Pilgrim Place shall be paved with asphalt and the private driveways serving each residence shall be mortarless brick;
12. The construction of the turn lane and other improvements within the right-of-way of Montclair Road, as shown on the Preliminary Grading and Utility Plan, shall be installed and constructed in accordance with the requirements of the City of Mountain Brook or such other governmental authorities which have jurisdiction over the improvements within Montclair Road, including the type of paving and the specifications therefor;
13. Requirements with respect to landscaping (including landscaping requirements along the exterior boundaries of each lot) and lighting of the individual residences within Pilgrim Place shall be as specified in the Declaration;
14. There shall be no common area street lamps within Pilgrim Place;
15. The retaining walls shown on the Preliminary Grading and Utility Plan shall be either (a) poured concrete walls, beige or other earth-tone color, with brick columns spaced every ten (10) to twelve (12) feet as determined by the engineering design for the walls, capped with brick or stone, or (b) stone walls with stone caps and stone columns. Evergreen planting shall be planted at the base of the portion of said walls which is parallel to Rockbrook Circle and trained or positioned to attach to or grow along said portion of the walls;
16. There shall be a forty-two (42) inch tall rail of wrought iron or wrought iron appearing constructed along the top of the retaining wall along Montclair Road;
17. Any walls or fences constructed on any lot within Pilgrim Place shall be subject to the restrictions set forth in the Declaration; no chain link, wire or metal fencing of any kind may be used;
18. The underground storm water detention system shown on the Preliminary Grading and Utility Plan shall be installed in accordance with such plans and specifications as are required by the City of Mountain Brook, which shall include the six (6) foot by four (4) foot reinforced concrete box culvert designated on said plan or as otherwise required by the City of Mountain Brook; the maintenance of said system, once installed, shall be by and at the expense of the owner's association established pursuant to

the Declaration in accordance with the terms and provisions of the Declaration;

19. The interior boundary of the Dedicated Green Space and Creek Preserve, as shown on the Master Development Plan, shall be marked with silt fencing and a brightly colored (such as orange) fencing, which shall be installed prior to the commencement of the site work and which shall remain in place until the completion of the site work, in order to protect said area from intrusion during development;
20. The developer of Pilgrim Place shall instruct its contractors that, during the development of Pilgrim Place, none of the materialmen, laborers, suppliers or other personnel involved in the development of Pilgrim Place shall park their vehicles on Rock Brook Circle or Cross Ridge Road;
21. The anticipated schedule of the completion of development of Pilgrim Place is anticipated to extend for between two and three years from the date of commencement; the commencement of construction is expected to occur during the first month in the year 2008;
22. The construction of improvements within Pilgrim Place shall not occur prior to 7 A.M. on any given day;
23. The drainage calculations with respect to the development of Pilgrim Place are as set forth in the Detention Study for Pilgrim Place prepared by Paragon Engineering, a division of Hatch Mott McDonald, dated 7-16-2007, and included in the materials filed in support of the application for rezoning of the subject property;
24. The Declaration (including the exhibits thereto) is in draft form; any revisions which are included in the final form of the Declaration shall be subject to review and approval by legal counsel to the City of Mountain Brook prior to the recordation thereof.

**“Blackline” of Page 9 of Covenant**

grounds of such Lot which shall tend to decrease the beauty and aesthetics of the Property or the neighborhood as a whole. No Lot Owner shall permit a garage or other type of public or private sale or auction on the Lot Owner's Lot or in the Green Space.

**11. Green Space Areas.** The green space surrounded by the circular private drive (the "Private Drive") and the green space located within the median at the entrance into the Property from Montclair Road, as shown on the Development Plan (the "Green Space Areas") are for the use and enjoyment of all Lot Owners. Developer will plant in the Green Space Areas, and the Association will maintain, the plants, and trees and grass within the Green Space Areas.

**12. Buffer Area.** Except as provided in paragraph 13 of this ARTICLE II, the buffer area (the "Buffer Area") shown on the Development Plan along the east, west and south perimeters of the Property shall be left in its natural condition, including the plants and trees which currently exist within the Buffer Area. The exact placement of the retaining wall along the interior boundary of the Buffer Area shall be determined by the Developer in cooperation and consultation with the City's arborist, in an effort to protect any large trees which are within the Buffer Area and also immediately adjacent to the retaining wall. The Association shall have the authority to prune or remove any diseased, dying or dead trees, or trees which are leaning or are in a condition which poses a risk of falling, within the Buffer Area.

**13. Restrictions Within Green Space Areas and Buffer Area.** No personal property of any Lot Owner shall be placed or stored on the Green Space Areas or the Buffer Area, except that automobiles may park in the spaces adjacent to the Green Space Area within the circular drive, as shown on the Development Plan. No alterations, additions, or improvements of any kind whatsoever shall be made to the Green Space Areas or the Buffer Area except as shown on the Development Plan or as permitted herein. Any Lot Owner who is responsible for any damage, defacement, or destruction to the Green Space Areas or the Buffer Area will be responsible for the repair, clean up, replanting or reconstruction thereof, the cost of which may be expended by the Association and assessed against the Lot Owner as an additional assessment. Provided, within the Buffer Area, Developer will perform selective cutting of any privet, mimosa, ivy, or other such non-native or invasive plants not located within the banks of the creek (which meanders through the Buffer Area) and the replanting of additional shrubs and trees which are native to the area. All such selective cutting and replanting shall be accomplished in ~~consultation with~~ accordance with a landscape plan which has been approved by both the City's arborist and the Developer's landscape architect. The said landscape plan shall include the standards by which the Buffer Area shall be maintained. The Buffer Area shall be maintained by and at the expense of the Association— in accordance with said plan. If the City's arborist and the Developer's landscape architect cannot agree upon the landscape plan, then the landscape plan shall be submitted to the City Council for its determination and approval at a hearing about which notice has been given as provided in Section 3 of Article VII hereof.

### ARTICLE III PILGRIM PLACE HOME OWNERS' ASSOCIATION

**1. Establishment.** Operation and administration of the Property shall be performed by Pilgrim Place Home Owners' Association, an unincorporated association (the "Association"). The powers and duties of the Association shall include the following:

**“Blackline” of Development Plan Narrative**

9. The sidewalks along Montclair Road, as shown on the Master Development Plan, shall be installed prior to the issuance of any certificate of occupancy with respect to Pilgrim Place or the residences constructed therein, and said sidewalks shall be installed with the approval and supervision of the Mountain Brook Public Works Department;
10. A Reclamation Bond as required by the applicable ordinances of the City of Mountain Brook shall be secured, and the costs of land disturbance and the costs of the installation of the landscaping shall be provided to the City of Mountain Brook Building Inspector, in order to calculate the amount of said bond;
11. The private drive within Pilgrim Place shall be paved with asphalt and the private driveways serving each residence shall be mortarless brick;
12. The construction of the turn lane and other improvements within the right-of-way of Montclair Road, as shown on the Preliminary Grading and Utility Plan, shall be installed and constructed in accordance with the requirements of the City of Mountain Brook or such other governmental authorities which have jurisdiction over the improvements within Montclair Road, including the type of paving and the specifications therefor;
13. Requirements with respect to landscaping (including landscaping requirements along the exterior boundaries of each lot) and lighting of the individual residences within Pilgrim Place shall be as specified in the Declaration;
14. There shall be no common area street lamps within Pilgrim Place;
15. The retaining walls shown on the Preliminary Grading and Utility Plan shall be either (a) poured concrete walls, beige or other earth-tone color, with brick columns spaced every ten (10) to twelve (12) feet as determined by the engineering design for the walls, capped with brick or stone, and evergreen or (b) stone walls with stone caps and stone columns. Evergreen planting shall be planted at the base of the portion of said walls which is parallel to Rockbrook Circle and trained or positioned to attach to or grow along said portion of the walls;
16. There shall be a forty-two (42) inch tall rail of wrought iron or wrought iron appearing constructed along the top of the retaining wall along Montclair Road;
17. Any walls or fences constructed on any lot within Pilgrim Place shall be subject to the restrictions set forth in the Declaration; no chain link, wire or metal fencing of any kind may be used;
18. The underground storm water detention system shown on the Preliminary Grading and Utility Plan shall be installed in accordance with such plans and specifications as are required by the City of Mountain Brook, which shall include the six (6) foot by four (4) foot reinforced concrete box

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**Correspondence from Mr. Downey**

**LLOYD, GRAY & WHITEHEAD, P.C.**

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\* ALSO ADMITTED IN MISSISSIPPI  
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\*\*\*\* ALSO ADMITTED IN GEORGIA  
\*\*\*\*\* ALSO ADMITTED IN INDIANA

FIRM ADMINISTRATOR  
JAMES B. BROOKS

October 29, 2007

**VIA E-MAIL TRANSMISSION**

Charles A.J. Beavers, Jr., Esquire  
Bradley Arant  
One Federal Place  
1819 5<sup>th</sup> Avenue North  
Birmingham, Alabama 35203

**Re: Proposed rezoning of Pilgrim Congregational Church property**

Dear Charlie:

I received and thank you for the drafts of the development documents over the past week or so. Many neighbors and I remain concerned about the buffer area, the definition of its boundaries, its being "cleaned up" and replanted, and ongoing maintenance of it. With regard to the boundaries of the buffer, it repeatedly was represented to the City and neighbors that the buffer would include the area from the edges of the streets (Rockbrook Circle and Cross Ridge Road), across the creek bed and to a boundary twenty-five (25) inward (to the property to be developed) from the inner bank of the creek. One of your e-mails indicates that the boundary referenced above is confirmed in the drawings submitted with the proposal. I may be mistaken but I do not recall seeing the boundaries of the buffer being defined as described above on those drawings. In any event, please let me know if there is any intention of the developer to decrease the size of the buffer from what I have described above.

The second issue relating to the buffer is what is going to be done with it as the development is completed. Specifically, there was lengthy discussion at the last Council meeting that I attended regarding cleaning out the undesirable plants and weeds from that area and replanting it. To my understanding, the only "specific" provision regarding this issue is that it is to be completed "in consultation" with the City's Arborist. I was of the understanding that Mr. Cafaro was to be consulted and must approve the plan in that regard.

We are concerned regarding the buffer issue in that the developer has little or no motivation to invest resources in that area in that the development is walled off from the buffer and the houses in the development will not face it. We are concerned that the cleaning out and replanting of the buffer area may not be completed in an aesthetically pleasing manner based on

67

financial considerations of the developer. Based on my communications with property owners adjacent to the development behind Western Supermarket in Mountain Brook Village previously completed by the developer, I understand this to be a valid concern. I would appreciate your advising me as to what the developer's working plan is with regard to the cleaning up and replanting of the buffer area. In my opinion, the PUD documents, as drafted, do not provide reasonable protection for the neighborhood regarding the buffer area consistent with the comments of Council members.

I am available to discuss this matter with you at your convenience. I trust that you understand and appreciate my concerns in that the buffer area is what the residents of Cross Ridge Road and Rockbrook Circle look at every day. Confirming what will be done in that area is extremely important to us.

Thank you in advance for your anticipated cooperation.

Sincerely yours,

*Howard Yeilding Downey*

Howard Yeilding Downey

HYD\kc

cc: Whit Colvin, Esquire (*via e-mail*)  
Mr. Don Cafaro (*via e-mail*)  
Neighbors (*via e-mail*)

68

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FIRM ADMINISTRATOR  
JAMES B. BROOKS

November 2, 2007

***VIA E-MAIL TRANSMISSION***

Charles A.J. Beavers, Jr., Esquire  
Bradley Arant  
One Federal Place  
1819 5<sup>th</sup> Avenue North  
Birmingham, Alabama 35203

**Re: Proposed rezoning of Pilgrim Congregational Church property**

Dear Charlie:

I know that you have been extremely busy and not in your office much of late. However, I would appreciate your responding to my recent correspondence as soon as possible. Essentially, my concerns relate to the buffer area. Specifically, neighbors adjacent to the property are concerned about specification of the dimensions of the buffer along Cross Ridge Road and Rockbrook Circle, the plan with regard to cleaning that area up and replanting it, and written provisions concerning these issues. If possible, I would like to avoid having to appear before the Council on November 13, 2007.

I look forward to hearing from you soon and thank you in advance for your anticipated cooperation.

Sincerely yours,

*Howard Yeilding Downey*

Howard Yeilding Downey

HYD\kc

cc: Whit Colvin, Esquire (*via e-mail*)  
Neighbors (*via e-mail*)

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CARL K. DOWDEY III  
\*\*\* DAVID A. POTE  
J. RICK WALLIS  
\*\*\*\*\*CARRIE J. DUNN  
BRIAN M. MCCLENDON  
\* JENNIFER S. PRECISE  
MONICA L. CARROLL  
\*\*\*\* KAREN D. FARLEY  
RACHEL E. VANNORTWICK  
\*\*\* \*\*\*\*\* FRENCH A. MCMILLAN  
\* GRAHAM R. PULVERE  
LAURA A. MONCRIEF  
\*\*\* RANDALL W. HALL  
DUSTIN J. KITTLE

November 5, 2007

***VIA E-MAIL TRANSMISSION***

Charles A.J. Beavers, Jr., Esquire  
Bradley Arant  
One Federal Place  
1819 5<sup>th</sup> Avenue North  
Birmingham, Alabama 35203

**Re: Proposed rezoning of Pilgrim Congregational Church property**

Dear Charlie:

I received and thank you for the most recent draft of the Pilgrim Place documents. Please let me know if and when the buffer area landscape plan to be submitted to Mr. Cafaro will be available for review by residents of the neighborhood.

Thank you in advance for your anticipated cooperation.

Sincerely yours,

*Howard Yeilding Downey*

Howard Yeilding Downey

HYD\kc

cc: Whit Colvin, Esquire (*via e-mail*)  
Mr. Don Cafaro (*via e-mail*)  
Neighbors (*via e-mail*)

**ORDINANCE NO. 1920**

**AMEND CHAPTER 121 (“THE SIGN ORDINANCE”) OF  
THE MOUNTAIN BROOK CITY CODE**

**BE IT ORDAINED** by the City Council of the City of Mountain Brook, Alabama, as follows:

**SECTION 1. AMENDMENT.** Chapter 121 (“The Sign Ordinance”) of the Mountain Brook City Code is hereby amended as follows:

**“Chapter 121 - Signs**

ARTICLE I. - IN GENERAL

ARTICLE II. - ADMINISTRATION

**ARTICLE I. - IN GENERAL**

Sec. 121-1. - Intent and purpose.

Sec. 121-2. - Compliance with chapter provisions.

Sec. 121-3. - Definitions.

Sec. 121-4. - Conflict.

Sec. 121-5. - Penalties.

Sec. 121-6. - Requirements applicable to all signs.

Sec. 121-7. - Prohibited and illegal signs.

Sec. 121-8. - Regulations for temporary signs.

Sec. 121-9. - Regulations for incidental signs.

Sec. 121-10. - Regulations for residential signs and general business signs.

Secs. 121-11—121-38. - Reserved.

**Sec. 121-1. - Intent and purpose.**

It is the purpose of this chapter to promote the public health, safety and welfare of the residents of the City of Mountain Brook and to avoid congestion on the public roads and streets so that signs do not become a hazard or a nuisance, and, therefore, to establish regulations for the control of all signs designed or intended to be seen by, or attract the attention of, the public, which may be erected, displayed, maintained, or altered in the city.

Further, it is the intent of this chapter:

- (1) To allow expression of commercial and noncommercial speech in a reasonable manner consistent with the rights of others;
- (2) To provide a pleasing overall environmental setting and good community appearance deemed vital to the continued economic attractiveness of the city;
- (3) To enhance a productive, enterprising, responsible community atmosphere through the use of effective visual communication;
- (4) To protect and enhance the value of properties, and, therefore, to have signs appropriate to the planned character and development of each area of the city; and
- (5) To protect and enhance the unique character of the traditional villages of Mountain Brook by carefully regulating the size, number, composition, and type of signs consistent with the architecture, building types, and pedestrian nature of the villages and to promote compatibility between properties located therein.

### **Sec. 121-2. - Compliance with chapter provisions.**

No sign shall be erected, displayed, maintained, or altered in the city unless it is in compliance with this chapter.

- (1) *Permit required.* It shall be unlawful for any person to erect, display, materially alter, or relocate any sign unless such sign is in compliance with this chapter, a permit for such sign has been issued by the building inspections superintendent, and the permit fee required by this chapter has been paid, except for any sign for which a permit is not required under this chapter.
- (2) *Signs displaying commercial messages.* Signs requiring a sign permit and displaying commercial messages shall be permitted only as accessory to buildings or structures engaged in permitted institutional activities, or in permitted activities as evidenced by a valid business license issued by the city.
- (3) *Design review required.* It shall be unlawful for the building inspections superintendent to issue a sign permit until satisfactory completion of the design review process as required under this chapter.
- (4) *Maintenance.* The owner of any sign shall maintain same, together with all sign supports, braces, anchors, and messages, in good repair, in a safe manner, and in a permitted location, all in accordance with this chapter.
- (5) *Required signs.* The street address of each of the premises in the city shall be displayed in a legible manner in a location visible from the public right-of-way.

### **Sec. 121-3. - Definitions.**

(a) *Interpretations.* With respect to words used in this chapter, words used or defined in one tense shall include other tenses and derivative forms. Words used in the singular number shall include the plural, and words used in the plural number shall include the singular.

(b) *Definitions.* The following definitions shall apply to the regulation and control of signs within this chapter:

*Awning sign.* Sign that is painted on, applied to, or otherwise is a part of a fabric or other nonstructural awning.

*Authorized agent.* An individual duly authorized by the owner of a development site to apply for a sign permit, approval of a master sign plan or other form of official action by the city with regard to any sign or signs on the property. An authorized agent, if not an attorney, shall have written authorization from all owners of the development site. Only an individual may be an authorized agent.

*Banner.* Sign made of cloth, canvas, plastic sheeting or any other flexible material, not rigidly attached to a building or the ground through a permanent support structure.

*Building.* A structure having a roof supported by columns or walls.

*Bulletin board.* Sign consisting of manually changeable copy boards or panels for the posting of notices.

*City Code.* The Code of the City of Mountain Brook, Alabama.

*Commercial message.* Any wording, logo, or other representation that, directly or indirectly, names, advertises, or calls attention to an institution, business, product, or service.

*Construction Sign.* A temporary sign displaying the names and contact information of those individuals or firms directly connected with the construction or development of a project.

*Development site.* One or more parcels of land unified under a single development plan, which constitutes the entire development shown on a site plan or subdivision plat, including all land needed for landscaping, drainage facilities, parking, internal access roads, driveways, or other physical design features needed to serve the proposed development.

*Directional sign.* Sign, other than an official sign, not displaying any commercial message, designed and erected solely for the purpose of traffic or pedestrian direction and placed on the property to which public may be directed.

*Display area, aggregate.* The total display area of all signs permitted on a lot, premises, or development site.

*Display area, awning.* The display area of the sign projected horizontally to a vertical plane.

*Display area, generally.* The area that can be enclosed or measured by the smallest rectangle that will encompass the entire sign face; excluding frame, posts, uprights, braces or other structural members that support it.

*Display area, multiple-face sign.* Where a sign has multiple faces and only one face may be viewed from a single location on a public right-of-way, the largest of these faces shall be considered its display area.

Where a sign has two or more faces that may be viewed from a single location, the display area of all such faces shall be the total area of all such faces.

*Door sign.* Sign attached to, painted on, or etched into a door. A sign in a window that is part of a door is a door sign rather than a window sign.

*Facade.* The front, side or rear wall of a building below the eaves or top of parapet wall.

*Facade sign.* Sign attached to, or painted directly upon, a facade.

*General business sign.* Sign containing a commercial message related directly to the premises and its owner, occupant, manager, business, institution, or building; the address; the type of business, profession, services, or activity conducted on the premises; and descriptive information about the products and services offered thereon.

*Ground sign.* Sign supported by uprights, posts, or bases affixed in or upon the ground and not attached to any part of a building.

*Hazard sign.* Sign warning of construction, excavation, or similar hazards, and of such size and placement that is in accord with the provisions of the Manual on Uniform Traffic Control Devices for Streets and Highways, 1988 edition; published by the U.S. Department of Transportation, Federal Highway Administration.

*Identification marker.* Sign marking an entrance to, and including the name and/or address of, a residential subdivision, shopping center, office park or institutional use, and containing no other content.

*Incidental sign.* Sign, other than an official sign, providing information or direction for the convenience and necessity of the public.

*Internal sign.* Sign not intended to be viewed from, and placed so as not be visible from, a public right-of-way.

***Internally Illuminated Sign.* Any sign where light shines through a transparent or semi-transparent sign face to illuminate the sign's message.**

*Nameplate.* A nonilluminated sign identifying only the name, occupation, or profession of the occupant of the premises upon which the sign is located.

*Noncommercial message.* Any wording or other display other than a commercial message.

*Official sign.* Any official federal, state, or local government traffic, directional, or informational sign placed by a duly authorized public official, or notice issued by any court, person, or officer in performance of a public duty; an official historical marker; any sign erected by a federal, state, or local government agency for identification purposes at any office, institutional, recreational, or other publicly owned or leased site.

*Premises.* Land and building or part of a building having a separate street address.

*Product sign.* Sign that is an integral part of a licensed or otherwise authorized vending machine, gasoline pump, or similar apparatus that directs attention only to products or services dispensed therefrom.

*Projecting sign.* Sign placed above the ground, permanently affixed at more or less a right angle to the exterior facade of the building to which it is attached.

*Residential sign.* Sign of, for or pertaining to a residence.

*Roof sign.* Sign mounted on a roof, above the eaves or above the top of a parapet wall of a building, but not extending above the highest point of its supporting roof or of another architectural element that serves to block a rear view of the sign.

*Sandwich board.* Sign, having two faces angled toward one another vertically and attached to one another at the top to form a structural "A" frame, placed upon the ground and not otherwise supported by uprights, posts, or bases.

*Shopping center.* A group of commercial establishments on one or more contiguous parcels of land having shared access and/or offstreet customer parking.

*Sign.* A lettered, numbered, symbolic, pictorial, or illuminated visual display that is designed to identify, announce, direct, or inform.

*Sign face.* The area of the smallest rectangle within which all letters, logos, symbols, or other elements displayed on the sign can be enclosed.

*Sign height.* The vertical distance measured from the lowest finished grade elevation directly beneath the center of the sign to the highest elevation of the sign.

*Structure.* Anything built or constructed that requires a permanent location.

*Suspended sign.* Sign attached to, and supported by, the underside of a structure.

*Temporary sign.* Commercial message sign, other than a sandwich board, not permanently and rigidly affixed to the ground or to a building.

*Traditional Villages.* Mountain Brook Village, English Village and Crestline Village.

*Utility sign.* Sign showing the location of a public telephone, or sign placed by a regulated public utility to indicate location of its facilities, and including no commercial message.

*Umbrella sign.* Sign that is painted on, applied to, or otherwise is a part the fabric of an umbrella.

*Village.* Any or all of the Villages of Mountain Brook as they are defined in section [129-416(a)] of this Code.

*Village design review committee.* The design review committee established under section 129-417 of this Code.

*Window sign.* Sign painted or etched onto the inside or outside of a window, or sign attached to the inside or outside of, or displayed in front of or within four feet (4') behind, a window in such a manner that it can be viewed from the exterior of the building.

#### **Sec. 121-4. - Conflict.**

Whenever this chapter may require or impose more restrictive standards than are required in or under any statute or other ordinance, the provisions of this chapter shall govern. Whenever the provisions of any statute or other ordinance require more restrictive standards than are required by this chapter, provisions of such statute or ordinance shall govern. This chapter shall not lower the restrictions imposed by plats, deeds, or private contracts, if they are more restrictive than the provisions of this chapter.

#### **Sec. 121-5. - Penalties.**

Each and every violation of the provisions of this chapter shall be punishable by a fine not exceeding \$500.00, at the discretion of the court trying the case. Each and every day the violation continues shall be construed as a separate offense.

#### **Sec. 121-6. - Requirements applicable to all signs.**

(a) *Building code.* All signs must comply with the building code, and all other applicable codes and ordinances of the city, as such codes and ordinances are in effect from time to time.

(b) *Electrical code.* Any sign that may require electrical wiring or connections shall comply with the electrical code, and all other applicable codes and ordinances of the city, as such codes and ordinances are in effect from time to time, and shall be submitted to the electrical inspector for an appropriate permit. The electrical inspector shall examine the plans and specification respecting all wiring and connections to determine if such wiring, etc. complies with the electrical code, and shall issue such permit only if the plans and specifications for such sign comply with such codes and ordinances or shall disapprove the application if they do not comply with such codes and ordinances. Such action of the electrical inspector shall be taken prior to submission of the application to the building inspections superintendent for a sign permit. All electrical devices used in signs must be inspected by Underwriters Laboratories (i.e., "UL Listed").

(c) *Height.* No sign shall exceed the height limit for buildings established in chapter 129 of this Code for the district in which it is located.

(d) *Obstruction to passage.* No sign shall be erected, displayed, or maintained so as to obstruct or interfere with any fire escape, any required exit way, window, door opening or any other means of egress, or of any opening required for ventilation required by the building code and all other provisions of this Code.

(e) *Signs in public rights-of-way.* No sign, other than an official sign, shall be placed in a public right-of-way, or shall project into a public right-of-way, or shall be attached to private property placed in a public right-of-way, except as expressly provided in this chapter. Any sign so placed or located except in conformance with this chapter shall be forfeited to the public and subject to confiscation and destruction. In addition to other remedies, the city shall have the right to recover from the owner of such sign or the person placing such sign the full costs of removal and disposal of such sign.

(f) *Illumination, lighting, and glare.* Signs may be illuminated (unless expressly prohibited in the district in which the sign is located or by Section 121-7 of the sign ordinance) through the use of direct or indirect illumination, backlighting, internal illumination, or tube illumination. Any device that illuminates a sign shall be placed and shielded so that the direct light therefrom, or from the sign itself, shall not cause direct glare into the windows of any adjacent property or be cast into the eyes of any passing motorist.

(g) *Substitution of Noncommercial Message.* Any sign permitted by this Chapter may contain, in lieu of any other message or copy, any lawful noncommercial message that does not direct attention to a business operated for profit, or to a product, commodity or service for sale or lease, or to any other commercial interest or activity, provided that said sign complies with the size, height, area, and other requirements of this Chapter.

#### **Sec. 121-7. - Prohibited and illegal signs.**

In addition to any sign not specifically permitted by these regulations, the following are specifically prohibited in the city:

- (1) Any sign visible from a public right-of-way that simulates or imitates in color, lettering, content, or design any traffic sign or signal, or that makes use of words, symbols, or characters in a manner which is likely to interfere with, mislead, or confuse pedestrians or motorists, or otherwise presents or implies the need or requirement of stopping, caution, the existence of danger, or which for any reason could be confused with any sign displayed or authorized by public authority.
- (2) Any sign or device designed to attract attention of the public, through motion of any kind, including those which may be set in motion by wind.
- (3) Any sign containing or consisting of any animated, blinking, flashing, intermittent, traveling or fluctuating lights, light emitting diodes (LED), liquid crystal display (LCD), plasma, video, or similar displays, including arrangements that spell messages, simulate motion or form various symbols or images or other illuminating devices that have a changing light intensity, brightness, or color. (Devices displaying video of photographs or intermittently displaying photographs are excluded from this provision for businesses whose primary commodity is photographic images; such is to be considered window display of merchandise but may only be displayed in accordance with Sec. 121-7(1) above).
- (4) Any sign at any street intersection that would obstruct free and clear vision of motorists, or that would obstruct or interfere with a motorist's view of any authorized traffic signal or sign.
- (5) Any sign painted on, or attached to, a utility pole, column, bench, sidewalk, or similar structure, or painted on or attached to a tree, rock or other natural feature.
- (6) Any sign erected, painted, enlarged, or structurally altered in violation of any provision of this chapter.
- (7) Any sign determined by the building inspections superintendent to be dangerous because it is not securely affixed to the ground, or otherwise affixed in a safe, secure, and permanent manner to a building or other approved supporting structure.
- (8) Any sign that has deteriorated or been damaged to such extent that the cost of reconstruction or restoration is deemed by the building inspections superintendent to be in excess of 50 percent of its depreciated value, exclusive of foundations.

- (9) Any sign identifying a business or other use not occupying the premises upon which it is displayed.
- (10) Any sign whose content is determined to be obscene, incites violence or is otherwise without protection of the First Amendment of the United States Constitution.
- (11) Any internally illuminated sign in the three traditional villages.
- (12) Neon signs (including but not limited to "open/closed" signs) on either the interior or exterior surface of a building or window; provided, however, that neon signs or signs incorporating neon may be permitted when such signs are custom designed for the particular location upon which they will be displayed, they enhance the architectural interest or merit of such location, and they relate to and compliment the village context in the area where located.
- (13) Cabinet, can or box signs with panel signs or translucent acrylic faces; such cabinet, can or box signs may be permitted with metal or completely opaque material backgrounds in conjunction with letter forms or logo type which is stencil cut through the surface and filled with backup and push-through non-transparent acrylic forms with an interior diffuser or which have backgrounds routed out with the interior acrylic forms.
- (14) Paper flyers, posters or hand-made signs in storefront windows/doors, except as may be permitted under the temporary sign provisions of this Chapter.
- (15) Sandwich boards, except as allowed by Section 121-8 (5).
- (16) Portable signs mounted on wheels.
- (17) Any sign that blocks the public view of any public sculpture, or any City monuments or City signage.
- (18) Roof signs.

**Sec. 121-8. - Regulations for temporary signs.**

It shall be unlawful to erect, display or permit the display of, or maintain any temporary sign unless such sign is expressly permitted by this chapter, subject to all of the limitations and provisions stated herein. Should a temporary sign exceed the permitted display area, it shall be considered a general business sign and shall be subject to every requirement of this chapter governing such signs. Permitted temporary signs are limited to the following types and conditions:

- (1) *Banner for new business.* Each new business may have one temporary banner, placed as a facade sign or a window sign in accord with all other applicable requirements of this chapter, for a period of not more than 45 days, or until a permanent sign is installed, whichever time period is shorter.
- (2) *Special event banner or sign.* For purposes of this subsection, a "special event banner" or "special event sign" is a banner or sign primarily and principally announcing or promoting special events pertaining to the premises or civic, public or community events or interests, and may not contain commercial advertisement or corporate logos that are not the subject of the special event.
  - a. Established businesses and institutions may be permitted to display special event banners or special event signs as follows:
    - i. During the holiday period between Thanksgiving Day and New Years Day ("Holiday Season"),
    - ii. In addition to the Holiday Season, up to twenty-one (21) days per calendar year.

Time extensions may be approved by the city council upon a showing of compelling hardship or exceptional circumstances. The city council may also designate city-wide or village-wide special events during which special event banners or special event signs may be displayed without utilizing the allotment set forth above. In such case, such banners or signs are to be removed on or before the last day of the designated city-wide or village-wide special event.

- b. The maximum display area allowed for any one special event banner or sign shall be no greater than twenty (20) square feet in the three traditional villages, and outside the three traditional villages, shall be limited to the maximum display area permitted for a general business sign at the permitted premises. No more than one such banner or sign shall be displayed at any one time along or facing each street frontage abutting the premises for which the permit is issued.
  - c. Banners shall be adequately secured at all corners to the facade of a building (but not to the roof), or to poles firmly affixed into the ground in the case of freestanding premises set back from the front property line. Banners shall not be internally illuminated or backlit. For safety reasons, banners shall not be located in the public right-of-way, nor may they be allowed to cause an unreasonable annoyance or inconvenience to users of neighboring premises.
  - d. A special event banner or special event sign permit must be obtained from the City Planner prior to the installation of any special event banner or special event sign. A permit may be obtained by submitting an application containing the following information:
    - 1. Text and other information to be displayed on banner or sign.
    - 2. Dimensions of banner or sign.
    - 3. Name of establishment or institution, and address of premises where banner or sign is to be displayed.
    - 4. Name, address, phone number of the responsible party applying for the permit.
    - 5. Dates banner or sign will be erected and removed.
    - 6. Description of location where banner or sign will be displayed.
  - e. Special events banners or signs permitted hereunder may be placed in windows, but the collective display area of such signs or banners and other window signs permitted by this Chapter shall not exceed twenty per cent (20%) of the window area.
- (3) *Hazard sign.* A hazard sign shall be permitted as a temporary sign. Each such sign shall be removed immediately when the hazard no longer exists.
- (4) *Real Estate Sign.* Temporary signs informing that a property is for sale or lease may be posted on the property that is for sale, rent or lease, provided, however, that only one (1) sign per street fronting the property, not including alleys, shall be permitted, and the display area of each such sign shall not exceed six (6) square feet in residential districts, or twenty-four (24) feet in all other districts.
- (5) *Sandwich board.* Each business, located within the City, having a direct storefront entrance on the ground floor, and that faces and is adjacent to the back of a sidewalk may display, during the operating hours of such business, a maximum of one sandwich board, which shall be of sturdy construction and of a size no greater than 24 inches in overall width or 36 inches in overall height, placed upon that sidewalk within the frontage of the business in such a manner that it shall not:
- a. Reduce any sidewalk width, as measured perpendicular to the curb, to less than five feet to allow for continuous unobstructed pedestrian traffic; nor
  - b. Be placed in a location that will obstruct the view of a motorist or a pedestrian leaving or passing the business or shopping center.
- (6) *Construction Sign.* Construction signs shall be permitted on property that is under development or construction and for which a building permit has been issued and is in good standing. The display area of all such signs in the aggregate shall not exceed six (6) square feet in residential districts or twenty-four (24) square feet in all other districts. Each such sign shall be removed within thirty (30) days of issuance of a certificate of occupancy or expiration of the building permit, whichever occurs first.

**Sec. 121-9. - Regulations for incidental signs.**

It shall be unlawful to erect, display or permit the display of, or maintain any incidental sign unless such sign is expressly permitted by this chapter, subject to all of the limitations and provisions stated herein. Should an incidental sign exceed the permitted display area, it shall be considered a general business sign and shall be subject to every requirement of this chapter governing such signs. Permitted incidental signs are limited to the following types and conditions:

- (1) *Directional sign.* Display area not to exceed two square feet each, aggregate display area per development site not to exceed 40 square feet, except in the villages, where aggregate display area not to exceed 20 square feet,
- (2) *Internal sign.*
- (3) *Nameplate.* Display area not to exceed two square feet per business.
- (4) *Product sign.*
- (5) *Identification marker.* A single ground sign, display area not to exceed 48 square feet and subject to all other applicable requirements of this chapter regarding ground signs, may be permitted at each entrance from a public street to a shopping center, office park, **apartment or townhome development**, or subdivision of at least ten lots, only if authorized by the **Village Design Review Committee. and only as indicated on the approved subdivision plat or site plan.**
- (6) *Utility sign.*
- (7) *Leased By/Managed By sign.* A single façade sign for commercial or office building; display area not to exceed 2 square feet, limited to a bronze or brushed aluminum finish (no color), and to only the name and contact information of the leasing company.
- ~~(7) *Sandwich board.* Each business, located within a local business district, having a direct storefront entrance on the ground floor, and that:
  - a. ~~Faces and is adjacent to the back of a public sidewalk; or~~
  - b. ~~Faces and is separated from the primary parking area of a shopping center by an adjacent sidewalk; may display, during the opening hours of the primary business to which it is an accessory use, a maximum of one sandwich board, which shall be of sturdy, A-frame construction and of a size no greater than 24 inches in overall width or 36 inches in overall height, placed upon that sidewalk within the frontage of the business in such a manner that it shall not:
    1. ~~Reduce any sidewalk width, as measured perpendicular to the curb, to less than five feet to allow for continuous unobstructed pedestrian traffic; nor~~
    2. ~~Be placed in a location that will obstruct the view of a motorist or a pedestrian leaving or passing the business or shopping center.~~~~~~

**Sec. 121-10. - Regulations for residential signs and general business signs.**

It shall be unlawful to erect, display or permit the display of, or maintain any residential sign larger than six square feet in area, unless such sign is expressly permitted by this chapter, pertains directly to the premises upon which it is displayed or conveys noncommercial message of the owner or occupant, subject to all of the limitations and provisions stated herein, and of aggregate display area not to exceed 18 square feet per premises.

It shall be unlawful to erect, display or permit the display of, or maintain any general business sign unless such sign is expressly permitted by this chapter, subject to all of the limitations and provisions stated herein.

- (1) *Aggregate display area.* Aggregate display area permitted varies by type of building or lot, by district, and building type, but shall not be less than 24 square feet per premises other than residential premises. Wherever more than one of the following may pertain to any particular situation, the more or most restrictive shall apply:
  - a. Attached premises in the villages, not including those in shopping centers: one square foot of aggregate display area for each linear foot of the portion of the facade which includes or contains the primary public entrance to the premises, not to exceed 60 square feet.

- b. Attached premises in shopping centers in the villages: one square foot of aggregate display area for each linear foot of the facade which includes the primary public entrance to the premises, not to exceed 80 square feet.
  - c. Freestanding buildings in the villages, not including those in shopping centers: one square foot of aggregate display area for each linear foot of the portion of the facade which includes or contains the primary public entrance to the premises, not to exceed 80 square feet.
  - d. Freestanding buildings in shopping centers in the villages: one square foot of aggregate display area for each linear foot of the portion of the facade which includes or contains the primary public entrance to the premises, not to exceed 100 square feet.
  - e. Community shopping district: two square feet of aggregate display area for each linear foot of the primary facade that faces a street, not to exceed 120 square feet.
  - f. Office park district: for each building, one square foot of aggregate display area for each linear foot of the front facade of the building, not to exceed 120 square feet.
  - g. Institutions, such as schools, churches or other religious or charitable uses, or public agencies in any district: one square foot of aggregate display area for each linear foot of the primary facade of the main building which faces the street, not to exceed 60 square feet.
- (2) *Conditions.* The permitted aggregate display area of general business signs may, subject to approval of the village design review committee and, as applicable, the master sign plan, be distributed among one or more permitted sign types, with the exception that each premise may, in the aggregate, employ the use of no more than one of the following general business sign types as otherwise permitted: ground sign, projecting sign, roof sign, or suspended sign. All general business signs, existing and/or proposed, shall be counted toward the permitted aggregate display area. Permitted general business signs are limited to the following types and conditions:
- a. *Awning sign.* Shall be flat against the surface of the awning, which shall extend no closer than two feet horizontal from the curb line of any public street or seven feet vertical from the finished surface directly below. No awning shall be backlighted.
  - b. *Bulletin board.* Not to exceed one per premises, display area not to exceed 24 square feet and height not to exceed six feet.
  - c. *Directory sign.* Not to exceed one per building, fashioned as a ground sign, suspended sign, facade sign, or window sign, subject to all conditions for such sign types and of a master sign plan.
  - d. *Door sign.* Aggregate display area per door not to exceed ten percent of the door area.
  - e. *Facade sign, generally.* Not to exceed one per facade per premises, to identify ground floor uses, tenants, and activities only. Shall not extend more than six inches beyond the surface of that portion of the facade to which it is attached, except in the CS zoning district, where such sign shall not extend more than 11 inches beyond the surface of that portion of the facade to which it is attached. On the front of the building, a facade sign may be placed only on the public entry portion of the facade above the primary public entrance to the premises. On the side of the building, the display area of a facade sign shall not exceed five percent of the area of that facade. On the rear of the building, the display area of a facade sign shall not exceed 12 square feet. Vertical dimensions of facade signs placed in the space between windows of a multi-story building shall not exceed two-thirds of the distance between the top of the ground floor window and the sill of the second floor window.
  - f. *Facade sign, within the villages.* In addition to general conditions for facade signs: on any one-story commercial building that fronts directly on the street and is part of a series of attached buildings of similar height, proportions, and display-window-area, a front facade sign shall be placed only within the traditional sign band or similar area located above the door and window(s), and shall consist of letters, logos, symbols, and other elements not to exceed 16 inches in letter height.
  - g. *Ground sign, generally.* Not to exceed one per building, subject to special approval of the village design review committee, after making at least one of the following findings:

1. A ground sign is the most reasonable means of identification for one or more occupants;
  2. The building or group of buildings is set back from the public street to such extent that a facade sign would not be appropriate; or
  3. The architectural style of the building or buildings would not be appropriate for other sign types. Shall not be placed in a location that will obstruct the view of a motorist or a pedestrian leaving or passing the building.
- h. *Ground sign, outside the villages.* In addition to general conditions for ground signs: display area of sign shall not exceed 48 square feet, height of sign shall not exceed ten feet, set back of sign from all property lines shall be at least ten feet.
- i. *Ground sign, within the villages.* In addition to general conditions for ground signs: display area of sign shall not exceed 15 square feet; height of sign shall not exceed six feet; set back of sign from all property lines, curb face, or public sidewalk, whichever is more restrictive, shall be a distance of least three feet. ~~The sign shall not be internally illuminated.~~
- j. *Projecting sign.* May only be permitted in the villages, not to exceed one per establishment. Because a projecting sign is so nearly a part of the building to which it is attached, the village design review committee shall assure that: projecting signs are appropriately fit to, and are not incompatible with the architecture of, buildings to which they are to be attached; a projecting sign shall not extend beyond the surface of that portion of the facade to which it is attached more than three feet horizontally; a projecting sign shall not extend vertically beyond the window sill of the second story of a multi-story building to which it is attached, nor more than three feet above the facade of a one-story building to which it is attached; a projecting sign shall not be placed closer than two feet horizontal from the curb line of any street or seven feet vertical clearance from the finished surface directly below.
- k. *Suspended sign.* May only be permitted in the villages, not to exceed one per establishment; placed not closer than two feet horizontal from the curb line of any street, nor closer than eight feet vertical clearance from the finished surface directly below.
- l. *Window sign.* Aggregate display area per window not to exceed 20 percent of the window area.
- m. *Umbrella sign.* Umbrella signs that display the uses, tenants, and products sold on the premises are permitted hereunder.

**Secs. 121-11—121-38. - Reserved.**

## **ARTICLE II. - ADMINISTRATION**

DIVISION 1. - GENERALLY

DIVISION 2. - SIGN PERMIT

DIVISION 3. - MASTER SIGN PLAN

DIVISION 4. - NONCONFORMING CONDITIONS

### **DIVISION 1. - GENERALLY**

Sec. 121-39. - Enforcement.

Sec. 121-40. - Variance.

Sec. 121-41. - Appeals.

Sec. 121-42. - Inspection.

Sec. 121-43. - Removal of unsafe signs.

Sec. 121-44. - Removal of prohibited signs.

Secs. 121-45—121-61. - Reserved.

**Sec. 121-39. - Enforcement.**

If a violation of any provision of this chapter specified in a written notice from the building inspections superintendent to the owner of the property upon which the sign is located is not remedied by the time specified in the notice, the building inspections superintendent shall use all available means to remedy the situation and may direct the city attorney to bring a civil action to remedy the violation. Any reasonable expenses incident to such removal shall be paid by the owner of the property to which such sign is located.

**Sec. 121-40. - Variance.**

The village design review committee may authorize, on application in specific cases, a variance from the provisions of this chapter such as will not be contrary to the public interest, where owing to special conditions applying to the premises in question and not applicable generally to other buildings or structures, a literal enforcement of such provisions will result in unnecessary hardship, but where the spirit of the chapter shall be observed and substantial justice done. Such special conditions shall be limited to those which the village design review committee finds that the granting of the application for a variance is necessary, that it does not merely serve as a convenience to the applicant, and that the condition from which relief is sought would:

- (1) Result in peculiar, extraordinary and practical difficulties to the property upon which the sign would be erected or displayed; or
- (2) As applied to a sign existing as of the effective date of this chapter, serve to decrease the aesthetic value or condition of the villages as set forth in the design review guidelines as authorized under section 129-417(c) of this Code.

**Sec. 121-41. - Appeals.**

Any decision of the planning commission, village design review committee, building inspections superintendent, or zoning officer authorized by this chapter may be appealed to the city council. Appeals shall be filed in writing with the zoning officer within 15 business days of the decision. Appeals shall be considered at the next city council meeting, provided the applicant has furnished the city council with all information and materials needed by the city council to consider the appeal at least seven days in advance of such meeting.

**Sec. 121-42. - Inspection.**

The building inspections superintendent shall be responsible for inspection of all signs to determine compliance with the provisions of this chapter.

**Sec. 121-43. - Removal of unsafe signs.**

The building inspections superintendent shall require any sign that is an immediate danger to persons or property to be removed by the owner of the property upon which the sign is located within 48 hours of written notice to such owner. The building inspections superintendent shall require any sign that is not in immediate danger to persons or property, but otherwise impinges upon the public health, safety, or general welfare, or is, in the opinion of the building inspections superintendent, structurally unsound or unsafe in any way, to be removed, repaired, replaced, or secured, in compliance with the provisions of this chapter, by the owner of the property upon which the sign is located, within 30 days of written notice to such owner.

**Sec. 121-44. - Removal of prohibited signs.**

The building inspections superintendent shall require any sign for which no permit has been issued, or that is specifically prohibited by this chapter, to be removed by the owner of the property upon which the sign is located, within 30 days of written notice to such owner. If the sign is not removed within said 30-day period, the city may, but shall not be required to, have such sign removed and such owner must reimburse the city for the cost of such removal within ten days of the removal of such sign.

**Secs. 121-45—121-61. - Reserved.**

## **DIVISION 2. - SIGN PERMIT**

Sec. 121-62. - Responsibility.

Sec. 121-63. - Signs exempt from sign permit.

Sec. 121-64. - Application procedure.

Sec. 121-65. - Initial staff review.

Sec. 121-66. - Design review—Generally.

Sec. 121-67. - Same—Time limitation.

Sec. 121-68. - Fees.

Sec. 121-69. - Time limitation, sign permit.

Sec. 121-70. - Revocation.

Secs. 121-71—121-98. - Reserved.

### **Sec. 121-62. - Responsibility.**

The zoning officer shall be responsible for receiving applications and fees for sign permits, for conducting initial staff review of such applications for completeness, for advising applicants that they are encouraged to appear before the village design review committee on behalf of their applications, for forwarding such applications to the village design review committee for review and for issuing sign permits when all required procedures and approvals are satisfactorily completed and fees paid.

### **Sec. 121-63. - Signs exempt from sign permit.**

Required signs, official signs, residential signs, permitted temporary signs, and permitted incidental signs shall not require a sign permit **under this Article** or the payment of sign permit fees but shall meet all other provisions of this chapter, and all other provisions of the City Code.

### **Sec. 121-64. - Application procedure.**

Application for a sign permit shall be made upon the form provided by the zoning officer and shall contain, or have attached thereto, the following information:

- (1) Name, address, and telephone number of applicant;
- (2) Name, address, telephone number and proof of business license of person or company who shall erect the sign;
- (3) Address of building, or property upon which sign is proposed to be erected;
- (4) Written consent, of the owner of the property on which the sign is to be located, for erection or placement of sign;
- (5) Copy of the approved master sign plan, if applicable;
- (6) Photographs of adjacent buildings and/or sites clearly showing the character of the surrounding area and of nearby signs;
- (7) Photographs of the building or site on which the sign is proposed to be placed;
- (8) Scaled, dimensioned drawing of the proposed sign;
- (9) Scaled drawing of building facade, showing the actual size and location of the proposed sign in proportion to and in relation to the existing building or the building to be constructed;
- (10) Information regarding method of construction and placement of sign;
- (11) Description or samples of sign materials and colors;
- (12) Other information the zoning officer may require to demonstrate full compliance with all applicable provisions of this Code.

### **Sec. 121-65. - Initial staff review.**

The zoning officer shall review all sign permit applications for compliance with this chapter, and shall forward all complete sign applications to the village design review committee for **consideration**.

**Sec. 121-66. - Design review—Generally.**

The village design review committee shall review all sign applications as to compliance with the provisions of this chapter and for compatibility with its design guidelines and the theme and overall character to be achieved in the area. Because signs are so nearly a part of the buildings to which they are attached or pertain, the village design review committee shall assure, through the review process, that signs are appropriately fit to, and are not incompatible with the architecture of, their host premises. The village design review committee shall report its approval or denial of the application to the building inspection superintendent, who shall not issue a sign permit without approval of the application by the village design review committee.

**Sec. 121-67. - Same—Time limitation.**

If within 45 days (or such longer period of time as may be agreed upon by the applicant and the village design review committee) of the applicant's submittal to the zoning officer of a complete application for a sign permit, including all required information and materials, the report of the village design review committee is not submitted to the building inspection superintendent, the application shall be considered approved by the village design review committee as submitted, and the building inspection superintendent shall issue a sign permit if all other requirements of this chapter have been satisfied and the appropriate fee paid.

**Sec. 121-68. - Fees.**

Each sign permit application shall be accompanied by a check made payable to the city or cash in an appropriate amount, as established by resolution of the city council. This fee shall defray the cost of processing sign permit applications, and shall be charged in addition to any building permit fee, electrical permit fee, or any other fee associated with the approval of a proposed or existing development. Incidental and temporary signs shall not require a sign permit or payment of a sign permit fee.

**Sec. 121-69. - Time limitation, sign permit.**

If the work authorized under a sign permit has not been completed within six months following the date of issuance, such permit shall become null and void and any partial construction removed by the permittee.

**Sec. 121-70. - Revocation.**

The building inspections superintendent is authorized and empowered to revoke any sign permit upon failure of the permit holder to comply with any provision of this chapter.

**Secs. 121-71—121-98. - Reserved.**

**DIVISION 3. - MASTER SIGN PLAN**

Sec. 121-99. - Required.

Sec. 121-100. - Application.

Sec. 121-101. - Review and approval.

Sec. 121-102. - Content.

Sec. 121-103. - Amendment.

Secs. 121-104—121-134. - Reserved.

**Sec. 121-99. - Required.**

A development site containing an existing or proposed office park, shopping center, building, or group of buildings that contains multiple businesses, institutions, or other arrangement of multiple nonresidential uses shall have a master sign plan **which, if not approved as part of a master development plan by the City Council or Planning Commission as part of the zoning or rezoning of the site, shall be** subject to approval

by the ~~planning commission~~ village design review committee, prior to application for any sign within its boundaries. All sign permit applications pertaining to such development sites shall be reviewed in light of such approved plans. Sign permit applications reviewed under authority of a master sign plan shall be subject to the following:

- (1) All general business signs existing prior to submission of the master sign plan, whether or not such signs conform to the provisions of this chapter, shall be counted toward the permitted aggregate display area of general business signs.
- (2) The master sign plan shall apply to all businesses within a related project, even if the properties have been subdivided.
- (3) The master sign plan may be more restrictive with respect to sign size and placement, than set forth in Article I of this chapter.

**Sec. 121-100. - Application.**

Application for approval of a master sign plan shall be made only by the owner of the development site or an authorized agent. The zoning officer shall receive proposals for master sign plans, conduct preliminary reviews of such plans, and forward such proposed plans to the village design review committee for review.

**Sec. 121-101. - Review and approval.**

The village design review committee shall review proposed master sign plans in accord with its design guidelines and, if acceptable, approve such plans and maintain copies thereof.

**Sec. 121-102. - Content.**

A master sign plan shall consist of a site plan of the development site, and building elevations, at a scale of no less than one-eighth inch equals one foot zero inches, showing:

- (1) The location of buildings, parking lots, driveways, and streets, and building elevations.
- (2) Sign bands and other sign locations on buildings, as applicable.
- (3) Dimensioned locations and sizes of all general business signs and incidental signs, existing and proposed, by type of sign.

**Sec. 121-103. - Amendment.**

Application for amendment to a master sign plan shall be made only by the owner of the development site or an authorized agent, and shall include written evidence of approval of the amendment from all affected tenants. Signs subsequently made nonconforming because of an amendment to a master sign plan shall be brought into compliance with the amended plan within 180 days following approval of the amended plan.

**Secs. 121-104—121-134. - Reserved.**

**DIVISION 4. - NONCONFORMING CONDITIONS**

Sec. 121-135. - Conditions.

Sec. 121-136. - Alteration.

Sec. 121-137. - Compliance.

**Sec. 121-135. - Conditions.**

Any sign that is not specifically permitted, or that does not comply with all provisions of this chapter, yet which lawfully existed and was maintained as such as of the effective date of this chapter shall be considered a nonconforming sign.

**Sec. 121-136. - Alteration.**

A nonconforming sign shall not, after the effective date of this chapter, be enlarged, structurally altered, or extended unless such sign shall be made to comply with all the provisions of this chapter. A

nonconforming sign may not be replaced by another nonconforming sign. Minor repairs and maintenance of nonconforming signs, such as repainting and electrical repairs, shall be permitted. However, no changes in the location, size, or shape of any nonconforming sign shall be permitted except to make the sign comply with all provisions of this chapter.

**Sec. 121-137. - Compliance.**

The building inspections superintendent shall require all nonconforming signs to be removed or made to conform with all provisions of this chapter, by the owner of the property upon which the sign is located, in accord with the following schedule:

- (1) Within 30 days of written notice to the owner of the property upon which the sign is located, should any of the following events or conditions occur:
  - a. The use of the premises on which the nonconforming sign is located changes.
  - b. The exterior of the building or other site conditions on the property upon which the nonconforming sign is located are to be altered to the extent that a building permit is required.
  - c. A nonconforming sign is damaged by any cause, resulting in replacement or repair cost equal to at least one-half of its depreciated value, exclusive of foundations, at the time of damage.
- (2) Within the periods specified below, excepting for conditions or events as specified above, when the depreciated value of the nonconforming sign, as of the effective date of this chapter, is:
  - Less than \$500.00 ..... One year
  - \$500.00—\$999.00..... Two years
  - \$1,000.00—\$2,999.00..... Three years
  - \$3,000.00—\$5,999.00..... Four years
  - \$6,000.00 or more ..... Five years

To establish the value of signs for purposes of this chapter, the owner of a sign shall, upon written request from the building inspections superintendent, furnish acceptable proof of the initial cost and depreciated value of the sign by means of one of the following:

- a. Original bill of sale;
- b. Depreciation schedule from state or federal income tax returns; (c) appraisal by a sign manufacturer.
- c. Appraisal by a sign manufacturer.”

**SECTION 2. REPEALER.** All ordinances or parts of ordinances heretofore adopted by the City Council of the City of Mountain Brook, Alabama that are inconsistent with the provisions of this ordinance are hereby expressly repealed.

**SECTION 3. SEVERABILITY.** If any part, section or subdivision of this ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this ordinance, which shall continue in full force and effect notwithstanding such holding.

**SECTION 4. EFFECTIVE DATE.** The effective date of this ordinance shall be October 7, 2014.

**ADOPTED:** This 13th day of October, 2014.

\_\_\_\_\_  
Council President

**APPROVED:** This 13th day of October, 2014.

\_\_\_\_\_  
Mayor

## CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of an ordinance adopted by the City Council of the City of Mountain Brook, Alabama, as its meeting held on October 13, 2014, as same appears in the minutes of record of said meeting, and published by posting copies thereof on October \_\_\_\_, 2014, at the following public places, which copies remained posted for five (5) days as required by law.

City Hall, 56 Church Street  
Gilchrist Pharmacy, 2850 Cahaba Road

Overton Park, 3020 Overton Road  
The Invitation Place, 3150 Overton Road

\_\_\_\_\_  
City Clerk