

**MOUNTAIN BROOK CITY COUNCIL
PRE-MEETING AGENDA**

**PRE-COUNCIL ROOM (A106) CITY HALL
56 CHURCH STREET
MOUNTAIN BROOK, AL 35213
DECEMBER 8, 2014
6:00 P.M.**

1. Beech Street/Circle drainage study presentation – Walter Schoel of Schoel Engineering. (See attached information.)
2. All-In Mountain Brook Committee to make a presentation on their mission and request funds from the city – Leigh Ann Sisson. (See attached information. This item could be added to the formal agenda.)
3. Variance request from the 2012 International Building Code – Perry Given at 3819 Forest Run Road. (See attached information. This item may be added to the formal agenda.)
4. Proposed modifications to the City’s IRC Section 115 Retiree Medical Trust document – Steve Boone. (See attached information.)

Beech Street Drainage Study Report

October 14, 2014

The City of Mountain Brook has asked Walter Schoel Engineering to review the hydrologic impacts of developments upstream from Beech Circle that have been constructed in the City of Birmingham. The developments include but are not limited to two apartment complexes known as Tapestry 1 and Tapestry 2. Mountain Brook residents have complained that storm runoff from in the local creek seems to have increased since the development of Tapestry 2—a development that included no storm water detention to mitigate for increased impervious area.

Prior to the development of Tapestry 1, St. Francis Xavier Church had a major expansion in developed area but this included a very large detention pond. The St. Francis Xavier pond reduced the flow below pre-construction values not only from St. Francis Xavier but also from the watershed upstream on the south slope of Red Mountain that drains through the corner of the church property.

The scope of the Schoel hydrologic study was to review the hydrologic impacts of the Tapestry developments in combination with the other discharges in the watershed that drains to Beech Circle and Beech Street. The results are presented below.

The original drainage analysis for Tapestry1 did not include evaluation of the residual effect of the Tapestry 1 development on the larger watershed that it combines with. We have included that area in our analysis because it is essential to the effects at Beech Circle. We have attempted to use the pre and post development coefficients that were used in the original study as far as possible for the development itself. For the 100-year peak flow, we see a 13% increase in runoff from the Tapestry 1 development outlet of the detention pond (TapPnd). However, this represents only a 5% increase when the flow from the pond is combined (WB04) with the flow from the much larger Watershed that originates on Red Mountain. Further downstream the residual increase from Tapestry 1 is only 3% of the combined 100-year peak flow (WB07), where it is joined with the flow from St. Francis Xavier, and is considered negligible.

The original drainage study for Tapestry 2 did include evaluation of residual effects on the discharge from the St. Francis Xavier pond. In fact, this comparison was used as the justification for not including storm water detention for Tapestry 2. The concept was that a detention pond for Tapestry 2 would delay the peak from Tapestry 2 such that it would cause the two peaks to combine in such a way as to increase the total peak flow. Whereas, allowing the Tapestry 2 flow to pass downstream well before the St. Francis Xavier pond peak, would have a very small impact. This does appear to be the case in our analysis as well where the impact of Tapestry 2 is a 2% increase in the 100-year peak flow (WB12) before combining with the flow from Tapestry 1 and the area that it combined with off of Red Mountain. After combining at a point just

upstream from Beech Circle (WB07a), the Tapestry 2 increase is only 1% of the combined 100-year peak flow and is considered negligible.

Together, the increase in the 100 year storm discharge from both Tapestry 1 and 2 is only 4% of the combined flow of the full watershed downstream from Beech Street (WB14).

In the process of gathering the data for these analyses, it became apparent that the St. Francis Xavier pond had experienced a significant impact from beaver dams that caused the pond to maintain a nearly full condition that effectively canceled the ability of the pond to reduce the flow from St. Francis Xavier and the large watershed upstream on the south slope of Red Mountain. Comparing the discharge of St. Francis Xavier with and without the beaver dam shows that the beaver dam caused a 23% increase in peak flow (WB12) before combining with the flow from the area of Tapestry 1 and the watershed upstream on Red Mountain. This increase is 11% where the flow from the St. Francis Xavier pond combines (WB07a) with the flow from the Tapestry 1 direction.

This analysis indicates that the impacts from the Tapestry developments are so small that they would be difficult to measure in the field. And they would be impossible to notice by a casual observation. The impacts from the beaver dam were significant enough to be noticed and are likely responsible for any increased stormwater runoff in the Beech Circle/Beech Street neighborhood. The beaver dam has been removed and the function of the St. Francis Xavier detention pond has been restored. It will be important in the future to monitor the St. Francis Xavier detention pond and remove any further attempts to rebuild the beaver dam.

Proposed Improvements to the Beech Street Drainage System

The Beech Street drainage system is generally composed of rectangular concrete and stone channels and rectangular box-culvert sections. The system was evidently installed in phases; the materials and workmanship of the channel varies considerably along its length.

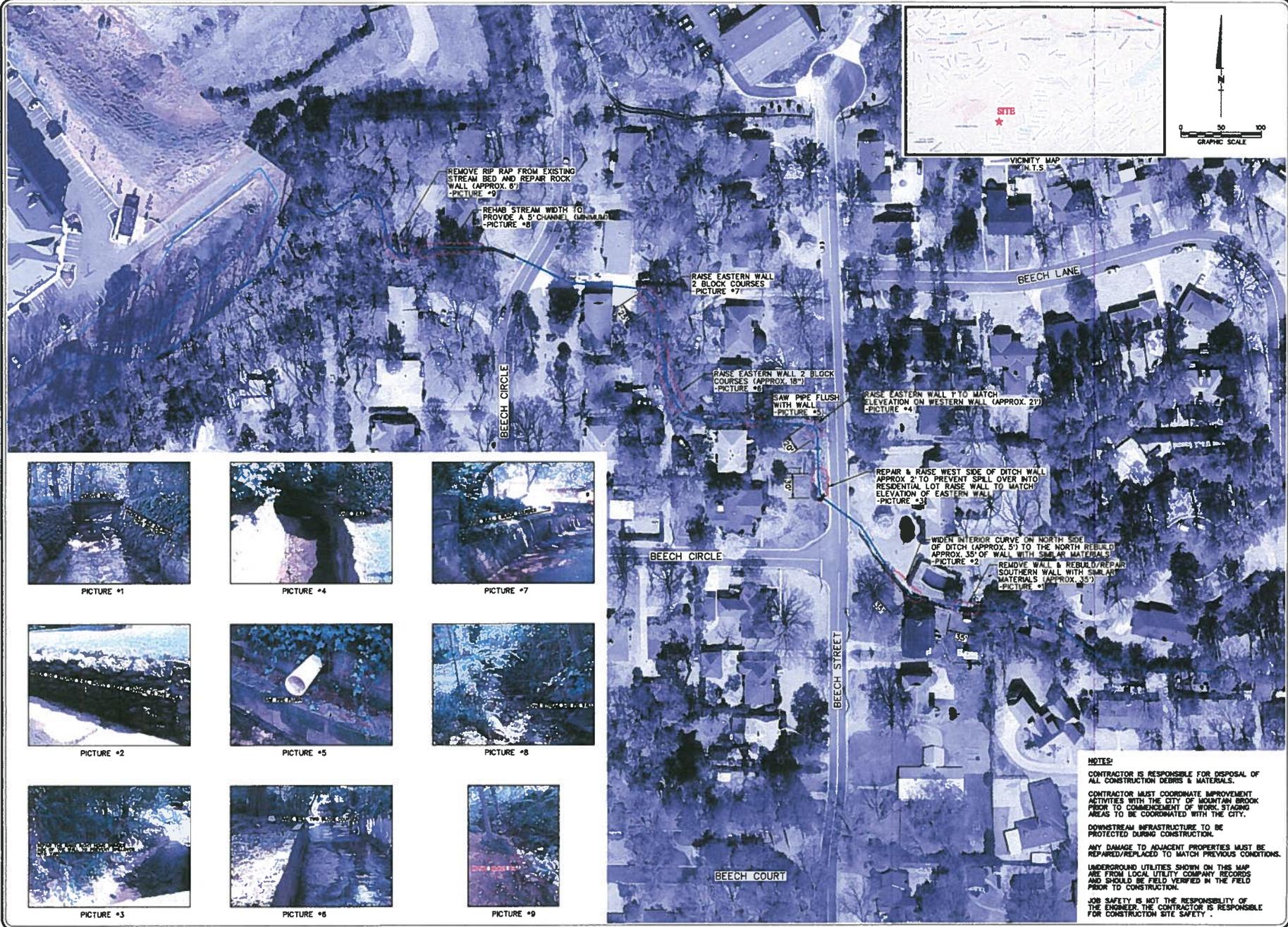
Historical evidence, as well as hydrologic and hydraulic calculations, indicates that the channel/culvert drainage system is undersized to convey return-period storm events without being overtaxed. When the system is overtaxed, stormwater enters the adjacent yards and overtops Beech Street. A true remedy to the drainage problem in this area would be to demolish the existing system in its entirety and install a box culvert system of appropriate size. However, due to the excessive cost of such a system, as well as the lack of room for a system of the appropriate size, this complete-remedy option is not being considered and is beyond the scope of the Beech Street Drainage Study.

The goal of this study is to identify problems with the Beech Street drainage system that can be remedied without undue cost or undue disturbance to the adjacent residential properties. It is hoped that these problems can be addressed such that the frequency and severity of the flooding as observed will be reduced. Generally, the aim of the improvements proposed herein is to make

the channel cross-section as uniform as possible. Areas where the channel cross-section is unusually narrow, is in need of repair, or has unusual bends are proposed to be improved. Preliminary plans which depict the location of the repairs have been developed and presented to the City of Mountain Brook for consideration.

Please note that these improvements will not solve the underlying problem of the channel/culvert system being too small. In addition, the concerns of having an open channel drainage system coursing through a residential area are not addressed, and cannot be addressed without installing an appropriately-sized enclosed culvert system.

"G:\14\125\Docs\Beech Street Hydrologic Review.docx"



PICTURE #1



PICTURE #4



PICTURE #7



PICTURE #2



PICTURE #5



PICTURE #8



PICTURE #3



PICTURE #6



PICTURE #9

NOTES:
 CONTRACTOR IS RESPONSIBLE FOR DISPOSAL OF ALL CONSTRUCTION DEBRIS & MATERIALS.
 CONTRACTOR MUST COORDINATE IMPROVEMENT ACTIVITIES WITH THE CITY OF MOUNTAIN BROOK PRIOR TO COMMENCEMENT OF WORK. STAGING AREAS TO BE COORDINATED WITH THE CITY.
 DOWNSTREAM INFRASTRUCTURE TO BE PROTECTED DURING CONSTRUCTION.
 ANY DAMAGE TO ADJACENT PROPERTIES MUST BE REPAIRED/REPLACED TO MATCH PREVIOUS CONDITIONS.
 UNDERGROUND UTILITIES SHOWN ON THIS MAP ARE FROM LOCAL UTILITY COMPANY RECORDS AND SHOULD BE FIELD VERIFIED IN THE FIELD PRIOR TO CONSTRUCTION.
 JOB SAFETY IS NOT THE RESPONSIBILITY OF THE ENGINEER. THE CONTRACTOR IS RESPONSIBLE FOR CONSTRUCTION SITE SAFETY.

WALTER SCHOEL ENGINEERING CO., INC.
CONSULTING ENGINEERS
 101 2ND STREET SOUTH
 BIRMINGHAM, ALABAMA 35205
 (205) 328-6666

REMEDIATION PLAN			
BEECH STREET DRAINAGE WAY			
MOUNTAIN BROOK, ALABAMA			
SCALE	DATE	DRAWN BY	CHECKED
1" = 50'	11/6/2014	WJH	WJH
SHEET NO.	OF	FILE NAME	DATE
1	1	1103-LP.dwg	11/03/14



Mountain Brook City Council Members:

All In Mountain Brook is a community-wide partnership whose mission is to enhance and protect the lives of Mountain Brook youth. This newly formed 501(c)(3) is building on the strong foundation and efforts of the previous Parent Partnership organization and the Mountain Brook Anti-Drug Coalition. AIMB is targeting three main audiences: parents, youth, and the community-at-large. Our board consists of psychologists, lawyers, accountants, parents, school personnel, worship community representatives, a city council member, physicians, business owners, and we plan to add student representation. AIMB currently has working committees in the areas of youth programming, parent programming, development, communications, and finance. Our organization is designed to be a truly community-based service, with programs offered and supported in the schools, in the worship communities, within the business community, and in city government.

We focus our efforts on factors which put our students at risk: substance use/abuse, high-risk behavior, violence, preventable accidents, and mental health issues. AIMB will focus on raising awareness, prevention, parenting practices, and the availability of local resources to aid families struggling with these problems. Below you will see a listing of programming that AIMB has organized/sponsored since its inception this past August.

In addition to working against these negative factors, we want to also take a positive approach. By this, we mean that we hope to promote and encourage parenting practices and youth activities which promote positive and healthy choices.

All In Mountain Brook would like to request \$10,000 from the city to support its efforts. This money would underwrite programming at the six Mountain Brook schools, and would therefore target families and students K-12. We anticipate that the breakdown of the \$10,000 would be \$5000 for high school and \$3000 for junior high. Each of elementary schools would receive \$500. These dollars would be utilized for All In speakers, activities, and communications. Activities will be planned by appointed PTO representatives in each school, along with the school counselors and principals. While the money we are requesting from the city would fund the All In Mountain Brook activities at the schools, AIMB plans to host hands-on classes for parents such as Dale Wisely's parenting series, community-wide speakers, as well as community events for families and youth. Other development projects are underway to raise money for those activities.

Many thanks for considering this request for funding. We are passionate about our youth here in Mountain Brook and believe this organization will allow our community the opportunity to partner with parents and youth to enhance and protect the lives of our community's future-our young people!



Programming thus far:

- Produced All In Mountain Brook video to introduce the organization to the community-shown at MBJH and MBHS Open Houses
- Developed All In website/twitter account/facebook page, all of which are now active
- Applied for and received 501(c)(3) status
- Sponsored John Beede speaking event for students and parents at MBHS –October
- Supported High School Wellness Club's pledge drive to be “courageous” during homecoming week–provided All In T-shirts
- Presented Dale Wisely’s parenting series on understanding the teenage brain, on the digital world, and on teen driving
- Held an organizational board meeting and one subsequent board meeting
- Planning a speaking event in a worship center for late January with Renee Napier-for parents and students
- Developed a survey to distribute to the community concerning the topics and types of information distribution and activities the community would like for All In to pursue

Dicky Barlow	barlowd@mtnbrook.k12.al.us	205 802-1629		32 Vine Street	Mountain Brook, AL 35213
Leslie Brown	leslie.brown@childrensal.org	205 527-2930	205 638-2727	133 Cherry Street	Birmingham, AL 35213
Alice Churnock	alice.churnock@covenantcounsel.com	205 531-0621	205 879-7500	2204 Lakeshore Drive, Suite 212	Birmingham, AL 35209
Donald Clayton	claytonw@mtnbrook.k12.al.us	205 871-3516		205 Overbrook Road	Birmingham, AL 35213
Cameron Cole	cameron@cathedraladvent.com	205 821-3505		2567 Acton Park Lane	Birmingham, AL 35243
Ted Cook	cookt@mtnbrook.org	205 802-3852		101 Tibbett Street	Mountain Brook, AL 35213
Suzan Doidge	suzan@welcometomountainbrook.org	205 871-3779		101 Hoyt Lane	Birmingham, AL 35223
William Dow	william.dow@warrenaverett.com	205 769-3405	960-5664	412 Euclid Avenue	Birmingham, AL 35213
Elizabeth Dunn	elizabeth.m.dunn@gmail.com	205 777-7146		PO Box 43193	Birmingham, AL 35243
Zeke Ezekiel	ezekielr@mtnbrook.org	205 438-2569	205 802-3838	102 Tibbett Street	Mountain Brook, AL 35213
Renee Fenn	rhfenn@gmail.com	205 834-4249	205 637-7907	3504 Kingshill Road	Birmingham, AL 35223
Amanda Hood	hooda@mtnbrook.k12.al.us	205 414-3800		3650 Bethune Drive	Mountain Brook, AL 35223
Laurie King	kingl@mtnbrook.k12.al.us	205 586-2957	205 871-8126	3785 Jackson Boulevard	Birmingham, AL 35213
Don Menedez	dymenendez@whiteplume.com	205 871-3833 x 110		4221 Sharpsburg Drive	Birmingham, AL 35213
Billy Pritchard	billyp@pm-j.com	205 908-4254	205 328-9190	125 Heritage Circle	Birmingham, AL 35213
Laura Sink	sinkfamily@mac.com	205 970-4141		3412 Sherwood Road	Birmingham, AL 35223
Leigh Ann Sisson	leighann.sisson@gmail.com	205 601-8616		2653 Montevallo Road	Birmingham, AL 35223
Dan Starnes	dan@starnespublishing.com	205 370-0732		PO Box 530341	Birmingham, AL 35253
Dale Wisely	wiselyd@mtnbrook.k12.al.us	205 877-8349		32 Vine Street	Mountain Brook, AL 35213
Jonathan Miller	rabbimiller@ourtemple.org	205-223-0916		2100 Highland Ave	Birmingham, AL 35205
Sam Gaston	gastons@mtnbrook.org	205-802-3803		56 Church St	Mountain Brook, AL 35213
Bruce Barze	bbarze@balch.com	205-226-8716		P.O. Box 306	Birmingham, AL 35201
Jack Young	lly@ffmylaw.com	205-960-1301		3384 Overton Rd.	Birmingham, AL 35223

Sam Gaston

From: Steve Stine
Sent: Monday, December 01, 2014 10:09 AM
To: 'Steve Boone'; 'Sam Gaston'
Cc: boyantond@mtnbrook.org; 'Jerry Weems'; carljohnson@bishopcolvin.com; whitcolvin@bishopcolvin.com
Subject: New Item for Council Agenda on Dec 8 - Grant of Acknowledgment Instrument - Perry Given Residence 3819 Forest Glen Dr
Attachments: GrantAcknRelease IndemnAgmt- GivenResid_3819 Forest Glen_Final.pdf; Exhibit A_Grant of Acknowledgment.pdf

Steve and Sam, the owner of the residence at 3819 Forest Glen Dr. – Perry Given – is undertaking a significant renovation of a house built in 1968. The owner wants to reuse a terrace railing as part of this renovation, but questions have arisen whether this railing complies with the 2012 International Building Code adopted by the City.

After speaking with David Boyanton in the Inspection Dept. and the owner, it is reasonable for the City and owner to enter into the attached Grant of Acknowledgement, Release and Indemnification Instrument whereby the owner will be allowed to reuse the railing, with the understandings that he acknowledges that the railing does not comply with the newest provisions in the IRC, he agrees to indemnify and release the City from claims related to its use and that the Grant runs with the land and will be recorded in the probate court records.

Could you please place this item on Dec 8 City Council Agenda? It could be considered at the Pre-Meeting session, with possible approval at the regular Meeting that follows. Unless you advise otherwise, I will alert the owner that this matter will be on the upcoming Dec 8 agenda and suggest that he plan to attend that meeting to answer any questions that the Council may have.

Thanks. Do not hesitate to contact me if you have any questions about this matter.

P.S. to Steve: The Grant instrument includes Exhibit A, which depicts the railing that will be reinstalled. Please place the attached depiction at the end of the agreement.

Steve Stine
1910 First Avenue North
Birmingham, Alabama 35203
Phone : (205) 251-2881
Fax : (205) 254-3987
Email: sstine@bishopcolvin.com



This email is free from viruses and malware because [avast! Antivirus](#) protection is active.

THIS INSTRUMENT PREPARED BY:

STATE OF ALABAMA)

JEFFERSON COUNTY)

**GRANT OF ACKNOWLEDGMENT, RELEASE,
AND INDEMNIFICATION INSTRUMENT**
RE: 3819 Forest Glen Drive, Mountain Brook, Alabama

This Grant of Acknowledgment, Release, and Indemnification Instrument (the "Acknowledgment") is made by Samuel Perry Given, Jr. (a/k/a Sam Perry Given, Jr. in certain public records and hereinafter referenced as the "Owner") in favor of the City of Mountain Brook, Alabama, a municipal corporation (the "City").

WHEREAS, the Owner owns property that is located at 3819 Forest Glen Drive, Mountain Brook, Alabama 35213, and is more completely described as follows:

Lot 22A, according to the Resurvey of Lot 22 and Part of Lot 24 of Forrest Glen as recorded in Map Book 237, Page 19, in the Probate Office of Jefferson County, Alabama.

(hereinafter, the "Property").

WHEREAS, the Owner (or contractors acting on his behalf) previously has applied and received building permits from the City for an extensive renovation and improvement project at a residence located on the Property (the "Project");

WHEREAS, upon the successful completion of projects like those undertaken on the Property, the City approves the permitted work upon final inspection ("Final Inspection");

WHEREAS, the residence at the Property was constructed in or about 1968, or approximately 44 years before the City adopted the 2012 International Residential Code (the "Code");

WHEREAS, before commencing the Project, a terrace on the second level of the subject residence was guarded by an ornate, wrought iron railing that is architecturally, aesthetically and historically significant to that structure (the "Terrace Railing");

WHEREAS, in connection with his renovation plans, the Owner intends to remove the Terrace Railing, repair and strengthen its components, rework the configuration due to changes being made to the terrace in accordance with the drawing attached hereto as Exhibit A and reinstall it in the same location that it guarded before work on the Project commenced;

WHEREAS, pursuant to Section AJ501.3 of the Code, the Project entails an alteration of more than 50 percent of the dwelling area of the residence, which thereby invokes provisions in the Code for reconstruction work;

WHEREAS, among the reconstruction requirements of the Code are Sections R312.1.1 and R312.1.3 of the Code, which require that guards that are at least 36" high and do not have openings that would allow the passage of a sphere that is greater than 4" in diameter be placed at locations in the residence where an open-sided walking surface is more than 30" inches below that surface;

WHEREAS, the Terrace Railing that the Owner desires to reinforce, rework, reuse and reinstall does not meet the 36" height requirement in the Code for guards or the Code requirement that openings in such guards not be greater in diameter than a 4" sphere;

WHEREAS, the Owner has been apprised that its planned reuse and reinstallation of the Terrace Railing at the residence will not comply with Sections R312.1.1 and R312.1.3 of the Code (collectively hereinafter the "Code Violations");

WHEREAS, the Owner asserts that replacing the Terrace Railing with a different style and type guard is an unduly burdensome financial obligation and would diminish the architectural, aesthetic and historical significance of the subject residence;

WHEREAS, the Owner has requested that, despite the Code Violations, the City grant approval on Final Inspection if all other work on the Project is completed in compliance with the Code and other applicable requirements; and

WHEREAS, the City has agreed to not withhold approval upon Final Inspection based solely on the Code Violations if the Owner acknowledges and agrees to each of the below enumerated understandings by executing and recording this Acknowledgment in the real property records for the Probate Court of Jefferson County, Alabama.

NOW, THEREFORE, for and in consideration of the above promises and the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Owner acknowledges and agrees as follows:

1. Owner, on behalf of himself and his successors in title, hereby forever RELEASES, WAIVES, EXONERATES, and DISCHARGES the City, and its officials, employees, agents, and representatives in their official and individual capacities (collectively hereinafter the “City Representatives”), from any and every claim, action, suit, demand, judgment, cost, fee, expense, or liability of any kind or character whatsoever arising out of or relating to the Code Violations or the City’s anticipated approval of the Project upon Final Inspection.

2. Owner, on behalf of himself and his successors-in-title and assigns, further agrees to indemnify, defend and hold harmless the City and the City Representatives from, against, and with respect to any and every claim, action, suit, demand, judgment, cost, fee, expense (including, but not limited to, reasonable attorneys’ fees or court cost) or liability of any kind or character that may be asserted, imposed or made against the City or the City Representatives by the Owner (or any of his successors-in-title or assigns), by any guest, lessee or occupant of the residence on the Property or by

any other person or entity as a result of or by reason of any claimed breach of legal duty arising out of or relating to the Code Violations;

3. Owner SPECIFICALLY ACKNOWLEDGES and AGREES that the City has no legal obligation to issue approve Final Inspective for the residence because the plans and intended work on the Project do not comply with the above-noted Sections R312.1.1 and R312.1.3 of the Code.

4. Owner SPECIFICALLY ACKNOWLEDGES and AGREES that, with the exception of the Code Violations related to the height and size of openings in the Terrace Railing, the City shall enforce compliance with the Code, permits issued on the Project and other conditions precedent to approval upon Final Inspection, and that the City has the legal right to do so; and

5. This Acknowledgment shall be recorded in the probate records of Jefferson County, Alabama, and shall be deemed to be an obligation of Owner (and his successors in title or assigns) and grant to the City that runs with the land.

IN WITNESS WHEREOF, the Owner has caused this instrument to be executed on this the ____ day of _____, 201__.

Samuel Perry Given, Jr. (Owner)

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said county and state, hereby certify that Samuel Perry Given, Jr. whose name is signed to the foregoing instrument and who is known to me, acknowledged before me that, being informed of its contents, he executed the same voluntarily, on the day the same bears date.

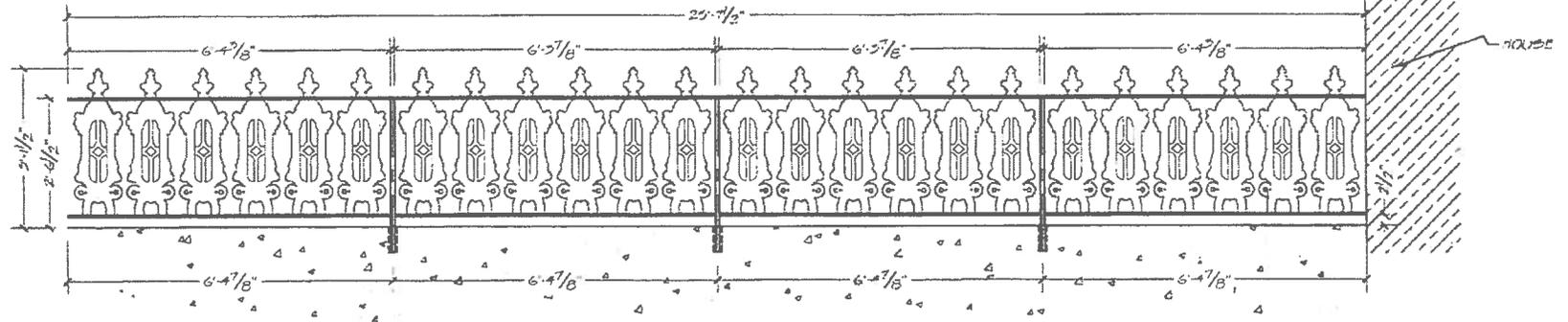
Given under my hand and official seal on this the ____ day of _____, 201__.

Notary Public

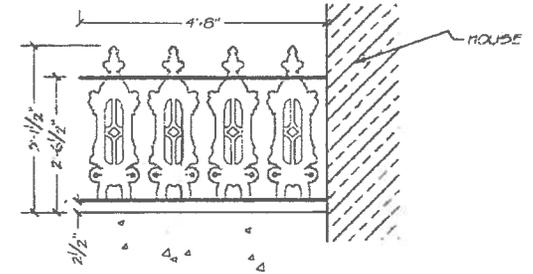
My Commission Expires: _____

EXHIBIT A

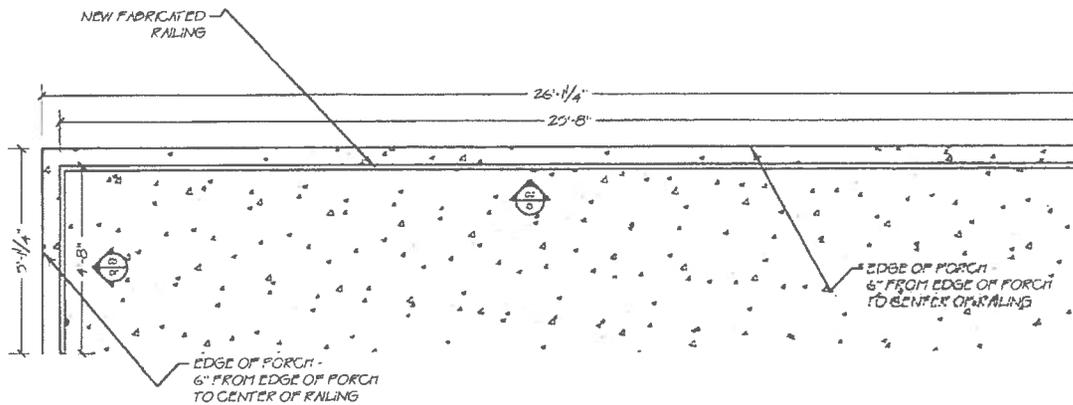
See attached.



02 TERRACE ELEVATION - LONG RETURN
SCALE: 1/4" = 1'



03 TERRACE ELEVATION - SHORT RETURN
SCALE: 1/4" = 1'



01 TERRACE PLAN VIEW
SCALE: 3/4" = 1'

SPECIFICATIONS / NOTES

- * VERIFY ALL DIMENSIONS IN FIELD BEFORE FABRICATION BEGINS
- * RAILING HEIGHT NOT TO CODE OF 42" HIGH
- * EXISTING PICKET CASTINGS AND FINIALS TO BE REMOVED FROM EXISTING RAILING AND RECONFIGURED AS COMPONENTS IN NEW RAILING.
- * MATERIAL: A36 MILD STEEL / 304 STAINLESS STEEL FASTENERS
- * UNDERCOATING / PRIMER: ZINC UNDERCOATING / 2-PART EPOXY PRIMER
- * FINISH: ACRYLIC POLYURETHANE (COLOR T.B.D. BY CLIENT)
- * INSTALLATION, PLUMBING, AND ELECTRICAL - BY OTHERS

Robinson Iron
FURNISHING & INSTALLATION

TITLE

TERRACE RAILING

JOB SITE

GIVEN'S RESIDENCE
BIRMINGHAM, AL

APPROVED BY:

SCALE:
AS NOTED

DRAWN BY:
CAD
P.L. BY:

DATE:

06/03/14

REVISION:
000000

DRAW. NO.

1704-01

JOB NO.

0000



Steve Boone <boones@mtnbrook.org>

Amended and Restated Section 115 Trust Agreement

1 message

Hardwick Walthall <HWalthall@maynardcooper.com>

Wed, Nov 26, 2014 at 2:04 PM

To: "Steve Boone (boones@mtnbrook.org)" <boones@mtnbrook.org>

Cc: Beth Beabe <BBeabe@maynardcooper.com>

Steve:

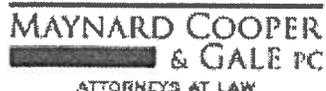
Attached is a draft of the Amended and Restated Section 115 Trust Agreement. Also attached is a redline showing the changes that were made against the original Section 115 Trust Agreement. Here are a couple of points about this document:

1. The trust agreement has been revised to reflect you, individually, as the successor trustee. You indicated in your last e-mail that you were ok with having 1 trustee. I think that is better than having co-trustees if only to avoid complications when making trustee decisions and any potential disagreements. I have made the City Manager the contact person on behalf of the City in the document.
2. The agreement has been revised to provide for the Trustee to make recommendations to the City regarding investment advisors to manage the investments. I think that still gives you the flexibility you need as Trustee.
3. The trustee does not receive any compensation under the agreement.
4. Please confirm again that the trustee powers in Article IV and trustee duties in Article V are consistent with your understanding of the operation of this trust going forward. Now is the time to make this as accurate as possible. *Suggested changes are noted.*
5. We did some research and did not run into any issue with an individual trustee of a Section 115 trust rather than a corporate trustee like Regions. The key aspect of the trust is that the assets are held exclusively to provide retiree benefits under the plans. That, of course, has not changed.

I am out the rest of this week for Thanksgiving holiday but back in the office on Monday and happy to discuss any comments and/or changes you have to the draft document.

Regards,

Hardwick



Hardwick C. Walthall

1901 Sixth Avenue North

2400 Regions/Harbert Plaza

Birmingham, AL 35203

Direct: 205.254.1208

Fax: 205.254.1999

www.maynardcooper.com

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2 attachments

 **Mountain Brook Amended and Restated 115 Trust (03087446-2).doc**
148K

 **03087446_DOC;1-vs-03087446_DOC;2-P926.doc**
166K

**CITY OF MOUNTAIN BROOK
AMENDED AND RESTATED
SECTION 115 TRUST AGREEMENT**

Effective as of [_____], 20~~13~~¹⁴

Style Definition: TOC 1: Justified, Space
After: 12 pt, Tab stops: 1", Left + 6.49",
Right, Leader: ...

**CITY OF MOUNTAIN BROOK
AMENDED AND RESTATED
SECTION 115 TRUST AGREEMENT**

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**CITY OF MOUNTAIN BROOK
AMENDED AND RESTATED
SECTION 115 TRUST AGREEMENT**

THIS AMENDED AND RESTATED SECTION 115 TRUST AGREEMENT (“this Agreement”) is made, entered into, and effective as of _____, 2009 by and between the City of Mountain Brook (the “City”) and Regions Bank d/b/a Regions Morgan Keegan Trust [_____] (the “Trustee”).

Formatted: Indent: First line: 0.5"

WHEREAS, in furtherance of its essential governmental function, the City has heretofore or herewith adopted one or more retiree welfare benefit plans (which may be a multiple-employer plan), attached hereto as Exhibit A, which may be amended from time to time in the sole discretion of the City in accordance with Section 8.1, (collectively, the “Plan”), the purpose of which is to provide certain welfare benefits for those retirees of the City and their eligible spouses and dependents covered by the Plan;

WHEREAS, the funds which will be City has contributed funds to the trust established pursuant to this Agreement, as and when received by the Trustee, will constitute a trust fund (the “Trust Fund”) to be held for the benefit of the retirees and their eligible spouses and dependents under and in accordance with the Plan, and such Trust Fund has been established pursuant to that certain City of Mountain Brook Section 115 Trust Agreement dated effective as of July 27, 2009 (the “Trust Agreement”), entered into by and between the City and Regions Bank d/b/a Regions Morgan Keegan Trust (the “Original Trustee”);

WHEREAS, the City intends that the Trust Fund hereby established shall constitute a tax-exempt trust pursuant to Section 115 of the Internal Revenue Code of 1986, as amended (the “Code”) and/or Treasury Regulations § 301.7701-1(a)(3); and as confirmed by the Internal Revenue Service by the issuance of Private Letter Ruling 200937023 dated June 15, 2009;

WHEREAS, the City desires has decided to remove the Original Trustee to hold, invest and appoint the Trustee named above as the successor trustee to administer the Trust Fund, and has notified the Original Trustee is willing to hold, invest and administer of such Trust Fund, pursuant to the terms removal;

WHEREAS, the Trustee named above has accepted the appointment by the City as successor trustee, as evidenced by the Trustee’s execution of this Agreement.;

WHEREAS, the City and Trustee desire to make certain changes to the Trust Agreement in order to (i) confirm the replacement of the Original Trustee with the Trustee as successor trustee and (ii) make certain changes to Article IV and V of the Trust Agreement in order to clarify certain powers and duties of the Trustee;

WHEREAS, Section 8.1 of the Trust Agreement provides that the Trust Agreement may be amended at any time provided that the Trust Fund assets shall continue to be used exclusively for the purpose of providing health benefits for the Plan;

WHEREAS, in order to accomplish the amendment and restatement of the Trust Agreement to reflect the changes described above, the City and Trustee have prepared this Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein, the City and the Trustee agree as follows:

ARTICLE I CONTRIBUTIONS

1.1 Receipt of Contributions. The Trustee shall receive any contributions paid to it in cash or in the form of such other property as it may from time to time deem acceptable and which shall have been delivered to it. Any contribution of property will be made at its fair market value (unless otherwise required) and such value will be provided to the Trustee when contributed. All contributions so received, together with the income therefrom and any other increment thereon shall be held, invested, reinvested and administered by the Trustee pursuant to the terms of this Agreement without distinction between principal and income. The Trustee shall not be responsible for the calculation or collection of any contribution under the Plan, but shall be responsible only for property received by it pursuant to this Agreement. All contributions to the Trust Fund shall be made by the City.

1.2 Compliance with Laws. This Agreement (including Exhibits A and B) and the Trust Fund are intended to comply with all of the requirements of Statement No. 45 of the Government Accounting Standard Board ("GASB") in order to allow the use of a higher discount rate in determining the present value of Other Post-Employment Benefits ("OPEB") liabilities and also to constitute an essential governmental purpose under Section 115 of the Code. City hereby represents and warrants to the Trustee that the Investment Policies or other investment guidelines set forth in Exhibit B, as may be amended from time to time in the sole discretion of City, are compliant with any and all applicable laws, rules and ordinances, including but not necessarily limited to ALA. CODE § 11-104-1, et. seq. (200814) (collectively, "'Laws'") and represent all applicable Laws with which the Trustee must comply in performing its duties and obligations hereunder. The Trustee shall be bound to perform its duties and obligations in accordance with Exhibit B. It shall be the sole obligation of the City to update Exhibit B to conform with any changes in the Laws, and the Trustee shall not be bound by such changes until such time as Trustee has received written notice from the City of a modification to Exhibit B.

1.3 Directions to Trustee by the City or City's Agents. The City shall have sole responsibility for determining the existence, non-existence, nature and amount of the rights and interests of all persons in the Trust Fund. All directions by the City or a City Agent (as defined below) to the Trustee shall be in writing signed by or on behalf of the City. The City shall furnish to the Trustee a specimen signature of the name(s) of any employee of the City who is designated and authorized to direct the Trustee in writing to take action on the City's behalf. The City also shall furnish to the Trustee the name and a specimen signature of each other person who is designated and authorized to direct the Trustee in writing to take action on the City's behalf (a "City Agent"), a designation of the scope of the City Agent's authority to act on behalf of the City, and a description of any documentation (including, without limitation, relevant minutes of meeting(s) of the City's Council) thereof. The Trustee shall be entitled to rely fully on the written instructions of the City, a City Agent and/or a City Agent who is an investment manager (per Section 3.3) in the discharge of the Trustee's duties and shall not be liable for any loss or other liability resulting from such direction (or lack of direction). The City promptly shall notify the Trustee in writing of the removal, replacement of, or change in the scope of authority or responsibilities of any employee of the City, City Agent or City Agent who is an investment manager, and unless and until notified by the City in writing of such changes, the Trustee shall be fully protected in acting upon the assumption that the City employee, the City Agent or the City Agent who is an investment manager has not been removed and/or replaced and that the scope of authority and responsibilities of the City employee, City Agent or the City Agent who is an investment manager have not been altered by the City or its Council.

ARTICLE II

PAYMENTS FROM TRUST FUND

2.1 Payments Directed by City or a City Agent. The Trustee shall from time to time, at either the City's or City Agent's direction, make payments out of the Trust Fund to the persons or entities to whom such monies are to be paid in such amounts and for such purposes as may be specified in the written directions. To the extent permitted by law, the Trustee shall be under no liability for any payment made pursuant to the written direction of the City or a City Agent. Any direction of the City or a City Agent shall constitute a certification that the distribution or payment so directed is one which the City or City Agent is authorized to direct.

2.2 Impossibility of Diversion Prior to Satisfaction of all Liabilities. Except as set forth below in this Section 2.2, it shall be impossible at any time for any part of the Trust Fund to be used for, or diverted to, purposes other than to pay premiums toward the Plan and/or provide the benefits contemplated under the Plan for the exclusive benefit of covered retirees and their eligible spouses and dependents, except that any reasonable expenses of administering the Plan or Trust Fund may be made from the Trust Fund as provided for herein. Upon termination of the Trust Fund, any assets remaining in the Trust Fund will be used solely to meet its obligations to pay premiums toward the Plan and/or provide benefits under the Plan to the City's retirees, their eligible spouses and dependents who participate in the Plan and to satisfy any other remaining debts or liabilities of the Trust Fund. Any assets remaining in the Trust Fund after meeting its obligations for premiums or to participants and satisfying any liabilities of the Trust Fund shall revert solely to the City, or, as determined solely by the City, to any other entity that is a state, a political subdivision of the state or an entity the income of which is excluded from gross income under Section 115. However, in no event shall any assets of the Trust Fund be transferred for the benefit of any entity that is not a state, a political subdivision of the state or an entity the income of which is excluded from gross income under Section 115. Neither the legislature of Alabama, nor any other entity, person or organization shall have the power or authority to appropriate any assets of the Trust. The assets of the Trust shall not be subject to the claims of any creditors and will not be subject to execution, attachment, garnishment, the operation of bankruptcy, the insolvency laws, or other processes whatsoever, nor shall any assignment thereof be enforceable in court.

2.3 Transfer of Assets. To the extent allowed by law, the City, in its sole discretion, may direct the Trustee to transfer the assets of the Trust Fund to any other trust (including an agent multiple-employer trust) or account if such other trust or account complies with Section 115 and GASB 45 and such trust or account also will maintain a segregated accounting of assets to be used for the same purpose set forth in Section 2.2. However, if the transfer is to be made to a trust for which the Trustee is not the trustee, the notice provisions of Section 6.2 and the termination provisions of Section 8.2 herein shall apply.

2.4 Tax-Exempt Status. Notwithstanding any provision of this Agreement to the contrary, if the Trust Fund established hereunder shall for any reason fail to be granted, or otherwise lose, tax-exempt status under Section 115 of the Code, and the Internal Revenue Service notifies the City that the Plan and/or Trust Fund do not so qualify, the City shall provide the Trustee with a copy of such notification, and the Trust Fund shall continue to be operated in accordance with this Agreement, subject to being modified to comply with Section 115 of the Code and subject to termination pursuant to Section 8.2.

ARTICLE III INVESTMENTS

3.1 General. The Trustee shall invest and reinvest the principal and income of the Trust Fund and keep the Trust Fund invested, without distinction between principal and income, in such securities or in such property, real or personal, tangible or intangible, as the Trustee shall deem advisable, including but not limited to stocks, common or preferred, trust and participation certificates, interest in investment

companies whether so-called "open-end mutual funds" or "closed-end mutual funds," leaseholds, fee titles, bonds, or notes and mortgages, and other evidences of indebtedness or ownership (which investments may include any investment vehicles maintained, managed or advised by the Trustee or any of its affiliates); however, investments shall be governed by and/or limited as set forth in Sections 3.2 and 3.3. Investments shall be so diversified as to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so in the sole judgment of the Trustee. In performance of its duties under this Section 3.1, the Trustee may recommend the City engage one or more financial institutions as an investment manager pursuant to Section 3.3 in order to make investment transaction decisions and hold investments.

3.2 Trustee's Adherence to Investment Guidelines. The Trustee's discretion of the Trustee or any investment manager appointed pursuant to Section 3.3 in investing and reinvesting the principal and income of the Trust Fund shall be subject to any investment guidelines or policy set forth in Exhibit B, and any written changes thereto from time to time, as the City may adopt and communicate to the Trustee in writing. The Trustee and any investment manager appointed pursuant to Section 3.3 shall have the duty to act strictly in accordance with Exhibit B, and any changes thereto, as so communicated to the Trustee by the City from time to time in writing.

3.3 Appointment of an Investment Manager. The. Upon the recommendation of Trustee, the City may appoint an investment manager or managers to manage all or any part of the Trust Fund (which may be the Trustee). The City shall notify the Trustee in writing of any. In the event of such appointment of an investment manager, and shall provide the Trustee with, the City shall obtain the investment manager's written acknowledgment that it is a fiduciary with respect to the Plan and Trust Fund. Any investment manager shall have all powers of the Trustee in the management of such part of the Trust Fund, including the power to acquire or dispose of assets of the Trust Fund. In the event an investment manager is so appointed, the Trustee shall not be liable for the acts or omissions of such investment manager or be under any obligation to invest or otherwise manage that part of the Trust Fund that is subject to the management of the investment manager. The Trustee shall not be responsible for any loss or investment performance caused by its acting upon any instructions from any investment manager which the Trustee reasonably believes to be genuine. At the direction of the City, the Trustee shall segregate such portion of the Trust Fund held by it as will be subject to the management of an investment manager into one or more separate accounts to be known as investment manager accounts. The Trustee shall follow the directions of the investment manager with respect to the account of such investment manager and shall not be obligated to invest or otherwise manage any such investment manager account other than to the extent that the investment manager may utilize the Trustee as a manager of reserves. Subject to procedures and conditions as may be established by the City, the Trustee and the investment manager, the investment manager may place direct orders for the purchase or sale of securities or other property for its investment manager account. The Trustee shall retain custody of the assets comprising said account, unless custodial arrangements satisfactory to the Trustee shall otherwise be made. The City may remove an investment manager and appoint a successor to manage any investment manager account, and shall notify the Trustee in writing of such removal and appointment of a successor. If no successor investment manager is appointed, the portion of the Trust Fund held in such investment manager's account shall return to the unsegregated portion of the Trust Fund and the Trustee shall have authority to manage such account. The Trustee shall be fully protected in relying upon the latest written notice of appointment/removal of an investment manager.

ARTICLE IV POWERS OF TRUSTEE

4.1 Powers. Subject to the provisions of Article III, the Trustee, in addition to all powers and authorities under common law, statutory authority, and other provisions of this Agreement including

without limitation those set forth in Article III, shall have the following powers and authorities, to be exercised in the Trustee's sole discretion:

- (a) To purchase, or subscribe for, any securities or other property and to retain the same in trust;
- (b) To sell, exchange, convey, transfer, grant options to purchase, or otherwise dispose of any securities or other property held by the Trustee, by private contract or at public auction, and any sale may be made for cash or upon credit, or partly for cash and partly upon credit. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity, expediency, or propriety of any such sale or other disposition;
- (c) To vote upon any stocks, bonds, or other securities; to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights, or other options, and to make any payments incidental thereto; to oppose, or to consent to, or otherwise participate in, corporate reorganizations or other changes affecting corporate securities, and to delegate discretionary powers, and to pay any assessments or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to stock, bonds, securities or other property held as part of the Trust Fund; however, the Trustee shall not vote proxies relating to securities for which it has not been assigned full investment management responsibilities. In the event another party has been assigned such investment management responsibilities, the Trustee shall deliver the proxies to said party who will then have full responsibility for voting those proxies;
- (d) To cause any securities or other property held as part of the Trust Fund to be registered in the Trustee's own name or in the name of one or more of the Trustee's nominees, and to hold any investments in bearer form, but the books and records of the Trustee shall at all times show that all such investments are part of the Trust Fund;
- (e) To borrow or raise money for the purposes of the Trust in such amount, and upon such terms and conditions, as the Trustee shall deem advisable; and for any sum so borrowed, to issue a promissory note as Trustee, and to secure the repayment thereof by pledging all, or any part, of the Trust Fund; and no person lending money to the Trustee shall be bound to see to the application of the money lent or to inquire into the validity, expediency, or propriety of any borrowing;
- (f) To keep such portion of the Trust Fund in cash or cash balances as the Trustee may, from time to time, deem to be in the best interests of the trust created hereby, without liability for interest thereon;
- (g) To accept and retain for such time as it may deem advisable any securities or other property received or acquired by it as Trustee hereunder, whether or not such securities or other property would normally be purchased as investments hereunder;
- (h) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (i) To settle, compromise, or submit to arbitration any claims, debts, or damages to or owing to or from the Trust Fund, to commence or defend suits or legal or administrative proceedings, and to represent the Trust Fund in all suits and legal and administrative proceedings;

- (j) To invest funds of the Trust Fund in night deposits or savings accounts maintained by Regions Bank or its affiliates, which deposits or accounts bear a reasonable rate of interest;
- (k) To invest in Treasury Bills and other forms of United States government obligations;
- (l) To deposit monies in federally insured savings accounts or certificates of deposit in banks or savings and loan associations, including accounts and deposits maintained, managed or advised by Regions Bank or any of its affiliates;
- (m) To do all such acts, take all such proceedings, and exercise all such rights and privileges, although not specifically mentioned herein, as the Trustee may deem necessary to administer the Trust Fund, and to carry out the purposes of this Agreement.

4.2 Fees and Expenses. The Trustee may be paid such reasonable will not receive any compensation as shall from time to time be agreed upon in writing for the services performed by the City and the Trustee. In addition, the under this Agreement. The Trustee shall, however, be reimbursed for any reasonable expenses directly incurred by the Trustee in the administration of the Trust Fund. The Trustee may enter contracts or arrangements under which persons (including, without limitation, agents, auditors, certified public accountants, internal auditors, and/or counsel) will advise or assist the Trustee in the carrying out of the Trustee's duties under this Agreement. Such compensation and expenses shall be paid from the Trust Fund, unless otherwise paid by the City. The City may direct the Trustee to pay the fees and expenses of investment managers from the Trust Fund. The Trustee shall not be responsible for determining the reasonableness of any compensation paid or agreed to be paid to an investment manager.

ARTICLE V TRUSTEE'S DUTIES

5.1 General. The Trustee shall discharge its duties under this Agreement solely in the interests of the retirees and their eligible spouses and dependents covered under the Plan and for the exclusive purposes of paying premiums, providing benefits to such persons and defraying reasonable expenses of administering the Trust Fund, with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, and by diversifying the investments of the Trust Fund so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so, all in accordance with the provisions of this Agreement insofar as they are consistent with applicable law, as this Agreement and applicable law may be from time to time amended; but the duties and obligations of the Trustee as such shall be limited to those expressly imposed upon it by this Agreement notwithstanding any reference herein to the Plan, or the provisions thereof, it being hereby expressly agreed that the Trustee is not a party to the Plan.

5.2 Consultation. The Trustee may consult with counsel, and the Trustee shall not be deemed imprudent by reason of its taking or refraining from taking any action in accordance with the opinion of counsel. The Trustee shall not be required to give any bond or any other security for the faithful performance of its duties under this Agreement, except such as may be required by a law which prohibits the waiver thereof.

5.3 Accounts and Records. The Trustee shall keep accurate and detailed accounts of all investments, receipts, disbursements, and other transactions hereunder and all such accounts and other records relating thereto shall be open to inspection and audit at all reasonable times by any person designated by the City. The Trustee shall furnish to the City a written statement of account ~~on at least a quarterly basis~~ setting

upon request by the Mountain
Brook City Council

120
120
requested accounting
period
120

forth all receipts and disbursements for the applicable quarter (or such more frequent reporting basis as agreed to by the parties). Additionally, the Trustee shall furnish to the City an annual written statement of account within 60 days after the end of the Trust's year end setting forth all receipts and disbursements. Failure by the City or City Agent to disapprove any such statement of account within 60 days after its receipt thereof shall be deemed approval thereof. The approval by the City or a City Agent of the statement of account shall serve to release and discharge the Trustee from any liability or accountability to the City as respects the propriety of the Trustee's acts or transactions shown in the statement of account, except with respect to any acts or transactions as to which the City or a City Agent shall file written objections with the Trustee within the 60-day time period prescribed. The Trustee shall not be required by the terms of this Agreement or by the sole capacity of acting as trustee to file an accounting with any court.

5.4 Limitation on Trustee's Liability and Indemnification. The City, or its designated third party administrator, shall administer the Plan as provided therein, and the Trustee shall not be responsible in any respect for administering the Plan nor shall the Trustee be responsible for the adequacy of contributions to the Trust Fund to meet or discharge any payments or liabilities under the Plan. Further, the Trustee shall not be responsible in any respect for any act or omission of any prior trustee or custodian of any assets of the Trust Fund or the Plan, and the City agrees, to the extent permitted law, to indemnify and hold the Trustee harmless from and against any liabilities that the Trustee may incur, which are the direct or indirect result of a prior trustee's or custodian's acts or omissions. The City further agrees to indemnify and hold harmless the Trustee against any and all claims, damages, liabilities, costs and expenses (including without limitation attorneys' fees) assessed against, incurred by or imposed upon the Trustee and/or its successor in connection with or arising out of any claim, demand, proceeding, action, suit, settlement or compromise in which the Trustee may be involved or to which it may be a party by reason of its acting and serving as Trustee hereunder, except in the case of willful negligence or willful misconduct on the part of the Trustee. The right to be defended, indemnified and held harmless hereunder shall extend to the Trustee and its successor and shall continue to apply after the Trustee ceases to serve as Trustee with respect to acts or omissions committed prior to such cessation. Therefore, the provision of this section shall survive the removal or resignation of the Trustee as to acts or omissions committed prior to such removal or resignation. Such right to indemnification shall not be exclusive of other rights to which the Trustee may be entitled as a matter of law.

5.5 Finality of Decisions or Acts. Except for the right of a participant to appeal the denial of a claim, any decision or action of the Trustee made or done in good faith upon any matter within the scope of authority and discretion of the Trustee shall be final and binding upon all persons. In the event of judicial review of actions taken by any fiduciary within the scope of its duties in accordance with the terms of the Plan and this Agreement, such actions shall be upheld unless determined to have been arbitrary and capricious.

ARTICLE VI RESIGNATION, REMOVAL AND SUCCESSION OF TRUSTEE

- 6.1 Resignation. The Trustee may resign at any time by giving 30 days' notice in writing to the City.
- 6.2 Removal. The City may remove the Trustee at any time upon 30 days' notice in writing to the Trustee.
- 6.3 Successor Trustee. Upon the resignation or removal of the Trustee, the City shall appoint a successor trustee who shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon acceptance of such appointment by the successor trustee, the Trustee shall assign, transfer, and pay over to such successor trustee the funds and properties then constituting the Trust Fund.

The Trustee is authorized, however, to reserve such reasonable sum of money, as it may deem advisable, for payment of its fees and expenses in connection with the settlement of its account or otherwise, and any balance of such reserve remaining after the payment of such fees and expenses shall be paid over to the successor trustee. Until such a successor is appointed, the current Trustee shall have full authority to act hereunder; provided, however, that if no successor is appointed on or before the effective date of a resignation or removal, the Trustee may file a civil action to seek the appointment of a successor.

6.4 Report by Trustee. Within ~~60~~¹²⁰ days after the resignation or removal of the Trustee, the Trustee shall furnish to the City a written statement of account with respect to the portion of the year for which the Trustee served. Failure by the City or a City Agent to disapprove any such statement of account within 60 days after its receipt thereof shall be deemed approval thereof. The approval by the City or a City Agent of the statement of account shall serve to release and discharge the Trustee from any liability or accountability to the City as respects the propriety of the Trustee's acts or transactions shown in the statement of account, except with respect to any acts or transactions as to which the City or a City Agent shall file written objections with the Trustee within the 60-day time period prescribed.

6.5 Waiver of Notice. In the event of any resignation or removal of the Trustee, the Trustee and the City may in writing waive any notice of resignation or removal as may be provided hereunder.

ARTICLE VII REPRESENTATIONS AND WARRANTIES OF THE CITY

7.1 Authority to Establish Trust Fund and Enter into Agreement. The City hereby represents and warrants that it has consulted with legal counsel regarding the City's authority to establish the Trust Fund and to enter into this Agreement and that it has been conclusively determined that the City has the authority to establish the Trust Fund and to enter into this Agreement.

7.2 Authorized Person. The City represents and warrants that the person executing this Agreement below is authorized by the City to enter into this Agreement.

ARTICLE VIII AMENDMENT AND TERMINATION OF AGREEMENT

8.1 Amendment. Any or all of the provisions of this Agreement may be amended at any time and from time to time, in whole or in part, by an instrument in writing, signed by the Trustee and the City. No such amendment shall authorize or permit any part of the Trust Fund (other than such part as is required to pay administration expenses) to be used for or diverted to purposes other than for the exclusive benefit of the retirees and their eligible spouses and dependents; except as provided in Section 2.2, no such amendment shall cause or permit any portion of the Trust Fund to revert to or become the property of the City. Exhibit A may be amended from time to time in the sole discretion of the City to add or remove plans that are covered by the Trust; however, a plan may not be removed from coverage under the Trust unless and until all liabilities associated with such plan have first been satisfied.

8.2 Termination. This Agreement may be terminated at any time by the City, and upon such termination, or upon the dissolution or liquidation of the City, the Trust Fund shall be paid out by the Trustee as and when directed by the City or a City Agent, in accordance with the provisions of Article II hereof and the terms of the Plan.

**ARTICLE IX
GENERAL**

9.1 Limited Effect of Plan and Trust Fund. Neither the establishment of the Plan nor the Trust Fund nor any modification thereof, nor the creation of any fund or account, nor the payment of any welfare benefits, shall be construed as giving to any person covered under the Plan or other person any legal or equitable right against the Trustee, the City, or any officer or employee thereof, except as may otherwise be provided in the Plan or in this Agreement.

9.2 Protective Clause. Neither the City nor the Trustee shall be responsible for the validity of any contract of insurance issued in connection with the Plan or Trust Fund or for the failure on the part of the insurer to make payments provided by such contract, or for the action of any person which may delay payment or render a contract null and void or unenforceable in whole or in part.

9.3 Construction of Agreement. This Agreement shall be construed and enforced according to the laws of the State of Alabama.

9.4 Trust Exemption. The City shall submit this Agreement (or represents and warrants that it already has previously submitted this Agreement) to the Internal Revenue Service for a private letter ruling on its status as a tax-exempt trust under Section 115 of the Code.

9.5 Gender and Number. Wherever any words are used herein in the masculine, feminine or neuter, they shall be construed as though they were also used in another gender in all cases where they would so apply, and whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply.

9.6 Headings. The headings and sub-headings of this Agreement have been inserted for convenience of reference and are to be ignored in any construction of the provisions hereof.

9.7 Written Communications. All notices, demands, directions, designations, specifications, consents, instructions, approvals, requirements, information, statements or communications between the City and the Trustee required or permitted to be given, made, disclosed, furnished or transmitted under this Agreement shall be in writing and/or an electronic medium or format agreed upon by the City and Trustee and directed by first-class (postage prepaid) U.S. mail, electronic facsimile transmission, or electronic mail to the recipient at its physical address, facsimile number, or electronic mail address set forth below in this Section 9.7 or at any other physical address, facsimile number, or electronic mail address of which a party shall have notified the other party in accordance with the procedures of this Section 9.7. All notices, demands, directions, designations, specifications, consents, instructions, approvals, requirements, information, statements or communications between a City Agent (including a City Agent who is an investment manager) and the Trustee required or permitted to be given, made, disclosed, furnished or transmitted under this Agreement shall be in writing and/or an electronic medium or format agreed upon by the City (or if applicable, a City Agent) and the Trustee and directed by first-class (postage prepaid) U.S. mail, electronic facsimile transmission, or electronic mail (1) to the Trustee at its physical address, or facsimile number set forth below in this Section 9.7 or at any other physical address, facsimile number, or electronic mail address of which the Trustee shall have notified the City Agent in accordance with this Section 9.7 and (2) to the City Agent at a physical address, facsimile number, or electronic mail address of which the City or City Agent shall have notified the Trustee. Notice of a change in a City Agent's physical address, facsimile number or electronic email address shall be given in accordance with the procedures of this Section 9.7.

(a) If to the TrusteeCity:

Vice-President, Institutional Services
Regions Bank, d/b/a Regions Morgan Keegan Trust
P.O. Box 830859
City Manager
City of Mountain Brook
56 Church Street
Birmingham, AL 35203- 085935213-3700
Fax: 205.264.5866879.6913

Formatted: Underline

Electronic Mail Address: [_____]

(b) If to the City Trustee:

Chief Financial Officer
City of Mountain Brook
56 Church Street
Birmingham, AL 35213-3700
Fax: 205.879.6913
Electronic Mail Address: boones@mtnbrook.org

9.8 Electronic Data Exchange. Notwithstanding the foregoing Section 9.7, the City (or a City Agent, if applicable) and the Trustee may establish procedures to facilitate the secure electronic transmission and exchange of data (such as computer files) between the City (or a City Agent, if applicable) and the Trustee. All communications pertaining to any such procedures shall be subject to Section 9.7.

9.9 Severability. If any provisions of this Agreement shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions hereof, and this Agreement shall be construed and enforced as if such provision, to the extent invalid or unenforceable had not been included.

9.10 Assignment of Agreement. The Trustee may not assign this Agreement to any other trustee, corporation, person or entity unless the City consents to such assignment in writing in advance of the effective date thereof.

9.11 No Effect on Current or Future Benefits. Nothing in this Agreement shall be construed to define or otherwise grant any right or privilege to any benefits to any person. Benefits, if any, shall be governed by the terms of the applicable plan document. Further, this Agreement is not intended to assure or deny any existing or future employee, retired employee, any of their dependents, or any other person of any right of employment or entitlement to any benefit or otherwise restrict the ability of the City to modify or eliminate any existing or future benefit.

IN WITNESS WHEREOF, this Agreement has been executed the day and year first above written.

“CITY”

City of Mountain Brook

By: _____

Its: _____

“TRUSTEE”

Regions Bank
d/b/a Regions Morgan Keegan Trust

By: _____

Its: _____

Steven Boone

EXHIBIT A

**Copies of Retiree Welfare Benefit Plan(s) Covered under the Section 115 Trust Agreement
(attached)**

EXHIBIT B

**Description of any State Law, Investment Policy
or other Guidelines or Limitations Relating to Investments**

(attached)

**MOUNTAIN BROOK CITY COUNCIL
MEETING AGENDA**

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

MONDAY, DECEMBER 8, 2014, 7:00 P.M.

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- ✓ 1. Approval of the minutes of the November 24, 2014 regular meeting of the City Council.
 2. Consideration: Resolution reappointing Ken Key to serve on the Tree Commission, to serve without compensation, with the term of office to end December 8, 2017.
 3. Consideration: Resolution appointing Stacey Turner to serve on the Jefferson County Intellectual and Developmental Disabilities Authority (formerly MR/DD 310 Authority), to serve without compensation, with the term of office to end December 8, 2020.
 4. Consideration: Resolution renaming "Cahaba Park" to "Cahaba River Walk".
 5. Consideration: Resolution setting a public hearing on January 12, 2015, to consider an ordinance adopting the 2015 International Building Code, 2015 International Residential Code, 2015 International Fuel Gas Code, 2015 International Mechanical Code, 2015 International Plumbing Code, the 2015 International Fire Code, and the 2015 Life Safety Code (all to become effective March 1, 2015).
 6. Consideration: Ordinance de-annexing a parcel on Old Trace.
 7. Announcement: The next (special) meeting of the City Council is December 16, 2014, at 5:30 p.m. in the Council Chamber of City Hall located at 56 Church Street, Mountain Brook, AL 35213.
 8. Comments from residents.
 9. Adjourn.

Steve S.
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