

**MOUNTAIN BROOK CITY COUNCIL
PRE-MEETING DISCUSSION
OCTOBER 28, 2013**

The City Council of the City of Mountain Brook, Alabama met in public session in the Pre-council Room (A106) of City Hall at 6:30 p.m. on Monday, the 28th day of October, 2013. 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. RECOGNITION OF GUESTS

Council President Smith recognized Boy Scout Jim Williams of Troop 63 in attendance to satisfy the requirements for the Communications merit badge.

2. AGENDA

1. Declare certain Library property surplus and authorize its sale at public Internet auction.
2. Authorize an amendment to the Sain Associates construction, engineering, and inspection fees in an amount not to exceed \$130,000.00 (formerly 75,302.58 as provided in Supplement No. 2, Resolution No. 2013-118 dated August 26, 2013) with respect to the Mountain Brook Village Walkway System, Phase 6, CMAQ-98-02(921) due to contract delays that have extended the construction completion date.
3. Authorize the execution of a 3-year Auxiliary Audit Agreement between the City and PRA Government Services, LLC (d/b/a RDS) for tax and license auditing services.
4. Authorize the execution of an agreement between the City and The Mercer Group, Inc. with respect to an organizational and staffing study for The Emmet O'Neal Library Board.

The members of the City Council stated that they want to see the following revisions incorporated into the proposal: 1) clarify that the interviews shall include representative of the Junior Women's Committee of 100 (JWC100), 2) all Library Board members shall be interviewed, 3) the chairperson of the Library Foundation Board shall be interviewed, and 4) the peer group of libraries to be used for comparisons shall include other Blue Ribbon libraries.

5. Authorize the City Planner and City Attorney to draft amendments to any article of the Zoning Ordinance to eliminate all self-imposed requirements to publish notices in the newspaper.

After the City Council's review of the formal [7 p.m.] agenda issues above, City Attorney Whit Colvin discussed a request by Crown Castle to extend its lease(s) with respect to the cellular communications towers located at Public Works and the Old Leeds Road fire station. The members of the City Council expressed their general agreement that the lease negotiations should proceed and "finalized" lease agreements shall be considered by the City Council once said negotiations have concluded.

Upon conclusion of said discussion, Council President Smith adjourned the meeting.

A handwritten signature in black ink that reads "Steven Boone". The signature is written in a cursive style with a large initial 'S'.

Steven Boone, City Clerk

**MINUTES OF THE REGULAR MEETING OF THE
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK, ALABAMA
OCTOBER 28, 2013**

The City Council of the City of Mountain Brook, Alabama met in public session in the City Hall Council Chamber at 7:00 p.m. on Monday, the 28th day of October, 2013. 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. RECOGNITION OF GUESTS

Council President Smith recognized Boy Scout Ty Barton of Troop 320 in attendance to satisfy the requirements for the Citizenship in Community merit badge.

2. 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 October 14, 2013 meeting of the City Council.

2013-157	Declare certain Library property surplus and authorize its sale at public Internet auction.	Exhibit 1
2013-158	Authorize an amendment to the Sain Associates construction, engineering, and inspection fees in an amount not to exceed \$130,000.00 (formerly 75,302.58 as provided in Supplement No. 2, Resolution No. 2013-118 dated August 26, 2013) with respect to the Mountain Brook Village Walkway System, Phase 6, CMAQ-98-02(921) due to contract delays that have extended the construction completion date.	Exhibit 2, Appendix 1
2013-159	Authorize the execution of a 3-year Auxiliary Audit Agreement between the City and PRA Government Services, LLC (d/b/a RDS) for tax and license auditing services.	Exhibit 3, Appendix 2
2013-160	Authorize the execution of an agreement between the City and The Mercer Group, Inc. with respect to an organizational and staffing study for The Emmet O'Neal Library Board.	Exhibit 4, Appendix 3

2013-161 Authorize the City Planner and City Attorney to draft amendments to any article of the Zoning Ordinance to eliminate all self-imposed requirements to publish notices in the newspaper. Exhibit 5

Thereupon, the foregoing minutes and resolutions were introduced by Council President Smith and their immediate adoption was moved by Council member Pritchard. The minutes and resolutions were then considered by the City Council. Council member Vogtle seconded the motion to adopt the foregoing minutes 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 and resolutions (nos. 2013-157 through 161) are adopted by a vote of 5—0.

3. PUBLIC HEARING: CONSIDERATION OF AN ORDINANCE (NO. 1896) REZONING A PARCEL OF LAND IN THE CITY OF MONTAIN BROOK, ALABAMA FROM RESIDENCE-D TO RESIDENTIAL INFILL DISTRICT (RID), AND THE APPROVAL OF A MASTER DEVELOPMENT PLAN (RE: CALTON HILL PROPERTY LOCATED ON MONTCLAIR ROAD). (EXHIBIT 6, APPENDIX 4)

Council President Smith opened the public hearing, introduced the ordinance in writing, and invited comments and questions from the audience.

David Averett with MJK, LLC (developer) of 3505 Bent River Road:

- The property was acquired recently after the original developer declared bankruptcy.
- The proposal before the City Council is essentially the same as approved about 10 years ago [although the portion of the development actually in Mountain Brook has been determined to be much less than what was presented to the City by the previous owner/developer].
- Another change from the original proposal is that the properties shall be single family detached residences instead of condominiums as proposed by the previous owner/developer.
- All other aspects (design, landscaping, etc.) previously approved shall be adopted by the new owner and incorporated into the development.
- Regarding the municipal boundary line, the original application and development plan showed a much larger development in the City. However, it has been determined that a portion of the property is actually in the City of Birmingham [since 1949], therefore that portion of the City's annexation was not valid and is not part of this application.
- The homes will be a minimum of 3,000 square feet of living space with a minimum valuation of \$410,000. The owner anticipates that the starting price of the first units completed will be around \$490,000 and are expected to increase as the units are completed.

Miller Peterson of 3936 Montclair Road:

- Represents Mrs. Edward J. Peterson who owns a piece of property north of this proposed development which is not adjacent or contiguous to any public road or highway. The closest public road to Mrs. Peterson's property is 3rd Street.
- Requests that the City Council include in the master development plan to be approved tonight an access by way of 3rd Street to Mrs. Peterson's otherwise landlocked property.
- Sec. 18-3-1 Code of Alabama allows for a right-of-way to the most convenient road or highway.

Council member Pritchard questioned how Mr. Peterson's request is relevant to the action under consideration as it appears that 3rd Street is not part of the subject property.

Mr. Peterson:

- Expressed his belief, which he claims is supported by a recent survey, that there is a strip of land in the development that would allow the requested access to his client's property.
- Mr. Peterson reiterated that he simply wants the access incorporated into the master development plan.

Other issues discussed included: 1) the implications of modifying the published ordinance, and 2) questions as to whether the land where access would be granted is located in Mountain Brook or Birmingham. It was determined after said discussions that nothing will preclude Mr. Peterson from seeking said access at a later date and that modifying the master development plan is therefore unnecessary at this time.

Jennifer Nunnelley of 3433 Cherokee Road:

- Wants to be sure that 3rd Street is not being vacated [which was affirmed as such vacation is not currently proposed.]

There being no discussion or comments, 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 for the immediate consideration of said ordinance be 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 C. Smith, Council President
Amy 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 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 C. Smith, Council President
Amy Carter, Council President Pro Tempore
William S. Pritchard III
Jesse S. Vogtle, Jr.

Nays: Jack D. Carl

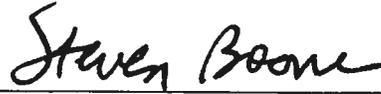
The President of the Council declared that the ordinance is hereby adopted by a vote of 4—1 and, as evidence thereof, she signed the same.

4. ANNOUNCEMENT REGARDING THE NEXT REGULAR MEETING OF THE CITY COUNCIL.

Council President Smith announced that the next regular meeting of the City Council will be Tuesday, November 12, 2013, at 7 p.m. in the Council Chamber of City Hall located at 56 Church Street, Mountain Brook, AL 35213. (There will be no meeting of the City Council on Monday, November 11, 2013 in observance of Veterans' Day.) Please visit the City's web site (www.mtnbrook.org) for more information.

5. ADJOURNMENT

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



Steven Boone, City Clerk

EXHIBIT 1

RESOLUTION NO. 2013-157

A RESOLUTION AUTHORIZING THE SALE OR DISPOSAL OF CERTAIN SURPLUS PROPERTY

WHEREAS, the City of Mountain Brook, Alabama, has certain items of personal property which are no longer needed for public or municipal purposes; and

WHEREAS, Section 11-43-56 of the Alabama Code of 1975 authorizes the municipal governing body to dispose of unneeded personal property.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Mountain Brook, as follows:

Section 1. It is hereby established and declared that the following property owned by the City of Mountain Brook, Alabama is not needed for public or municipal purposes and is hereby declared surplus property:

Count	Description	Model	Description
21	Dell Optiplex 755	755	computers
20	Dell Monitor	2007FP	20" wide flat panel monitors
6	Dell Monitor	E198FPf	19" square flat panel monitors
3	Decorative table	n/a	Handpainted tables
2	Dell Optiplex 760	760	computers
2	Dell Optiplex 780	780	computers
2	Toshiba laptop	Satellite A105	Laptop computer
2	Craft table	n/a	Craft tables for children
2	IBM Typewriter	Wheelwriter 5	Electric typewriters
1	HP Laserjet Printer	CP2025	color printer
1	Optoma Projector	n/a	Portable projector
1	Activity display	n/a	Display with children's activities

Section 2. That the City Manager, or his designated representative, is hereby authorized and directed to sell the above property by way of public Internet auction or to otherwise dispose of such property that does not sell at said auction.

EXHIBIT 2

RESOLUTION NO. 2013-158

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama that the City Council hereby accepts and approves a modification to Supplement No. 2 (re: Resolution No. 2013-118 adopted August 26, 2013) with respect to the construction, engineering, and inspection service fees in an amount not to exceed \$130,000.00 (see Exhibit A attached hereto) with respect to the Mountain Brook Village

Walkway System, Phase 6, CMAQ-98-02(921) requested due to contract delays that extended the construction completion date.

BE IT FURTHER RESOLVED by the City Council of the City of Mountain Brook, Alabama that the City Council hereby authorizes the execution of such other documents that may be determined necessary with respect to said services all subject to review and approval by the City Attorney.

APPENDIX 1

EXHIBIT 3

RESOLUTION NO. 2013-159

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes the execution of a 3-year Auxiliary Audit Agreement between the City and PRA Government Services, LLC d/b/a RDS, in the form as attached hereto as Exhibit A, subject to such minor revisions as may be determined appropriate by the City Attorney.

APPENDIX 2

EXHIBIT 4

RESOLUTION NO. 2013-160

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 The Mercer Group, Inc., in the form as attached hereto as Exhibit A, for their management and organizational study of The Emmet O'Neal Library Board.

APPENDIX 3

EXHIBIT 5

RESOLUTION NO. 2013-161

WHEREAS, §11-52-77 of the Alabama Code sets forth the required procedure for the passage of ordinances concerning zoning; and

WHEREAS, said Code section provides in pertinent part as follows:

No ordinance shall be passed by any municipal corporation under the authority of this article unless and until the proposed ordinance has been published . . . at least 15 days in advance of its passage and in a newspaper of general circulation published within the municipality, or, if there is no such newspaper, then by posting the proposed ordinance in four conspicuous places within the municipality . . .

ALA. CODE §11-52-77 (1975); and

WHEREAS, according to said code section, if there is no newspaper of general circulation published within the City of Mountain Brook, the City's statutory notice obligations with regard to zoning ordinances or amendments thereto are satisfied by posting the ordinance in four conspicuous places; and

WHEREAS, the Attorney General has determined as follows with regard to the publication of newspapers:

A newspaper is published at the place where it is entered in the post office and where it is first put in circulation and not at the place where it is printed. Furthermore, a newspaper is considered to be published at the location where it has its principal office and where its form and content are determined.

Whether a newspaper is entered in the post office and first put in circulation in that municipality so as to be "a newspaper of general circulation published in the municipality" is a question of fact to be determined by the city governing body.

Opinion to Honorable Patrick H. Boone, dated October 21, 2010, A.G. No. 2011-005 (internal citations omitted); and

WHEREAS, the *Birmingham News*, while a newspaper of general circulation in the City, is not published in the City of Mountain Brook, as it is not first placed into circulation in the City, nor is the principal office where its form and content are determined located in the City of Mountain Brook; and

WHEREAS, the City Council finds and determines that the *Birmingham News* is not a "newspaper of general circulation published within the municipality," and that there is no other such newspaper that satisfies the criteria in ALA. CODE §11-52-77 (1975).

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Mountain Brook that, after due consideration, the *Birmingham News* shall not be considered as a newspaper of general circulation published within the municipality as contemplated in ALA. CODE §11-52-77 (1975).

BE IT FURTHER RESOLVED that, because there is no such newspaper of general circulation published within the municipality, the notice requirements concerning zoning ordinances may be satisfied by posting proposed zoning ordinances in four conspicuous places within the City or by other means permitted by law.

BE IT FURTHER RESOLVED that the City Planner and City Attorney are authorized and directed to review the Zoning Ordinance of the City and to present the Council with proposed changes to any article or provision requiring notice by newspaper publication, which said changes shall eliminate any such requirement, consistent with the determinations set forth in this resolution.

EXHIBIT 6

CITY OF MOUNTAIN BROOK, ALABAMA ORDINANCE NO. 1896

AN ORDINANCE REZONING A PARCEL OF LAND IN THE CITY OF MOUNTAIN BROOK, ALABAMA FROM RESIDENCE-D TO RESIDENTIAL INFILL DISTRICT (RID), AND THE APPROVAL OF A MASTER DEVELOPMENT PLAN

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

1. Amendment of Zoning Ordinance and Map. The zoning ordinance of the City of Mountain Brook and zoning map established under authority of Section 129-17 of the Mountain Brook City Code are hereby amended by rezoning the property described hereinbelow from its present "Residence-D" zoning classification under Chapter 129, Article V, of said Code to a "Residential Infill District (RID)" zoning classification as described in Chapter 129, Article XXVIII, and that the development of the subject property shall be governed by the zoning standards set forth in the RID Rezoning Application and Master Development Plan.

2. Master Development Plan. The Master Development Plan and the materials submitted by the applicant, as required by Section 129-497 of the Mountain Brook City Code, are made a part hereof and are

specifically incorporated herein by reference, said Plan and materials constituting regulatory standards for use of the affected Property, subject to modification only as provided for in Article XXVIII, Chapter 129 of the Mountain Brook City Code.

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

A parcel of land situated in the Southwest quarter of the Southwest Quarter of Section 33, Township 17 South, Range 2 West, Jefferson County, Alabama, said parcel being a part of Lot 1 of Brown Development L.L.C. Addition to Mountain Brook as recorded in Map Book 207, Page 88 in the Office of the Judge of Probate, Jefferson County, Alabama, and being more particularly described as follows:

Commence at a found 1 inch solid pipe marking the Northwest corner of the Southwest Quarter of the Southwest Quarter of said Section 33; thence run South along the West line of said Section for a distance of 376.72 feet to a set 5/8 inch capped rebar stamped CA-560LS, said point being the POINT OF BEGINNING of the parcel herein described; thence continue along the last described course for a distance of 31.64 feet to a set 5/8 inch capped rebar stamped CA-560LS; thence leaving said Section line turn an interior angle to the right of 52 degrees 12 minutes 25 seconds and run in a Northeasterly direction for a distance of 426.46 feet to a set 5/8 inch capped rebar stamped CA-560LS; thence turn an interior angle to the right of 307 degrees 31 minutes 38 seconds and run in a Southerly direction for a distance of 332.05 feet to a found 2 inch capped pipe, said point lying on the Northerly Right of Way of Montclair Road (80' R.O.W.), said point also lying on a non-tangent curve to the left, said curve having a radius of 3759.82 feet, a central angle of 02 degrees 36 minutes 40 seconds, an interior angle to the right to chord of 57 degrees 33 minutes 20 seconds, and a chord distance of 171.32 feet; thence run along the arc of said curve and said Right of Way for a distance of 171.34 feet to set 5/8 inch capped rebar stamped CA-560LS; thence leaving said Right of Way turn an interior angle right from chord of 122 degrees 32 minutes 38 seconds and run in a Northerly direction for a distance of 332.79 feet to a set 5/8 inch capped rebar stamped CA-560LS; thence turn an interior angle right of 96 degrees 30 minutes 42 seconds and run in a Westerly direction for a distance of 17.16 feet to a set 5/8 inch capped rebar stamped CA-560LS; thence turn an interior angle right of 318 degrees 09 minutes 08 seconds and run in a Northeasterly direction for a distance of 63.31 feet to a set 5/8 inch capped rebar stamped CA-560LS; thence turn an interior angle to the right of 37 degrees 10 minutes 14 seconds and run in a Westerly direction for a distance of 48.03 feet to a set 5/8 inch capped rebar stamped CA-560LS; thence turn an interior angle to the right of 140 degrees 32 minutes 19 seconds and run in a Southwesterly direction for a distance of 592.49 feet to the POINT OF BEGINNING.

Said parcel contains 65,099 Square Feet or 1.49 Acres more or less.

4. 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.

5. 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.

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

APPENDIX 4



MEMORANDUM

TO: Sam Gaston, City of Mountain Brook
FROM: Alicia Bailey, P.E.
DATE: 10/22/13
SUBJECT: Mountain Brook Phase 6 Sain's Contract

Sam,
Thank you for taking time on Friday to speak with us. Below is the information we discussed.

There have been numerous design plan changes on this project. These changes have caused for certain areas of the project to be on hold pending the redesigns and subsequent reviews and approvals from ALDOT on the revised plans.

One of Sain's responsibilities as CE&I consultant is to keep up with the days charged on the construction contract. Ideally, every day that the contractor can work for six continuous hours, a day is charged.

- Original contract days - 140 days
Days added due to over-runs of quantities - 26 days
Days added due to contractor supplements for changes - 34 days
Days not counted due to redesigns and approvals of plan changes - 106 days

As of 9/30/13, the plan redesigns and approvals have added 166 working days (approximately 8.5 months) to the construction contract.

If the contractor depletes all the construction days without being done with the work, he will be charged liquidated damages. The concern is that by charging the contractor liquidated damages, he will file a claim.

In July, Sain prepared supplement #2. At the time, the contractor estimated completing his work in mid-September. During September, the contractor was held up on being able to complete his work mainly due to delays associated with the sanitary sewer work on Old Leeds Road.

Supplement #2 had only enough money for Sain to provide CE&I services until mid-September and for project close-out. Due to construction still being ongoing, Sain has maintained a full time inspector onsite and we have depleted the Supplement #2 funds.

Two Perimeter Park South, Suite 600 East - Birmingham, Alabama 35243
p (205) 940-6420 - f (205) 940-6433
www.sain.com



our fee will cover our CE&I services until November. Sain cannot maintain full time inspection until November unless we revise Supplement #2 for an increased fee. Below is a summary of Sain's Contract:

- Original Contract - \$237,158.00
Supplement #1 - \$145,621.00
Supplement #2 - \$75,302.58

*Please note, ALDOT reimburses the City 80% of Sain's fee.

Sain requests Supplement #2 be amended to increase the fee from \$75,302 to \$130,000. This will allow Sain to continue providing full time inspection and management of the project until November 2013.

Two Perimeter Park South, Suite 600 East - Birmingham, Alabama 35243
p (205) 940-6420 - f (205) 940-6433
www.sain.com

From: Sam Gaston [mailto:gastons@mntbrook.org]
Sent: Wednesday, October 23, 2013 4:19 PM
To: Virginia Smith; Amy Carter; Terry Oden; Billy Pritchard; Vogtle, Jesse; Jack Carl
Cc: Steve Boone; Whit Colvin
Subject: Phase 6 Sidewalks-CE and I

Virginia and I met today with Sain Associates concerning their CE and I contract for the Phase 6 sidewalk project. Sain is requesting an additional \$65,000 for CE and I, 80% which will be paid by ALDOT and 20% by the City or \$11,000. Virginia and I recommend we approve this at our October 28th Council meeting.

I know we all are very frustrated with this project and can't wait for it to be completed, but we have experienced a perfect storm on this project due to:

- 1. The topography and terrain have made this a very difficult and challenging project.
2. Not to throw Nimrod Long and Associates under the bus, but this was not their best effort on designing the plans for this project as ALDOT has required several revisions to the plans, after they were initially approved and the project bid, which has significantly delayed the project.
3. ALDOT has a new person reviewing the sidewalk plans and supervising the sidewalk projects, Genevieve Brown, who goes by the book.
4. Due to the delays in this project for plans/design revisions, it has forced the contractor, Walker-Patton, to skip around on this project and to miss critical path construction which has delayed the completion.

So, we, the city, are being forced to pay more \$ for CE and I although ALDOT is picking up 80% of the tab. A CE and I inspector must be on-site each day per ALDOT regulations.

I ask the Mayor and Council keep this information confidential, but Virginia and I wanted to give you some background information in advance of the October 28th Council meeting.

Sam S. Gaston
City Manager

APPENDIX I

Auxiliary Audit Agreement

This agreement made as of the 28th day of October, 2013, by and between PRA Government Services, LLC d/b/a RDS ("RDS") and City of Mountain Brook, an Alabama CITY ("CITY").

A. General Provisions

- 1. Audit Services Performed: RDS will perform auxiliary audit services for business license fees, sales and use taxes, rental/lease tax, lodging tax and such other taxes as may from time to time be designated by the CITY. Such services shall only be performed when specifically requested or approved in writing by CITY.
2. Deposit Process: Deposits are made to the extent that funds have been received, via Automated Clearing House of the amounts and to the designated recipients as instructed by the CITY for each type of tax collected, as shown in more detail on Exhibit A.
3. Information Provided: CITY represents that it has the right to provide information to RDS necessary to perform the services hereunder and such information shall be true, accurate, current and complete.
4. Compliance with laws: Each Party accepts responsibility for its compliance with federal, state, or local laws and regulations.
5. Review and Appeal Process: RDS has adopted and will use a review and appeals process which is based on the Alabama Taxpayers' Bill of Rights Act and Uniform Revenue Procedures Act codified as Title 40, Chapter 2A, Code of Alabama, 1975, as amended.
6. Audit Services:
I. RDS Audit Services: Audit Services include all preparation for the performance of an audit, any research or statistical analysis performed in relation to an audit, in-house audit/collection efforts, examination of the books and records of the taxpayer, an assessment of the amount due (if any), and all services related to closing an audit.
II. RDS Reciprocal Agreement: To the fullest extent allowed by law, CITY hereby authorizes RDS to act as a facilitator with the Alabama Department of Revenue and other applicable jurisdictions to share audit findings on its behalf.
1. RDS Fee: RDS will receive an amount based on an hourly rate of seventy dollars (\$70.00) for audit services. There shall be no contingent fees. Each year on the anniversary date of this Agreement the hourly rate will increase by 3%.
2. If overnight travel or travel more than 25 miles beyond origination point is required, RDS will pay the auditor and bill the CITY for its portion of travel expenses. CITY agrees to pay the amount of these fees when due, regardless of any recovery.
3. Billing Increment: Time will be recorded in 15-minute intervals (.25 hours);
4. Shared Audit Fees: When audits for CITY overlap with audits for other RDS clients or clients of RDS Affiliates, the fees will be shared as follows:
a. Travel Time: travel time, expenses, and a daily per diem amount for each audit is distributed evenly among the clients reviewed for each audit.
b. Interview Time: time billed during the initial interview of each audit is distributed evenly amongst the clients reviewed for each audit - during this process the auditor determines which clients will actually be audited for and billed Audit Time as follows:
i. Audit Time: Time billed during the actual audit stage of each audit is billed according to actual time spent working for each client.
i. No Double Billing: in no event will the overlapping audits combined require payment for more than 100% for any one RDS representative.
7. Notification, Reporting to CITY:

RDS City Contract 2013

Notwithstanding the foregoing, RDS may assign this Agreement, in whole or in part, without the consent of CITY to any corporation or entity into which or with which RDS has merged or consolidated; any parent, subsidiary, successor or affiliated corporation of RDS; or any corporation or entity which acquires all or substantially all of the assets of RDS. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their successors or assigns.

- 16. Force Majeure: RDS shall not be in default of its obligations hereunder to the extent that its performance is delayed or prevented by causes beyond its control, including but not limited to acts of God, government, weather, fire, power or telecommunications failures, inability to obtain supplies, breakdown of equipment or interruption in vendor services or communications.
17. Subcontractors: RDS shall have the right to hire assistants as subcontractors or to use employees to provide the Services required by this Agreement. RDS, in rendering performance under this Agreement shall be deemed an independent contractor and nothing contained herein shall constitute this arrangement to be employment, a joint venture, or a partnership. RDS shall be solely responsible for and shall hold CITY harmless from any and all claims for any employee related fees and costs including without limitation employee insurance, employment taxes, workman's compensation, withholding taxes or income taxes.
18. Intellectual Property Rights: The entire right, title and interest in and to RDS' database and all copyrights, patents, trade secrets, trademarks, trade names, and all other intellectual property rights associated with any and all ideas, concepts, techniques, inventions, processes, or works of authorship including, but not limited to, all materials in written or other tangible form developed or created in the course of this Agreement (collectively, the "Work Product") shall vest exclusively in RDS. The foregoing notwithstanding, in no event shall any CITY-owned data provided to RDS be deemed included within the Work Product.
19. Entire Agreement: This Agreement and the Addendum thereto constitute the entire agreement between the Parties hereto and supersedes any prior understandings or written or oral agreements between the Parties respecting the subject matter contained herein. Said Agreement shall not be amended, altered, or changed, except by a written Agreement signed by both Parties hereto.
20. Invalidity: If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained therein.
21. Effective Date: The effective date for the performance of services under the terms of this agreement shall commence November 1, 2013.

IN WITNESS WHEREOF, the parties hereto as of the date first above written have duly executed this Agreement.

PRA GOVERNMENT SERVICES, LLC City of Mountain Brook
D/B/A RDS

By: [Signature]
Its: COO and SVP, Operations

By: [Signature]
Its: Lawrence T. Oden, Mayor

Proposed pricing contained herein valid for 60 days from date of issuance. Issued 4/10/13 (SC)

RDS City Contract 2013

APPENDIX 2

EXHIBIT A
DISTRIBUTION CONFIRMATION

October 24, 2013

Steven Boone
City of Mountain Brook
P.O. Box 130009
Mountain Brook, AL 35213

Dear Mr. Boone:

Funds will be distributed in the following accounts pursuant to this Agreement:

Table with 5 columns: Agency, Routing #, Account #, Distribution %, Tax Type/Rate Code. Row 1: Mountain Brook, Check, Check, 100%, Audit Taxes; all rates

If at any time there are any discrepancies between the schedule set out above and your Municipality's records, please notify us in writing immediately.

IT IS YOUR RESPONSIBILITY TO PROVIDE NOTICE TO US OF ANY CHANGES IN TAX RATES OR IN THE DISTRIBUTION OF FUNDS. NOTICE MUST BE IN WRITING AND SENT, VIA CERTIFIED MAIL, TO:

PRA Government Services, LLC (d/b/a RDS)
2317 Third Avenue North, Suite 200
Birmingham, Alabama 35203
ATT: Kennon Walthall, COO and SVO, Operations

Thank you for your assistance. If you have any questions, or if I may be of assistance, please let me know.

Sincerely Yours,
Connie Taylor
Client Relations Manager
RDS
205-423-4144 direct dial
205-423-4097 direct fax

I have reviewed the above distribution and verify that it is correct.
By:

Name: [Signature]
Title: RDS COO and SVP, Operations

RDS City Contract 2013

RDS City Contract 2013

ADDENDUM TO AGREEMENT BETWEEN THE CITY OF MOUNTAIN BROOK AND PRA GOVERNMENT SERVICES, LLC (d/b/a RDS) DATED OCTOBER 28, 2013

THIS ADDENDUM ("the Addendum") to the principal agreement between the City of Mountain Brook, Alabama ("the City") and PRA Government Services, LLC (d/b/a RDS) ("the Contractor") dated October 28, 2013.

This Addendum is a part of the principal agreement, but supersedes and controls any conflicting or inconsistent terms or provisions in the principal agreement, particularly to the extent the conflicting or inconsistent terms or provisions purport either to (a) confer greater rights or remedies on the Contractor than are provided herein or under otherwise applicable law, or to (b) reduce, restrict, or eliminate rights or remedies that would be available to the City under otherwise applicable law.

- 1. Definitions. For purposes of this Addendum, the terms below have the following meanings:
A. "The City" refers to and includes the City of Mountain Brook, Alabama, and its constituent departments, boards, and agencies.
B. "The (this) Agreement" refers to the principal contract, agreement, proposal, quotation, or other document that sets forth the basic terms and conditions under which the Contractor is engaged to provide goods, materials, or services to the City, including the payment or other consideration to be provided by the City in exchange therefor.
C. "The Contractor" refers to the person, firm, or other legal entity that enters into an agreement with the City to provide goods, materials, or services to the City, and includes vendors and suppliers providing goods, materials, and services to the City with or without a formal contract as well as the Contractor's vendors, suppliers, and subcontractors.
2. Arbitration; Mediation; Alternate Dispute Resolution. The City agrees to arbitrate disputes or to engage in alternate dispute resolution (ADR) if arbitration or ADR is required by the agreement as a means of resolving disagreements arising thereunder or is a precondition to the pursuit of other legal remedies, but only to the extent (1) the rights and remedies available under such arbitration rules or processes do not afford the Contractor greater relief (e.g., attorney's fees, damages, etc.) than would be available under otherwise applicable law, (2) the venue for the arbitration or mediation proceeding is in Jefferson County, Alabama, and (3) the costs of such proceedings (including the fees of the arbitrator or mediator) are divided evenly between the parties.
3. Attorney's Fees; Court Costs; Litigation Expenses. The City shall not be liable for attorney's fees, court costs, litigation expenses, and like charges except and to the extent such fees, costs,

Program prior to performing any work, or continuing to perform any ongoing work, and shall remain enrolled throughout the entire course of its performance hereunder, and shall attach to its affidavit the E-Verify Program for Employment Verification and Memorandum of Understanding and such other documentation as the Board may require to confirm Contractor's enrollment in the E-Verify Program. Contractor agrees not to knowingly allow any of its subcontractors, or any other party with whom it has a contract, to employ in the State of Alabama any illegal or undocumented aliens to perform any work in connection with the Project, and shall include in all of its contracts a provision substantially similar to this paragraph. If Contractor receives actual knowledge of the unauthorized status of one of its employees in the State of Alabama, it will remove that employee from the project, jobsite or premises of the City and shall comply with the Immigration Reform and Control Act of 1986, as amended by the Immigration Act of 1990, and the Beason-Hammon Alabama Taxpayer and Citizen Protection Act. Contractor shall require each of its subcontractors, or other parties with whom it has a contract, to act in a similar fashion. If Contractor violates any term of this provision, this Agreement will be subject to immediate termination by the City. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless the City from any and all losses, consequential damages, expenses (including, but not limited to, attorneys' fees), claims, suits, liabilities, fines, penalties, and any other costs arising out of or in any way related to Contractor's failure to fulfill its obligations contained in this paragraph.

DATED this 28th day of October, 2013.

PRA Government Services, LLC (d/b/a RDS)

City of Mountain Brook, Alabama

By: _____

By: [Signature]

Its: _____

Its: Mayor

APPENDIX 2

and charges would be assessed against the City under applicable law in the absence of any contractual provision imposing or assigning liability therefor.

- 4. Late Payment Charges; Fees; Interest. The City shall not be liable for any late payment charges, interest, or fees on any delinquent bill for goods, materials, or services at a rate higher than two-thirds of one percent per month (eight percent per annum), but bills rendered to the City shall not be considered delinquent any earlier than thirty (30) days after rendition of a complete and accurate bill by the Contractor. Contested bills shall not be subject to late payment charges pending resolution of the dispute.
5. Indemnification; Hold-Harmless; Release; Waiver; Limitations of Liability or Remedies. The City shall not and does not indemnify, hold harmless, or release the Contractor or any other person, firm, or legal entity for, from, or with respect to any claim, cause of action, cost, charge, fee, expense, or liability whatsoever arising out of or relating to the subject matter of the agreement or the performance or nonperformance thereof, nor shall or does the City waive its right to assert or pursue any remedy or claim for relief of any kind that it may have against the Contractor or any other person, firm, or entity for any actual or alleged default or other breach of legal duty on the part of the Contractor or any person, firm, or entity in privity therewith or acting on Contractor's behalf. Any limitation or restriction regarding the type, nature, form, amount, or extent of any right, remedy, relief, or recovery that would otherwise be available to the City is expressly disavowed, excluded from the terms of the agreement, and void.
6. Choice of Law; Choice of Venue or Forum. The meaning, legal effect, and enforcement of terms and provisions of the agreement and the resolution of any disputes arising thereunder or relating thereto shall be governed by the laws of the State of Alabama except to the extent otherwise required by applicable conflict-of-law principles. The venue of any suit, action, or legal proceeding brought to enforce or secure relief by reason of any asserted breach of duty arising out of or relating to the performance or nonperformance of the agreement shall be Jefferson County, Alabama except to the extent otherwise required by applicable principles of law.
7. Construction of Addendum. Nothing in this Addendum shall be construed to create or impose any duty or liability on the City, to create a right or remedy in favor of the Contractor against the City, or to restrict or abrogate any right or remedy that is available to the City against the Contractor or any other person, firm, or entity under either the principal agreement or as a matter of law.
8. Alabama Immigration Law Compliance Contract. Contractor agrees that it will fully comply with the Immigration Reform and Control Act of 1986, as amended by the Immigration Act of 1990, and the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, which makes it unlawful for an employer in Alabama to knowingly hire or continue to employ an alien who is or has become unauthorized with respect to such employment or to fail to comply with the I-9 requirements or fails to use E-Verify to verify the eligibility to legally work in the United States for all of its new hires who are employed to work in the State of Alabama. Without limiting the foregoing, Contractor shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien, and shall have an officer or other managerial employee who is personally familiar with the Contractor's hiring practices to execute an affidavit to this effect on the form supplied by the Board and return the same to the City. Contractor shall also enroll in the E-Verify


The Mercer Group, Inc.

Consultants to Management

1000 Whitlock Avenue
Suite 320-129
Marietta, Georgia 30064
Phone 770-425-1775
Fax 770-425-8561
www.mercergroupinc.com

October 17, 2013

Mr. Sam Gaston
City Manager
City of Mountain Brook

Via Email

Dear Sam:

As requested, enclosed is The Mercer Group, Inc.'s proposal to perform a Management and Organizational Study of City's Library. The proposal presumes a full scope study of library operations. We would be glad to revise the proposal if you have a different scope in mind.

As you already have our Clients/Projects List and Resumes from the Public Works Study, I only am sending the text of the Library proposal.

If you have any questions or need additional information, please call me at 770-425-1775 or email me at segan@mercergroupinc.com.

Very truly yours:

Steve Egan

THE MERCER GROUP, INC.
Stephen D. Egan, Jr., Senior Vice-President
Project Manager and Lead Consultant

Copy: Jim Mercer, President and CEO


The Mercer Group, Inc.

Consultants to Management

1000 Whitlock Avenue, Suite 320-129
Marietta, Georgia 30064
Phone 770-425-1775
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www.mercergroupinc.com

October 17, 2013

Mr. Sam Gaston
City Manager
City of Mountain Brook
City Hall
3928 Montclair Road
Mountain Brook, Alabama 35213

VIA EMAIL

Dear Mr. Gaston:

The Mercer Group, Inc. is pleased to present our Proposal to perform a Management and Organizational Study of the City's Library.

Our proposal is based on our recent conversations and is structured like the proposals for our recent study of the Public Works Department and upcoming study of the Parks & Recreation Department. The proposal includes the following chapters:

- I. UNDERSTANDING OF THE PROJECT
- II. SUMMARY OF OUR APPROACH
- III. WORK PLAN AND SCHEDULE
- IV. PROJECT MANAGEMENT AND STAFFING
- V. SUMMARY OF QUALIFICATIONS
- VI. COST PROPOSAL

APPENDIX 3

CITY OF MOUNTAIN BROOK, ALABAMA

**MANAGEMENT AND ORGANIZATIONAL STUDY
OF THE
EMMET O'NEAL LIBRARY**

PROPOSAL
THE MERCER GROUP, INC.

1000 Whitlock Avenue
Suite 320-129
Marietta, Georgia 30064
770-425-1775 Phone
770-425-8561 Fax

www.mercergroupinc.com

October 17, 2013

Mr. Sam Gaston
City Manager
City of Mountain Brook, Alabama
October 17, 2013
Page 2

As you read the proposal, you will note that the Strengths of our Firm are People, Project Experience, Consulting Tools and Methods, Commitment to the Public Sector, and Independence.

Specific reasons for choosing our firm for this study are:

1. **We're Different.** The Mercer Group team combines a depth and breadth of personal work and consulting experience in governmental and public works management and operations that even the largest consulting firms cannot match.
2. **What You See Is What You Get.** Jim Mercer and Steve Egan will be your primary consultants, with the support of Anne Haines, our Library Specialist. We are here not just to sell the project, but to do it as well!
3. **Team Experience.** Each of us has over 30 years of public sector experience as government officials and/or consultants to governments.
 - Jim Mercer, the Mercer Group's President/CEO and our project director, has consulted with the public sector for over 30 years and has completed over 250 management studies and over 1000 executive recruitment assignments. Jim started his career as an Assistant City Manager in Raleigh, North Carolina, and has a deep understanding of the workings of local government, including library services.
 - Steve Egan, our project manager and lead consultant, is a former local government budget official, who worked extensively with County departments on a variety of public policy and management issues, including the operations of the Atlanta-Fulton County Library System. Steve has conducted over 160 public sector consulting projects over the past thirty years, including three studies for Mountain Brook (city-wide, public works, and parks & recreation) and ten library studies. He also served for almost three years as interim public works and utilities director for the City of Highland Park, Michigan, with responsibility for preservation of the library building and books after the library was closed for financial reasons.
 - Anne Haines, our library specialist, is the current interim director of the Atlanta-Fulton County Library system, having served as a Children's Librarian, Branch Manager, and Branch Group Manager for the library system over her 30-year career. Anne has a Masters in Library Science from Emory University.

Mr. Sam Gaston
City Manager
City of Mountain Brook, Alabama
October 17, 2013
Page 3

- 4. **Consulting Track Record.** A total of over 2,000 projects across all of our consulting specialties in the past thirty years shows we have staying power, the technical skills you need for this project, and the ability to satisfy our clients.
 - **Alabama Clients:** In addition to the 2003-2004 Organization and Staffing study and the 2012 Public Works study for the City of Mountain Brook, we have conducted management, financial, and planning projects for the Alabama GPOA, City of Birmingham, City of Huntsville, Jefferson County, Birmingham-Jefferson County Transit Authority, and the City of Tuskegee, as well as executive recruitment projects for several other communities.
 - **Southeastern Clients:** The Mercer Group and/or its associated consultants have conducted strategic planning, organization and staffing, operations improvement, human resource management, and executive search projects for over 100 local governments in Southeastern states, including Atlanta, Georgia; Athens-Clarke County, Georgia; Charlotte, North Carolina; the Georgia Municipal Association; Greenville, South Carolina; Iberia Parish, Louisiana; Mecklenburg County, North Carolina; New Orleans, Louisiana; the North Carolina League of Municipalities; Palm Beach County, Florida; and Spartanburg, South Carolina;
 - **Library Studies:** We have conducted over a dozen library studies, including Athens-Clarke County, Georgia; Atlanta-Fulton County; Cobb County, Georgia; Iberia Parish, Louisiana; Port Arthur, Texas; Two Rivers, Wisconsin; Winona County, Minnesota; the State of Iowa; and the New Jersey State Library.
- 5. **Resources and Time to Do It.** We have skilled people available and ready to conduct the project. This project will blend in nicely with current consulting assignments.
- 6. **Commitment to Do It Right.** Our references will attest to our ability to exceed their expectations.
- 7. **A Bias for ACTION and IMPLEMENTATION, not for a study that gathers dust of a shelf.** Each member of our project team has worked in local government and is committed to making the public sector more efficient and effective.

I. UNDERSTANDING OF THE PROJECT

This chapter of the proposal describes our understanding of the current situation and the project's purpose, objectives, scope, issues, deliverables, and schedule.

A. CURRENT SITUATION

City of Mountain Brook

The City of Mountain Brook is a primarily residential community and a suburb of Birmingham. Mountain Brook has a population of about 21,000, with relatively slow, controlled growth. The City is noted for the quality of life and the excellence of its school system, parks, and recreation programs. The city was incorporated in 1942 and is governed by a Mayor and five-member City Council, which appoints a City Manager to run daily operations.

The City's mission is to be "a professional organization committed to teamwork and excellence which promotes full participation in enhancing the quality of life for residents." Key values are Integrity, Safety, Education, Community, Stewardship, and Beauty.

Emmet O'Neal Library

A five-member Library Board governs the Emmet O'Neal Library, with day-to-day management by the Library Director who reports to the Board.

The library has an annual budget of about \$2,600,000 and employs 21 full-time and 22 part-time/temporary staff. The library is open seven days a week for a total of 67 hours per week. Library services include adult/reference and children's departments; circulation, technical services, information technology, and meeting room rentals.

The library is supported by the Friends of the Library, including the *JWCoF1080* Young Friends Group, and the Mountain Brook Library Foundation.

The library was built in 2001 and includes 39,000 square feet of space. Circulation ranks third among libraries in Jefferson County.

APPENDIX 3

(1) Junior Womens' Committee of 100 (JWC of 100)

The Mercer Group, Inc.
Proposal to the City of Mountain Brook, Alabama, for a Library Study

Mr. Sam Gaston
City Manager
City of Mountain Brook, Alabama
October 17, 2013
Page 4

Finally, we have the tools, commitment, and independence required to provide high-level professional consulting services to the City:

- **Tools:** We have a set of project-tested analytical methods, surveys, questionnaires, interview guides, and other tools to develop recommendations that will provide long-term benefit to the City and the Emmet O'Neal Library.
- **Commitment:** Our project team is devoted exclusively to improving the management and services of state and local governments. As former local government officials, we have been studied ourselves and are committed to preparing a report that is fair, practical, and implementable, and that offers tangible benefits to the City and the Library.
- **Independence:** Our firm is a professional consulting firm that is not connected to any Alabama agencies, businesses, computer systems or services vendors, suppliers, or contractors. We will provide objective and independent recommendations to the City and the Library.

Thank you for the opportunity to propose on this important project. If you have any questions or require additional information regarding our proposal, please call Jim Mercer, project director, at (505) 466-9500, or Steve Egan, project manager and lead consultant, at 770-425-1775.

Very truly yours,

The Mercer Group, Inc.

THE MERCER GROUP, INC.
James L. Mercer, President and CEO
Stephen D. Egan, Jr., Senior Vice-President

B. PROJECT OVERVIEW

Need, Purpose, and Scope of the Project

Similar to many well-run cities, Mountain Brook's City Council and City Manager are concerned about the level of services provided to its citizens and the resources required to deliver these services.

With the growth in Library personnel over the past decade and a proposal to convert some part-time/temporary staff to full-time, the City believes this is a good time for an independent, objective review of the management, organization, and operations of the Library.

Project Issues

Issues to be studied are a combination of the Fifty Management Issues (see following pages) that Mercer reviews in all of our comprehensive Management and Operations studies, as well as issues of primary concern to the City of Mountain Brook.

City Issues: The City Manager identified the following key issues to be reviewed in the study:

1. Organizational plan including span of control, organizational levels, grouping of functions, reporting relationships, and communications.
2. Staffing levels, particularly related to objective standards of workload and responsibilities assigned, and to the mix of full-time and part-time staff.
3. Operational policies, procedures, and practices, including the impact of the building's layout on staffing needs.
4. Type and number of library programs, including the need for existing programs and for new programs to meet community interests and demands.
5. Role of the library as a community center for the City of Mountain Brook.

Mercer Issues: The following *Fifty Management Issues*, which are at the core of all of our management and operations reviews, will be reviewed and assessed in this study.

Governance

1. Legal structure/form of government (role of the Library Board)
2. Role of governing and advisory boards and committees (Friends and the Foundation)
3. Staff support to these boards and committees
4. Policy making and decision making processes
5. Identification of and compliance with legal, regulatory, and policy requirements

Service Delivery Structure

6. Organizational location of services and activities both in and outside the city
7. Interdepartmental cooperation among city government departments
8. Intergovernmental cooperation across the region
9. Use of alternative service delivery opportunities, such as inter-local agreements, contracts, and privatization
10. Comparison with industry best practices, benchmark communities, and Mercer's national experience

Planning

11. Strategic planning process compared to the Mercer Model
12. Alignment of vision, mission, strategies, long-term goals, and short-term objectives (as they impact services levels, organization, and staffing)
13. Capital projects planning process, documents, and oversight
14. Financial planning and budgeting processes, documents, and oversight
15. Operational planning processes, documents, and oversight

Management

16. Senior management organization structure
17. Internal workings of the management team
18. Management reporting and communications
19. Documentation of policies and procedures
20. Customer and stakeholder relations and communications
21. Organizational culture and values
22. Management philosophy and employee-management relations

Operations Management

23. Work standards and specifications
24. Work planning and scheduling
25. Unit organization and staffing
26. Job classifications, roles, and duties
27. Adequacy of facilities, equipment, tools, technology, communications, and materials
28. Unit supervision
29. Unit operations, work flow, productivity, and cost-effectiveness
30. Technical support and administrative support operations
31. Activity and performance reporting and analysis
32. Emergency management plans and processes

Resource Management

33. Human resources management policies, practices, and processes
34. Training and career development program
35. Safety and risk management program
36. Employee relations
37. Financial management and reporting
38. Financial transactions and processes
39. Project and activity cost accounting
40. Rates, fees, charges, and cost recovery practices
41. Internal service fund operations and charges
42. Information systems management and support services
43. Computer and technology applications (hardware and software)
44. Records management, including library records and documents
45. Purchasing and materials management
46. Warehouse and stores operations
47. Facilities management
48. Facility and grounds maintenance operations
49. Fleet and equipment management
50. Equipment specifications, procurement, and replacement

Project Schedule

The Project Schedule will require about four months from project kick-off to delivery of the final report. The detailed schedule by task, with time frames and milestones, is presented in Chapter III after the Work Plan. The schedule provides time for:

- ▶ A Kickoff meeting followed by periodic status meetings and reports.
- ▶ Library staff to complete questionnaires and surveys.
- ▶ On-site interviews, site visits, and observation of work.
- ▶ Data collection, research, and benchmarking.
- ▶ Analysis of information and data collected during the study, development of preliminary findings and alternatives, and preparation of a draft report.
- ▶ Review of the draft report by the City Manager, Library Director, and Project Steering Committee.
- ▶ Preparation of a final report, followed by a final presentation.

Project Deliverables

The consultant will be responsible for the following Deliverables:

- ▶ **Interim Status Reports:** These reports to the project liaison will be delivered at key project milestones to be defined at the project kickoff meeting. Typically, we prepare these reports monthly during our Fact Finding activities.

We envision these reports to include a description of work performed to date, major management and operational issues and ideas defined by the consultants, a list of any obstacles or project management issues, and a list of planned activities for the next reporting period.

- ▶ **Draft and Final Reports:** We will provide electronic copies of the Draft Report to the City Manager, Library Director, and Project Steering Committee, as well as an electronic report plus six bound copies of the Final Report. The reports will detail our findings, recommendations, and an implementation plan (in the final report).

- The **Draft Report** will be delivered within about 90 days of the project kickoff meeting. We ask that the City Manager, Library Director, and others on the Project Steering Committee be prepared to review the draft within two weeks of its delivery.

- The **Final Report** will be delivered within ten to fifteen business days of our receipt of the City's and Library's response to the Draft Report.

- ▶ **Presentation:** We will make a final presentation to the Library Board, Library staff, and the City Council at the conclusion of the project.

II. SUMMARY OF OUR APPROACH

The key elements of our approach are summarized in this chapter of the proposal.

A. EXPERIENCED PROJECT TEAM

We will assign a high-qualified and experienced project team that will include:

- ▶ **James L. Mercer**, project director, is our firm's President and CEO and a highly experienced consultant to state and local governments, including library services.
- ▶ **Stephen D. Egan, Jr.**, project manager and lead consultant, is a Mercer Senior Vice-President and a highly experienced consultant to state and local governments, including library services.
- ▶ **Anne Halmes**, library specialist, is the interim director of the Atlanta-Fulton County Library System.

Each member of our project team has over 30 years of work and consulting experience with state and local governments. A description of the role and qualifications of each member of the team is provided in Section IV.

B. PARTICIPATIVE APPROACH

We emphasize a participative approach that involve as wide range of officials, managers, employees, stakeholders, and citizens/customers to gain a 360-degree understanding of the organization.

Project management activities include regular status meetings and reviews of preliminary deliverables in order to confirm the accuracy of our findings, develop a consensus on recommendations, and foster a commitment to implementation.

We recommend that our clients appoint a **Project Steering Committee** to monitor the progress of our work and review draft deliverables, as well as a **Project Liaison** to provide logistical support. During the project we normally contact or meet with the Project Liaison biweekly and the Steering Committee monthly or at key milestones, such as the end of Fact Finding, ten days after issuance of the Draft Report; and after delivery of the Final Report.

C. STRUCTURED WORK PLAN

The proposed work plan and schedule that follows is based on work plans tested on other projects and tailored to the specific needs of each client. The work plan emphasizes:

- A reasonable project schedule that provides adequate time on site and interaction with client staff, with limited intrusion on operations.
- Application of tested project tools, such as interview guides, questionnaires, operations guidelines, and management principles.
- Effective use of the varied skills of the project team.

Project-Tested Methods

In the course of over 500 management and operations studies for state and local governments, we have developed a series of project-tested analytical methods and tools, many of which will be applied on this project.

Our analysis will be based on several models and principles for managing in the public sector:

- The *Strategic Management Process*, a general model for managing in the public sector.
- The Mercer Group's "*ORGRIGHT*" *Process* for Organizational Transformation and Reengineering.
- The Mercer Group's *Integrated Management System* a process for ensuring that missions and plans achieve quality results.
- A set of thirty *Management Principles* on which we base our recommendations for management and operational improvements.
- A set of over fifty administrative and resource *Management Issues for Analysis* that supplement the *Fifty Management Issues* identified earlier in the proposal.

Research and Publications

In addition, the members of our team have written or are writing nationally distributed books or articles on managing in the public sector, which represent our philosophies and principles both as consultants and managers:

- Jim Mercer has written over fifty articles and six books on managing in the public sector, including books on strategic planning, managing in lean times, and public management systems.
- Steve Egan is developing his ideas, articles, and speeches on the Strategic Management Process into articles, training programs, and perhaps a book that pulls together recommended approaches to strategic planning, goal-setting, resource allocation, administrative and operations management, performance reporting, quality assurance, organizational culture, and managing in the public sector.

Steve is in the process of writing a book with two co-authors on internal discipline and control systems in professional services (*Managing Professional Service Delivery: 9 Rules for Success*) that will be published in 2014.

Data Collection and Analytical Tools

Data collection and analytical tools that will be used on the project include the following:

- **Structured Interview Guides** for elected officials, senior managers, employees, and customers/stakeholders.
- **Employee Questionnaires and Surveys:** In this study, we will ask each employee to complete several questionnaires and surveys to communicate their view and opinions of:
 - Their experience and future goals
 - The vision, values, mission, goals and objectives, and departmental performance
 - Job duties, backlogs, and inappropriately assigned work that should be transferred to or from other units and employees
 - Reporting relationships, and internal and external working relationships
 - Time spent on major tasks
 - The adequacy of resources (facilities, equipment, personnel, finances, materials)
 - Management and operational issues
 - Employee relations and morale issues

The last three items are scored and the results reported by major organizational unit, as well as compared to other Mercer clients and our best practice scores.

The questionnaires and surveys include several important analytical tools:

- **Values Survey**, a tool to document if values have been defined and implemented.
- **Management Practices Survey**, a tool to document employee attitudes toward Growth and training, Respect and recognition, Information, Potential tapped, Empowerment, and Support.
- **Resource Management Survey**, a tool to document employee ratings of resources provided and human resource management functions.
- **Management Philosophy Profile** to assess and modify each manager's and supervisor's philosophy towards relationships with subordinates in order to gain greater adherence to organizational values and foster accomplishment of the mission.
- **Job Duty Questionnaire** to document work experience, special skills, reporting relationships, and job assignments.
- **Organizational Climate Survey:** Our proprietary tool to measure the cultural health of an organization based on sixty key indicators, grouped into the following sub-scales:
 - Understanding of city and department goals and strategies
 - Information and communications
 - Management receptivity to change
 - Management and supervisory capabilities
 - Work group problem solving
 - Work group coordination and cooperation
 - Employee involvement
 - Productivity and service quality
 - Quality emphasis
 - Working conditions
 - Compensation and benefits
 - Career opportunities

The survey results would be compiled by the twelve scales and stratified by major organizational sub-units, then compared to survey data from other Mercer Group clients.

III. WORK PLAN AND SCHEDULE

This chapter of the proposal describes each task and deliverable in the work plan, and defines a schedule for timely completion of all deliverables.

A. WORK PLAN

The Work Plan is organized into five tasks and a number of subtasks. A proposed project schedule follows the work plan.

Task 1: Project Initiation and Management. The purpose of Task 1 is to start the project with full agreement on objectives and scope, Work Plan, schedule, and deliverables; collect basic data on the organization; and perform ongoing project administration. Subtasks are:

- **Subtask 1a: Project Startup.** The project team will meet with the Project Steering Committee and Liaison to introduce our staff; confirm project objectives, scope, work plan, schedule, and deliverables; schedule initial factfinding meetings (if not arranged in advance); arrange logistics (e.g. office space, phones); and confirm the content of the Employee Questionnaires and Surveys.
- **Subtask 1b: General Research.** We will collect and analyze previously published materials, such as budgets, financial reports and audits, organization charts, job description, prior studies, policy and procedure manuals, and management reports that relate to the project. Specific information that we will gather at Kickoff includes:
 - Descriptions and diagrams of planning processes
 - Copies of strategic, operational, capital, and functional plans
 - Codes and regulations
 - Budgets and financial reports
 - Library organization and staffing plans, job descriptions, pay plan
 - Library reports, brochures, statistics, flowcharts, and performance measures
 - Inventory of facilities, equipment, information systems, and other resources
- **Subtask 1c: Questionnaires and Surveys.** As appropriate to the scope of the study, we will tailor, distribute, collect, and analyze the Employee Questionnaires and Surveys, which will be distributed just after the Kickoff Meeting and be the foundation for staff interviews in Task 2.
- **Subtask 1d: Project Management.** The project director and manager will perform ongoing project management tasks such as client status meetings, billings, internal administration, planning, and quality control.

each member
Library Foundation
board chairman

Task 2: Fact Finding. The purpose of this task is to document current practices and resources and to develop data for analysis in Task 3. Subtasks are:

- **Subtask 2a: Assessment Interviews with City and Library Officials and Senior Managers.** We will interview the Chair of the Library Board, the Library Director, the City Manager, the Finance Director, and perhaps other officials and senior staff to identify and understand major policy, regulatory, management, organizational, financial, and resource management issues affecting the project.

The **PRODUCT** of these interviews is initial elements of the **SWOT Assessment** (strengths, weaknesses, opportunities, and threats) and a series of service delivery, management, organization and staffing, and operational issues and challenges to analyze.

- **Subtask 2b: Functional Organizational Analysis.** We will develop a profile of services and service delivery mechanisms, the functional organization plan, and department, division, and unit responsibilities through:
 - Interviews with the management team to understand DPW's responsibilities and services; identify interrelationships with other departments, contractors, and local government agencies; and document direct and indirect reporting relationships
 - Similar interviews with related departments, contractors, and agencies to confirm interrelationships and identify any overlaps or gaps in services

The **PRODUCT** of this subtask will be a "Responsibility Map" that identifies service gaps and overlaps, duplication of effort, functional fragmentation, misplaced functions, communication barriers, and other organizational issues.

- **Subtask 2c: Organization and Staffing Analysis:** We will meet with the Library Director, department supervisors and employees to document and review:
 - Organization plan and reporting relationships
 - Staffing plan and work assignments
 - Work load and activity statistics
 - Employee job descriptions

The **PRODUCTS** of this subtask will be two analyses:

- An "Organizational Analysis" that identifies needed improvement in the organization plan, reporting relationships, staffing plan, work assignments, and staff scheduling and assignments.
- A "Management Practices Analysis" to identify areas of management philosophy, practices, and communications that need improvement

- **Subtask 2h: Status Reports.** The purpose of this task is to ensure that Mercer and the Steering Committee agree on core facts and issues before we begin Analysis and Draft Report preparation in Task 3.

Based on activities to date, we will provide several written status reports and meet with the Project Steering Committee, monthly or at key milestones, to review project activities to date and discuss preliminary findings and issues identified during Tasks 1 and 2.

Task 3: Analysis, Development of Findings and Recommendations, and Draft Report. The purpose of this task is to analyze Task 1 and 2 data, develop findings and preliminary recommendations, and prepare a draft report. During this subtask, our team may revisit Mountain Brook to follow-up on open items, collect additional data, or seek clarification of information gathered earlier in the project.

- **Subtask 3a: Analysis of Factfinding Information.** We will analyze organizational, operational, technical, and financial data to support preparation of several task reports:
 - **Governance:** Legal, regulatory, and policy requirements affecting the Library.
 - **Organizational Culture:** Employee and stakeholder issues from interviews and questionnaires and the results of Mercer surveys.
 - **Strategic Direction:** Vision, mission, strategies, initiatives, values; goals and objectives; and performance measures.
 - **Functional Organizational Structure:** Service/functional alignment across Library departments; role of contractors and inter-local agreements; and alternative service delivery approaches.
 - **Organization and Staffing:** Management organization plan; staffing levels, allocations, roles, duties, skills, and experience; and current and projected workload levels.
 - **Operations:** Operational strengths and weaknesses that impact organization and staffing; quality and quantity issues relating to work products and services; and implementation of the Mercer Model for Managing the Numbers.
 - **Resource Management:** Adequacy of internal and city support services, training, and employee development program, classification of positions.
 - **Benchmarking:** Practices in benchmarked governments that offer lessons for the library.
 - **Performance Measures:** Performance measurement and reporting practices.

APPENDIX 3

- **Subtask 2d: Operations Review.** We will familiarize ourselves with current operations, resources, and services through:
 - Meetings with managers, supervisors, and employees to review current practices
 - Observation of work activities across the library
 - Review of policies, procedures, forms, reports, systems, and workflow
 - Analysis of operational, workload, and financial data
 - Analysis of resources assigned to organizational units
 - Comparison of local practices with our national database and experience developed during other studies

The **PRODUCTS** of this subtask will be a list of operational strengths and weaknesses that need to be resolved or analyzed in more detail in Task 3.

- **Subtask 2e: Resource Management Analysis.** During our management and departmental meetings in Subtasks 2a through 2d, we will collect information and review the performance of department and central resource management services, such as Facilities, Equipment, Finance, Human Resources/Personnel, Information Technology, and Purchasing/Materials Management.

The **PRODUCT** of this subtask will be a list of administrative and financial issues and problem areas that need to be analyzed in more detail in Task 3.

- **Subtask 2f: Benchmarking Analysis.** We will analyze data on the Library's services, service levels, and organization and staffing based on our team's experience and in comparison with ~~up to four comparable local library systems~~ in Alabama and across the Southeast. *other similar "Blue Ribbon" library systems*

The data will relate to services provided, service levels and statistics, service delivery structure, and the organizational and staffing structure. To facilitate collection of data, we ask that the Library Director send a request for information that we will prepare.

The **PRODUCT** of this analysis will be a presentation of key data elements and a narrative discussion of lessons for the City and the Library.

- **Subtask 2g: Stakeholder Interviews.** We will meet with each member of the Library Board and representatives of the Friends of the Library and the Mountain Brook Library Foundation to explore their role in library services and to assess quality, efficiency, and effectiveness of services provided by the Library.

The **PRODUCT** of this subtask will be a customer-oriented assessment of the performance of the Library, as well as additional input to the SWOT Assessment.

- **Subtask 3b: Findings and Preliminary Recommendations.** We will compile our findings and develop preliminary recommendations.

- **Subtask 3c: Draft Report.** Our findings and preliminary recommendations will be documented in a written, draft report, which will be sent to the Project Steering Committee for review.

Task 4: Management Review. The purpose of this task is to review the draft report with the Project Steering Committee. We expect that the Committee will complete its review within ten working days of receipt of the draft report.

Key members of the project team then will meet with the Committee to walk through the report to identify areas needing correction, further explanation, expansion, or modification, to discuss alternative recommendations, and to identify implementation issues and timetables.

We also will meet with the Library Director, department managers, and employees to present highlights of the reporting and to review preliminary recommendations.

Task 5: Final Report. The purpose of this task is to prepare and present our final report.

- **Subtask 5a: Final Report.** We will incorporate all required changes identified in Task 4 and issue the final report to the City and the Library. The final report will include an implementation plan.

- **Subtask 5b: Final Presentation.** We will present our final report to the Library Board, Library Director and staff, City Council, and City Manager.

B. PROJECT SCHEDULE

The proposed project schedule is based on the assumptions that City and Library officials and employees will be reasonably available for interviews and site visits and that the Steering Committee will be able to review and comment on the draft reports within ten (10) days of receipt. The proposed four-month project schedule for the project is presented below by task.

<u>Task and Description</u>	<u>Start</u>	<u>Finish</u>	<u>Milestone</u>
<u>Project Management</u>			
1a. Kickoff Meeting	Week 1	Week 1	
1b. Research	Week 1	Week 4	
1c. Questionnaires/Surveys	Week 1	Week 4	
1d. Administration	Week 1	Week 17	
<u>Fact Finding</u>			
2a. Assessment Interviews	Week 1	Week 4	
2b. Functional Analysis	Week 1	Week 7	
2c. Organization/Staffing	Week 1	Week 7	
2d. Operations Review	Week 1	Week 7	
2e. Resources Review	Week 1	Week 7	
2f. Benchmarking	Week 1	Week 7	
2g. Status Reports	Week 4, 8	Week 4, 8	Status report
<u>Analysis</u>			
3a. Analysis	Week 9	Week 10	
3b. Preliminary Findings and Recommendations	Week 11	Week 11	
3c. Draft Report	Week 11	Week 12	Draft Report
<u>Client Review</u>			
4a. Client Review	Week 13	Week 14	
4b. Draft Review	Week 15	Week 15	Meeting
<u>Final Report</u>			
5a. Final Report	Week 15	Week 16	Final Report
5b. Presentation	Week 17+	Week 17+	Presentation

Steve also served as interim Public Services and Water Director for the City of Highland Park, Michigan, under the direction of a state-appointed Emergency Financial Manager. Responsibilities included caretaking of the closed library and books, and grounds and facility maintenance.

In thirty years of consulting with state and local governments, he has performed over 160 management studies, including the 2003-2004 Organization and Staffing study and 2012 Public Works study for the City of Mountain Brook, as well as most of the studies referenced in the cover letter and the Summary of Qualifications chapter of the proposal. He is about to commence a Park & Recreation Management Study for the City of Mountain Brook.

Steve's library studies include Athens-Clarke County, Georgia; Atlanta-Fulton County; Cobb County, Georgia; Iberia Parish, Louisiana; Port Arthur, Texas; Two Rivers, Wisconsin; Winona County, Minnesota; the State of Iowa; and the New Jersey State Library.

Steve is a specialist in strategic planning; service delivery alternatives/shared services; organizational development; administrative and financial services; and public works, utilities, recreation, and maintenance operations.

Library Specialist

Anne Halmes, our library specialist, is the interim director of the Atlanta-Fulton County Library System. In her 30-year career with the library, Anne has served as a Children's Librarian, Branch Manager, Branch Group Manager, and Interim Director (twice).

She holds a Master of Library Science degree from Emory University and a Bachelor of Science degree in Journalism from the University of Florida.

IV. PROJECT MANAGEMENT AND STAFFING

This chapter of the proposal identifies the project team and client responsibilities.

A. PROJECT TEAM

The Mercer Group and our project specialists regularly team on management and organizational consulting projects. We believe that the combination of Mercer's management consulting skills in strategic planning, service delivery alternatives, and management and operations of local government departments and our technical staff's work and consulting experience in engineering, public works management and operations, administrative and financial services, and performance management create a team that "covers all the bases" for a study of this kind.

The project team includes the project director, project manager, and technical specialists who are described below. Note that members of the proposed Mercer team have personally conducted the projects listed in Section V and the Attachments.

Project Director

James L. Mercer CMC, founder and president of the Mercer Group, will direct the project and be responsible for the quality of our services. He also will contribute to the review of strategic, organizational, and management issues.

A former local government official, Mr. Mercer has worked on over 250 state and local government management consulting projects in a thirty year consulting career. Additionally, he has authored over 200 articles and five books, including *Public Management Systems*, *Managing Urban Government Services*, and *Strategic Planning for the Public Sector*.

Project Manager

Stephen D. Egan, Jr., a Mercer Group senior vice-president, will serve as our project manager and lead consultant. He is a former Fulton County, Georgia, Budget official whose responsibilities included analysis of department budget requests, internal consulting, and special projects for the County Manager and Board of Commissioners. One of Steve's responsibilities was budget development and monitoring for the Atlanta-Fulton County Library System.

V. SUMMARY OF QUALIFICATIONS

This chapter of the proposal provides background information on the Mercer Group, provides summary descriptions of recent projects, and lists references.

A. INTRODUCTION TO THE MERCER GROUP, INC.

Key Facts About Our Firm

The Mercer Group, Inc. is a management consulting firm incorporated in the State of Georgia and operating nationwide, with strongly established areas of practice in the Southeast and Midwest, and a growing Far West practice. Our thirty professional consultants work out of a network of eighteen offices across the United States.

Corporate Address: PMB 511
5579-B Chamblee-Dunwoody Road
Atlanta, Georgia 30338

Southeast Regional Offices: Chesapeake, Virginia
Hollywood, Florida
Marietta/Atlanta, Georgia
New Orleans, Louisiana
Raleigh, North Carolina
Sarasota, Florida

Contacts Persons: James L. Mercer, project director
President and CEO (Atlanta and Santa Fe Offices)
(505) 466-9500 Office
(505) 466-1274 Fax
j Mercer@mercergroupinc.com

Stephen D. Egan, Jr., project manager/lead consultant
Senior Vice-President (Marietta/Atlanta Office)
(770) 425-1775 Office
(770) 335-3245 Cell
(770) 425-8561 Fax
segan@mercergroupinc.com

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Proposal to the City of Mountain Brook, Alabama, for a Library Study

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Brief History of the Firm

James L. Mercer, a long-term public sector management consultant, started his own firm in 1981 and in 1984 merged it with another consulting firm, Wolfe and Associates. In 1986, Mr. Mercer acquired the Human Resources and Organizational Consulting Practice of Wolfe and Associates, using this acquisition as the basis for founding Mercer, Slavin, & Nevins, Inc. (MSN).

In early 1990, he sold his interest in MSN and founded The Mercer Group, Inc. The Marietta, Lansing, Raleigh, Santa Fe, Wiemar, and other area offices were added as our client base, practice areas, and staffing grew.

Business Model

The Mercer Group, Inc. is a Consortium Model firm, with a core of key staff members supplemented by associated independent consultants and specialty firms. The consortium members work together regularly and have long personal and professional relationships. This business model allows us to:

- Staff each engagement with precisely the right mix of consulting professionals, who have the specific managerial, functional, and technical skills needed to fully satisfy the project objectives.
- Eliminate pressure to assign salaried staff who may be available, but lack the experience or capabilities necessary to be effective and efficient in serving our clients.
- Offer competitive rates for very senior consultants due to our reduced administrative and overhead costs.

Client Base and Specialties

The Mercer Group, Inc. provides exceptionally high quality consulting services to a wide range of public sector clients:

- State government agencies,
- Local governments (counties, cities, towns, and villages),
- Utilities (electric, gas, stormwater, water, and wastewater),
- Transit Authorities, Health Care agencies, and Special Districts,
- School Districts,
- Colleges and Universities, and
- Some private sector clients.

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Specialty practice areas of our firm include:

- Strategic planning and policy studies
- Service delivery alternatives, including governmental and functional consolidations and collaboration, contracting and privatization, and managed competition
- Management, organizational, operations, and productivity improvement
- Organization development and training
- Human resource management, compensation and classification studies, and performance management systems
- Financial and budgetary management
- Executive recruitment

Our consultants have conducted successful planning, management, and organizational consulting assignments for over 500 public sector organizations and over 1500 executive recruitment assignments.

The Mercer Group, Inc. typically works with strong organizations that recognize the value of outside assistance and are prudent enough to solicit it and apply it. Our clients include some of the most successful public sector organizations in the United States.

Code of Ethics

The Mercer Group subscribes to the Codes of Ethics of the International City/County Management Association (ICMA) and the Institute of Management Consultants. James L. Mercer, President/CEO, and David Vondle, Senior Vice-President, are Certified Management Consultants through the Institute.

EEO Compliance

In its own internal operations and in its consulting practice, The Mercer Group, Inc. is in full compliance with E.E.O.C. regulations. Because executive search is a portion of our consulting practice, we are very much aware of the regulations for equal employment opportunity, and we fully comply with those regulations.

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Proposal to the City of Mountain Brook, Alabama, for a Library Study

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B. REPRESENTATIVE PROJECTS

We approach comprehensive organizational and operations studies in an integrated manner based on our *Fifty Management Issues*, as well as project-specific issues identified by our clients. The project descriptions that follow document successful projects for public libraries.

- **Athens-Clarke County, Georgia:** Steve Egan conducted an information technology needs assessment and developed an IT strategic plan for all county services with a focus on library, park & recreation, public works, and utility services.
- **Atlanta-Fulton County Library:** While employed by the Fulton County Finance Department, Steve Egan was responsible for the library system's budget. Later as a consultant, Steve and two other consultants assisted the library with board training, a board manual, and a rethinking of the budget structure and process.
- **Cobb County, Georgia, and Its Six Cities:** Steve Egan conducted a service delivery structure project that included library services in the county and coordination of the County library system and one city library.
- **Iberia Parish, Louisiana:** Steve Egan conducted parish-wide Management and Organizational study that included the library system.
- **State of Iowa:** Steve Egan served on a team that assessed the organizational structure and reporting relationships of state governments, including the organizational placement of state library services.
- **State of New Jersey:** Steve Egan served on a team reviewing technology application at the New Jersey State Library.
- **Port Arthur, Texas:** Jim Mercer and Steve Egan conducted a city-wide Management and Performance Review that included the public library.
- **Two Rivers, Wisconsin:** Steve Egan conducted a Management Assessment of the city's public library.
- **Waukesha, Wisconsin:** As part of a citywide Organizational Analysis, Steve Egan reviewed library services.
- **Winona County, Minnesota:** Steve Egan conducted a county-wide Management Audit that included library services.

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APPENDIX 3

C. REFERENCES

References are provided for the following recently completed projects. References for other projects can be provided upon request.

Fulton County, Georgia (Library and Other Studies)

ROBERT J. REGUS, former County Manager
 City Manager, Alpharetta, Georgia
 678-297-6010
 bregus@alpharetta.ga.us

Port Arthur, Texas (City-wide Study including the Library)

JOHN COMEAUX, Assistant City Manager-Operations
 409-983-8189

ARTHUR THIGPEN, Human Resources Director
 409-983-8218

ADDENDUM TO AGREEMENT BETWEEN
 THE CITY OF MOUNTAIN BROOK AND
 THE MERCER GROUP, INC.
 DATED OCTOBER 28, 2013

THIS ADDENDUM ("the/this Addendum") to the principal agreement between the City of Mountain Brook, Alabama ("the City") and The Mercer Group, Inc. ("the Contractor") dated October 28, 2013.

This Addendum is a part of the principal agreement, but supersedes and controls any conflicting or inconsistent terms or provisions in the principal agreement, particularly to the extent the conflicting or inconsistent terms or provisions purport either to (a) confer greater rights or remedies on the Contractor than are provided herein or under otherwise applicable law, or to (b) reduce, restrict, or eliminate rights or remedies that would be available to the City under otherwise applicable law. The addendum shall remain in full force and effect with respect to any amendment, extension, or supplement of or to the principal agreement, whether or not expressly acknowledged or incorporated therein. No agent, employee, or representative of this City is authorized to waive, modify, or suspend the operation of the Addendum or any of its terms or provisions without express approval of the Mountain Brook City Council.

1. **Definitions.** For purposes of this Addendum, the terms below have the following meanings:
 - A. "The City" refers to and includes the City of Mountain Brook, Alabama, and its constituent departments, boards, and agencies.
 - B. "The (this) Agreement" refers to the principal contract, agreement, proposal, quotation, or other document that sets forth the basic terms and conditions under which the Contractor is engaged to provide goods, materials, or services to the City, including the payment or other consideration to be provided by the City in exchange therefor.
 - C. "The Contractor" refers to the person, firm, or other legal entity that enters into an agreement with the City to provide goods, materials, or services to the City, and includes vendors and suppliers providing goods, materials, and services to the City with or without a formal contract as well as the Contractor's vendors, suppliers, and subcontractors.
2. **Arbitration; Mediation; Alternate Dispute Resolution.** The City agrees to arbitrate disputes or to engage in alternate dispute resolution (ADR) if arbitration or ADR is required by the agreement as a means of resolving disagreements arising thereunder or is a precondition to the pursuit of other legal remedies, but only to the extent (1) the rights and remedies available under such arbitration rules or processes do not afford the Contractor greater relief (e.g., attorney's fees, damages, etc.) than would be available under otherwise applicable law, (2) the venue for the arbitration or mediation proceeding is in Jefferson County, Alabama, and (3) the costs of such proceedings (including the fees of the arbitrator or mediator) are divided evenly between the parties.
3. **Attorney's Fees; Court Costs; Litigation Expenses.** The City shall not be liable for attorney's fees, court costs, litigation expenses, and like charges except and to the extent such fees, costs,

APPENDIX 3

VI. COST PROPOSAL

Based on our understanding of the project's objectives, scope, issues list, work plan, and deliverables defined earlier in the proposal, our total fees and expenses for the Management and Organizational Study of the Library will be \$27,500.

Expenses for travel, report production, administrative support, and the like are included in the above not-to-exceed cost proposal and amount to about 20% of professional fees.

This quotation is firm for a period of 90 days from the date of this proposal and is based on the budgeted hours for the proposed project team at each member's hourly billing rate, plus expenses (travel, hotel, meals, administrative support, etc.).

The budget is developed based on the following hourly billing rates for our professional staff. Any supplemental work by the project team would be billed at these hourly rates.

Project Director	\$145
Project Manager	\$135
Lead Consultant	\$125
Consultants	\$100

We propose to submit bills as follows:

- **Project Initiation:** 10% of the total cost at project initiation.
- **Progress Bills:** Milestone or Monthly progress bills based on actual fees and expenses for a total of an additional 75% of the total project cost.
- **Final Bill:** A final bill for the remaining 15% of the project budget upon delivery of the final report.

Based on our prior studies, we expect that we have adequate insurance coverage in place to meet City and Library requirements for consultants.

and charges would be assessed against the City under applicable law in the absence of any contractual provision imposing or assigning liability therefor.

4. **Late Payment Charges; Fees; Interest.** The City shall not be liable for any late payment charges, interest, or fees on any delinquent bill for goods, materials, or services at a rate higher than two-thirds of one percent per month (eight percent per annum), but bills rendered to the City shall not be considered delinquent any earlier than thirty (30) days after rendition of a complete and accurate bill by the Contractor. Contested bills shall not be subject to late payment charges pending resolution of the dispute.
5. **Indemnification; Hold-Harmless; Release; Waiver; Limitations of Liability or Remedies.** The City shall not and does not indemnify, hold harmless, or release the Contractor or any other person, firm, or legal entity for, from, or with respect to any claim, cause of action, cost, charge, fee, expense, or liability whatsoever arising out of or relating to the subject matter of the agreement or the performance or nonperformance thereof; nor shall or does the City waive its right to assert or pursue any remedy or claim for relief of any kind that it may have against the Contractor or any other person, firm, or entity for any actual or alleged default or other breach of legal duty on the part of the Contractor or any person, firm, or entity in privity therewith or acting on Contractor's behalf. Any limitation or restriction regarding the type, nature, form, amount, or extent of any right, remedy, relief, or recovery that would otherwise be available to the City is expressly disavowed, excluded from the terms of the agreement, and void.
6. **Choice of Law; Choice of Venue or Forum.** The meaning, legal effect, and enforcement of terms and provisions of the agreement and the resolution of any disputes arising thereunder or relating thereto shall be governed by the laws of the State of Alabama except to the extent otherwise required by applicable conflict-of-law principles. The venue of any suit, action, or legal proceeding brought to enforce or secure relief by reason of any asserted breach of duty arising out of or relating to the performance or nonperformance of the agreement shall be Jefferson County, Alabama except to the extent otherwise required by applicable principles of law.
7. **Construction of Addendum.** Nothing in this Addendum shall be construed to create or impose any duty or liability on the City, to create a right or remedy in favor of the Contractor against the City, or to restrict or abrogate any right or remedy that is available to the City against the Contractor or any other person, firm, or entity under either the principal agreement or as a matter of law.
8. **Alabama Immigration Law Compliance Contract.** Contractor agrees that it will fully comply with the Immigration Reform and Control Act of 1986, as amended by the Immigration Act of 1990, and the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, which makes it unlawful for an employer in Alabama to knowingly hire or continue to employ an alien who is or has become unauthorized with respect to such employment or to fail to comply with the I-9 requirements or fails to use E-Verify to verify the eligibility to legally work in the United States for all of its new hires who are employed to work in the State of Alabama. Without limiting the foregoing, Contractor shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien, and shall have an officer or other managerial employee who is personally familiar with the Contractor's hiring practices to execute an affidavit to this effect on the form supplied by the Board and return the same to the City. Contractor shall also enroll in the E-Verify

Program prior to performing any work, or continuing to perform any ongoing work, and shall remain enrolled throughout the entire course of its performance hereunder, and shall attach to its affidavit the E-Verify Program for Employment Verification and Memorandum of Understanding and such other documentation as the Board may require to confirm Contractor's enrollment in the E-Verify Program. Contractor agrees not to knowingly allow any of its subcontractors, or any other party with whom it has a contract, to employ in the State of Alabama any illegal or undocumented aliens to perform any work in connection with the Project, and shall include in all of its contracts a provision substantially similar to this paragraph. If Contractor receives actual knowledge of the unauthorized status of one of its employees in the State of Alabama, it will remove that employee from the project, jobsite or premises of the City and shall comply with the Immigration Reform and Control Act of 1986, as amended by the Immigration Act of 1990, and the Beason-Hammon Alabama Taxpayer and Citizen Protection Act. Contractor shall require each of its subcontractors, or other parties with whom it has a contract, to act in a similar fashion. If Contractor violates any term of this provision, this Agreement will be subject to immediate termination by the City. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless the City from any and all losses, consequential damages, expenses (including, but not limited to, attorneys' fees), claims, suits, liabilities, fines, penalties, and any other costs arising out of or in any way related to Contractor's failure to fulfill its obligations contained in this paragraph.

DATED this 28th day of October, 2013.

The Mercer Group, Inc.

City of Mountain Brook, Alabama

By: _____

By: *[Signature]*

Its: _____

Its: Mayor

Birmingham News LEGAL AFFIDAVIT

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I, Cynthia White being sworn, says that she is bookkeeper of Birmingham News which publishes a daily newspaper in the City of Birmingham and County of Jefferson, State of Alabama; and attached notice appeared in the issue of Birmingham News 10/06/2013

Sworn to and subscribed before me this 4th day of October 2013. Notary Public signature and name.

FOR QUESTIONS CONCERNING THIS AFFIDAVIT, PLEASE CALL CYNTHIA WHITE AT (251) 219-5405. YOU CAN PLACE A LEGAL NOTICE BY EMAIL OR FAX: LEGALS@AL.COM OR FAX# (205) 320-3550

SYNOPSIS OF PUBLIC NOTICE OF PUBLIC HEARING The City Council of the City of Mountain Brook shall conduct a public hearing on Monday, October 28, 2013, at 7:00 p.m., in the Council Chamber of the Mountain Brook City Hall, 501 Church Street, Mountain Brook, Alabama 35226...

NOTICE OF PROPOSED REZONING AND PUBLIC HEARING MET RESOLVED by the City Council of the City of Mountain Brook, Ala., at the meeting of the City Council to be held on Monday, October 28, 2013, at 7:00 p.m., in the Council Chamber of the Mountain Brook City Hall...

NOTICE OF PROPOSED REZONING AND PUBLIC HEARING MET RESOLVED by the City Council of the City of Mountain Brook, Ala., at the meeting of the City Council to be held on Monday, October 28, 2013, at 7:00 p.m., in the Council Chamber of the Mountain Brook City Hall...

Birmingham News LEGAL AFFIDAVIT

MTN BROOK, CITY OF PO BOX 130006 BIRMINGHAM, AL 35213

Name: MTN BROOK, CITY OF Account Number: 2001027 Ad Number: 0006017181

Sales Rep: Nancy Bridgman

Billing Inquiries Please Call: (251) 219-5433

Table with columns: Date, Position, Description, P.O. Number, Ad Size, Total Cost. Row 1: 09/29/2013, Legisla BN, NOTICE OF PROPOSED REZONING AND PUBLIC HEARING BE IT RESOLVED by the City...

I, Cynthia White being sworn, says that she is bookkeeper of Birmingham News which publishes a daily newspaper in the City of Birmingham and County of Jefferson, State of Alabama; and attached notice appeared in the issue of Birmingham News 09/29/2013

Sworn to and subscribed before me this 30th day of September 2013. Notary Public signature and name.

FOR QUESTIONS CONCERNING THIS AFFIDAVIT, PLEASE CALL CYNTHIA WHITE AT (251) 219-5405. YOU CAN PLACE A LEGAL NOTICE BY EMAIL OR FAX: LEGALS@AL.COM OR FAX# (205) 320-3550

set 5/10 inch standard rebar at 18 inch spacing. 2. 3000 psi concrete. 3. 18 inch diameter steel reinforcement. 4. 18 inch diameter steel reinforcement. 5. 18 inch diameter steel reinforcement. 6. 18 inch diameter steel reinforcement. 7. 18 inch diameter steel reinforcement. 8. 18 inch diameter steel reinforcement. 9. 18 inch diameter steel reinforcement. 10. 18 inch diameter steel reinforcement.

APPENDIX 4

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Recommended by Planning Commission for Approval on October 7, 2013.

Petition Summary

Consider a request to rezone the Morningside property (on Montclair Road) from Res-D to Residential Infill District (RID), and the approval of a master development plan.

Background

In 2002, the City Council approved a request to rezone the subject property from Res-D to RID, and the approval of a master development plan. In conjunction with said approval the majority of the infrastructure and perimeter walls were installed on the site. The remainder of the development did not transpire and the property has been in an undeveloped state for several years.

The current property owner purchased the property with the intention of developing it as previously approved (fourteen (14) detached single family dwellings). Ten (10) of these SFR's were thought to be in the City of Mountain Brook and four (4) in the City of Birmingham. Covenants and restrictions concerning the minimum square footage of the homes, and the minimum price points for the homes (among other items) were incorporated into the zoning approval and made a part of the master development plan.

Since the purchase of this property at least two major findings have occurred. The first is that the property along what is referred to as the southern border of the "ax head," which was to contain the northerly five (5) lots in Mountain Brook has been determined to actually be in the City of Birmingham. The second is that the legal description that was submitted with the 2002 rezoning request was incorrect, so the 11-year-old RID zoning is not valid; hence the current application to re-rezone the property from Res-D to RID.

Analysis

The proposal for the subdivision now includes the construction of four (4) detached single family dwellings on the Mountain Brook portion of the site (mainly the "ax handle" fronting on Montclair Road), and to construct sixteen (16) townhomes on the Birmingham portion. The proposed covenants for the project are largely the same as previously approved, with the minimum square footage of the SDR's at 3,000 and the minimum price point at \$410,000. Specific landscape, lighting and other details are proposed to be the same as previously approved.

Please see:

- Tab 1 for conceptual architectural renderings;
- Tab 2 for title binder;
- Tab 3 for proposed covenants;
- Tab 4 for proposed articles of incorporation for the Association;
- Tab 5 for landscaping;
- Tab 6 for traffic information;

Tab 7 for previously approved development plan

Affected Regulation

Section 129-433 (zoning amendments) and Section 129-497 (RID master development plan requirements).

Appends

LOCATION: 3916 Montclair Road

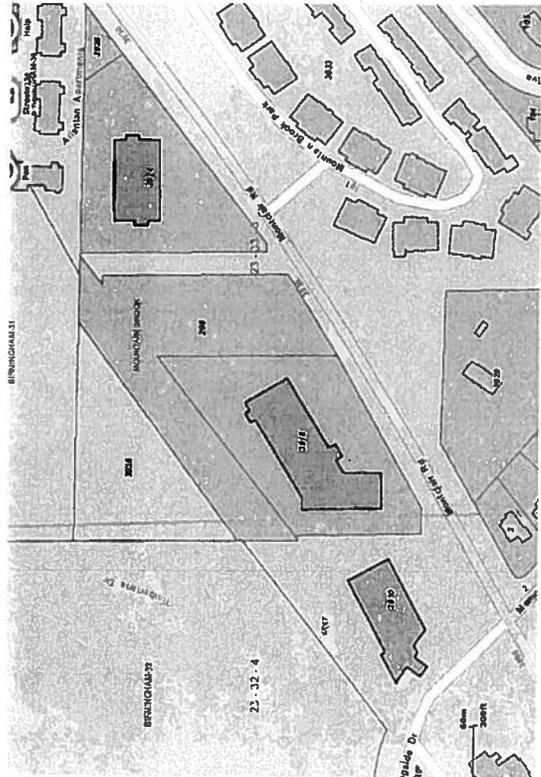
ZONING DISTRICT: Res-D

OWNER: NJK, LLC -- Charles Kessler, Jr.

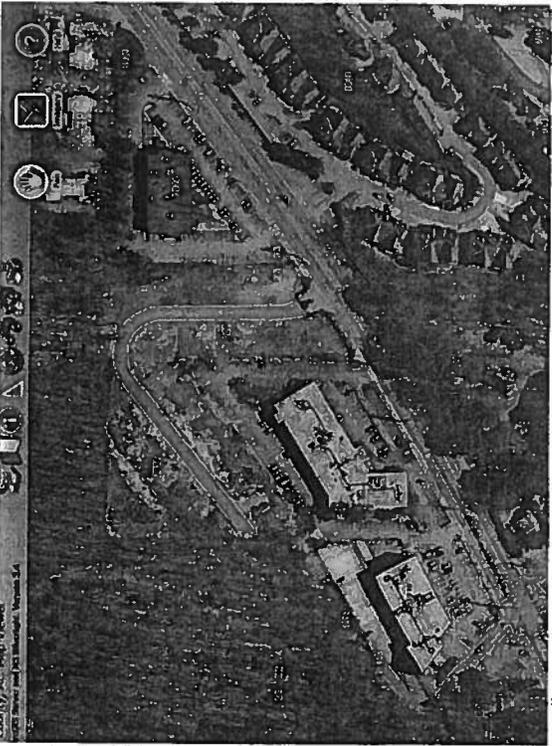
AGENT: David Averyt

ACREAGE:

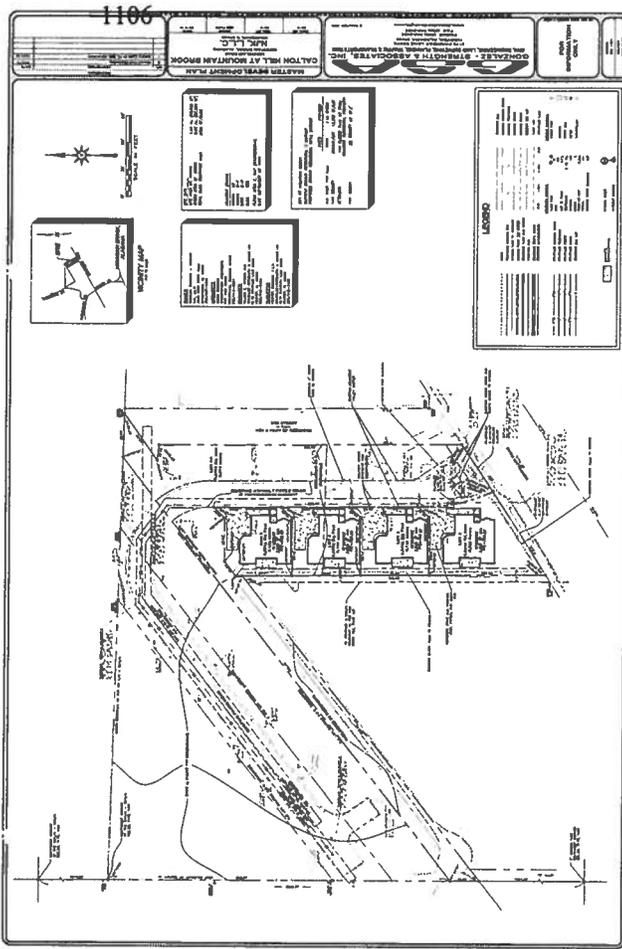
- 1.49 M/L Mountain Brook
- 2.03 M/L Birmingham
- 3.52 M/L entire property



APPENDIX 4



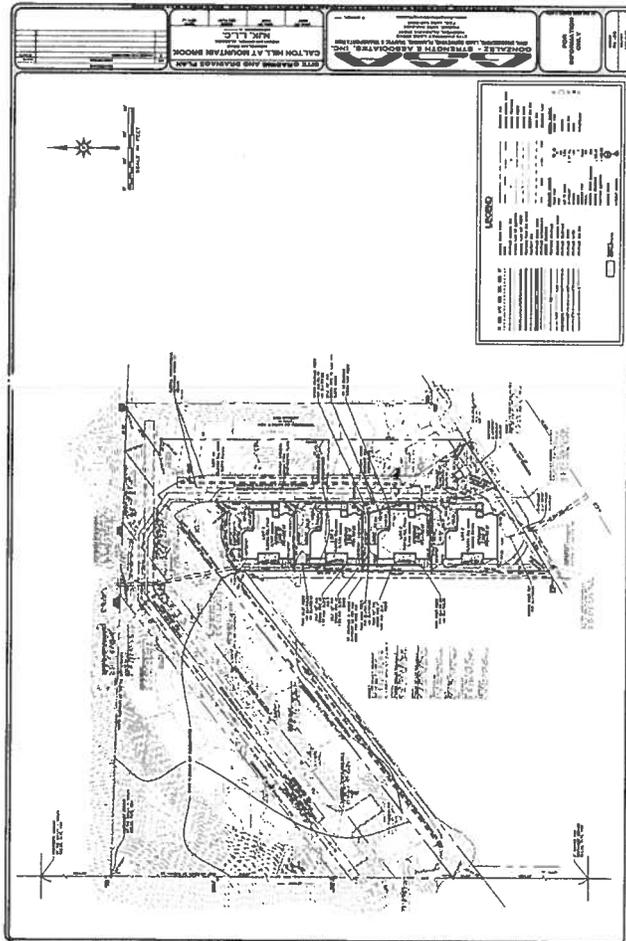
1892



Calton Hill at Mountain Brook

REZONING APPLICATION

APPENDIX 4



Calton Hill at Mountain Brook

An NJK, LLC Development
3505 Bent River Rd
Birmingham, AL 35216
(205) 985-7171

September 13, 2013

City of Mountain Brook, Planning Commission
Attn: Ms. Dana Hazen, City Planner
56 Church Street
Mountain Brook, AL 35213

Re: Rezoning Application (per § 129-432)
Calton Hill Master Development Plan

Dear Ms. Hazen:

Please accept our application for rezoning of Calton Hill at Mountain Brook, our master planned development located on Montclair Road. What follows are our responses to the requirements specified in Sections 129-433 and 129-497 of Mountain Brook's Code.

1. **Owner.** NJK, LLC
Charles G. Kessler, Jr., Manager
3505 Bent River Rd.
Birmingham, AL 35216
(205) 985-7171
2. **Applicant.** David N. Averyt (attorney-in-fact for NJK, LLC)
3505 Bent River Rd.
Birmingham, AL 35216
(205) 218-3176
3. **Zoning.** Despite efforts to rezone the parcel over ten years ago, it is currently zoned Residence D (R-D). We propose rezoning it to Residential Infill District (RID).
4. **Location.** The property is located at 3916 Montclair Road. The entire site contains approximately 3.52 acres, 1.49 acres of which is under the jurisdiction of Mountain Brook and the other 2.03 acres under the jurisdiction of Birmingham.
5. **Tax Parcel Tax IDs.** 23-00-33-3-001-004.000 and 23-00-33-3-001-006.000
6. **Legal Descriptions.**

Entire site:

A parcel of land situated in the Southwest quarter of the Southwest Quarter of Section 33, Township 17 South, Range 2 West, Jefferson County, Alabama, said parcel being all of Lot 1 of Brown Development L.L.C. Addition to Mountain Brook as recorded in Map Book 207, Page 88 in the Office of the Judge of Probate, Jefferson County, Alabama, and an Acreage parcel and being more particularly described as follows:

*The Council adopted Ord. No. 1546, which purportedly rezoned Jim Brown's Morningside English Villas development from R-D to the newly adopted (at the time) RID, on August 26, 2002. Unfortunately, the legal description contained in the adopted ordinance described property in Birmingham, not Mountain Brook. Ordinance No. 1546, together with Mr. Brown's application, is attached at 7a-7.

Commence at the Northwest Corner of the Northwest Quarter of the Southwest Quarter of said Section 33; thence run in a Southerly direction along the West line of said Section for a distance of 1314.90 feet to a found 1 inch solid pipe marking the Northwest corner of the Southwest Quarter of said Section and being the POINT OF BEGINNING of the parcel herein described; thence leaving said Section line deflect left 88 degrees 19 minutes 54 seconds and run in an Easterly direction along the North line of the Southwest Quarter of the Southwest Quarter for a distance of 516.43 feet to a set 5/8 inch capped rebar stamped CA-560LS; thence leaving said North Quarter-Quarter line deflect right 142 degrees 49 minutes 46 seconds and run in a Southwesterly direction for a distance of 63.31 feet to a set 5/8 inch capped rebar stamped CA-560LS; thence turn an exterior angle to the right of 41 degrees 50 minutes 52 seconds and run in an Easterly direction for a distance of 17.16 feet to a set 5/8 inch capped rebar stamped CA-560LS; thence turn an interior angle to the left of 96 degrees 30 minutes 42 seconds and run in a Southerly direction for a distance of 332.79 feet to a set 5/8 inch capped rebar stamped CA-560LS, said point also lying on the Northerly Right of Way of Montclair Road (80' R.O.W.), and also lying on a non-tangent curve to the right, said curve having a radius of said curve having a radius of 3759.82 feet, a central angle of 02 degrees 36 minutes 40 seconds, an interior angle to the left to chord of 122 degrees 32 minutes 38 seconds, and a chord distance of 171.32 feet; thence run in a Southwesterly direction along the arc of said curve and said right of way for a distance of 171.34 feet to a found 2 inch capped pipe; thence leaving said Right of Way turn an interior angle to the left from chord of 57 degrees 33 minutes 20 seconds and run in Northerly direction for a distance of 332.05 feet to a set 5/8 inch capped rebar stamped CA-560LS; thence turn an exterior angle to the right of 52 degrees 28 minutes 22 seconds and run in a Southwesterly direction for a distance of 426.46 feet to a set 5/8 inch capped rebar stamped CA-560LS, said point also lying on the Western line of said Section 33; thence deflect right 127 degrees 47 minutes 35 seconds and run in a Northerly direction along said Western line for a distance of 408.36 feet to the POINT OF BEGINNING. Said parcel contains 153,290 Square Feet or 3.52 Acres More or Less.

Mountain Brook Parcel:

A parcel of land situated in the Southwest quarter of the Southwest Quarter of Section 33, Township 17 South, Range 2 West, Jefferson County, Alabama, said parcel being a part of Lot 1 of Brown Development L.L.C. Addition to Mountain Brook as recorded in Map Book 207, Page 88 in the Office of the Judge of Probate, Jefferson County, Alabama, and being more particularly described as follows:

Commence at a found 1 inch solid pipe marking the Northwest corner of the Southwest Quarter of the Southwest Quarter of said Section 33; thence run South along the West line of said Section for a distance of 376.72 feet to a set 5/8 inch capped rebar stamped CA-560LS, said point being the POINT OF BEGINNING of the parcel herein described; thence continue along the last described course for a distance of 31.64 feet to a set 5/8 inch capped rebar stamped CA-560LS; thence leaving said Section line turn an interior angle to the right of 52 degrees 12 minutes 25 seconds and run in a Northeasterly direction for a distance of 426.46 feet to a set 5/8 inch capped rebar

2

stamped CA-560LS; thence turn an interior angle to the right of 307 degrees 31 minutes 38 seconds and run in a Southerly direction for a distance of 332.05 feet to a found 2 inch capped pipe, said point lying on the Northerly Right of Way of Montclair Road (80' R.O.W.), said point also lying on a non-tangent curve to the left, said curve having a radius of 3759.82 feet, a central angle of 02 degrees 36 minutes 40 seconds, an interior angle to the right to chord of 57 degrees 33 minutes 20 seconds, and a chord distance of 171.32 feet; thence run along the arc of said curve and said Right of Way for a distance of 171.34 feet to set 5/8 inch capped rebar stamped CA-560LS; thence leaving said Right of Way turn an interior angle right from chord of 122 degrees 32 minutes 38 seconds and run in a Northerly direction for a distance of 332.79 feet to a set 5/8 inch capped rebar stamped CA-560LS; thence turn an interior angle right of 96 degrees 30 minutes 42 seconds and run in a Westerly direction for a distance of 17.16 feet to a set 5/8 inch capped rebar stamped CA-560LS; thence turn an interior angle right of 318 degrees 09 minutes 08 seconds and run in a Northeasterly direction for a distance of 63.31 feet to a set 5/8 inch capped rebar stamped CA-560LS; thence turn an interior angle to the right of 37 degrees 10 minutes 14 seconds and run in a Westerly direction for a distance of 48.03 feet to a set 5/8 inch capped rebar stamped CA-560LS; thence turn an interior angle to the right of 140 degrees 32 minutes 19 seconds and run in a Southwesterly direction for a distance of 592.49 feet to the POINT OF BEGINNING. Said parcel contains 65,099 Square Feet or 1.49 Acres more or less.

7. **Proposed Use.** Calton Hill is an upscale, gated residential community designed for mature couples who typically have no children at home and desire a carefree lifestyle enhanced by a conveniently located, modern home. Proximity to Crestline Village is crucial to Calton Hill's attractiveness to residents. The portion of the site located in Mountain Brook features four single family detached homes with a minimum of 3,000 sq. ft. (as agreed between the City and Mr. Brown ten years ago). The portion located in Birmingham features sixteen large, high-end townhomes. The entire development will be designed with an old-world English aesthetic. Concept sketches of Calton Hill as well as pictures of similar developments that we have built are attached at (Tab 1).

8. **Covenants and Restrictions.** Attached at (Tab 2) is a copy of the property's title exceptions as well as copies of the covenants and restrictions noted in the title binder. A draft of the covenants that the owner intends to impose on the property is attached at (Tab 3). As noted in the proposed covenants, private streets, buffers, planted areas, light poles, and other common elements will be owned and maintained by a homeowner's association established for that purpose, the financing for which will be provided by annual assessments against the homeowners. Draft Articles of Incorporation and Bylaws are attached at (Tab 4).

9. **Neighbor Concerns.** We have met personally with many contiguous landowners. Only one neighbor, the neighbor to the east, is under Mountain Brook jurisdiction. All others are under Birmingham's jurisdiction. The neighbors to the east and southwest are commercial properties. Existing, recorded covenants specify the agreements, primarily regarding privacy walls and landscape buffers, reached between Mr. Brown and those neighbors. To the northwest is an assisted living facility whose nearest structure is located more than 300 feet from our northwest corner. The neighbors to the north, one a small apartment complex and the other unimproved land, have expressed their mutual desire to preserve the dedicated 3rd Street right-of-way, but our development plan does not currently include that dedicated property.

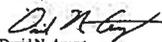
3

10. **Impact Mitigation.** Since Calton Hill is located on a four lane thoroughfare between commercial properties and across from a multiplex condominium development, the impact of increased density will be minimal. Nonetheless, privacy amenities are planned for the benefit of both commercial workers and Calton Hill residents. These amenities include front gates to secure the entrance to the private development; a privacy wall, part of which currently stands on the property; attractive landscaping for sight and noise buffering; and streetscaping, including light posts. A landscape plan and diagrams of other details are attached at (Tab 5).

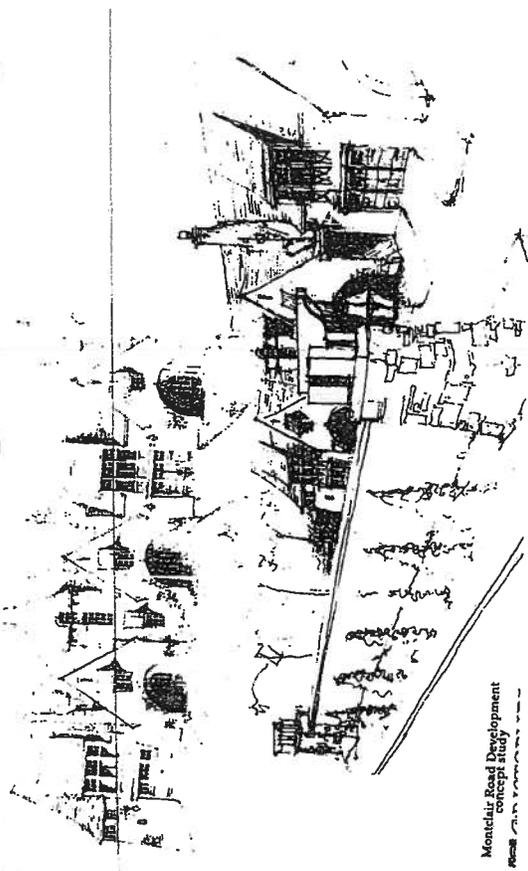
11. **Traffic Study.** Attached at (Tab 6)

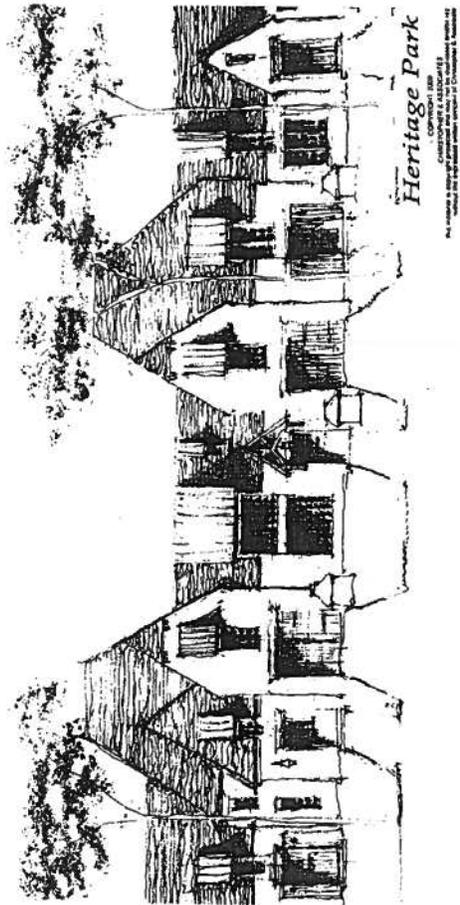
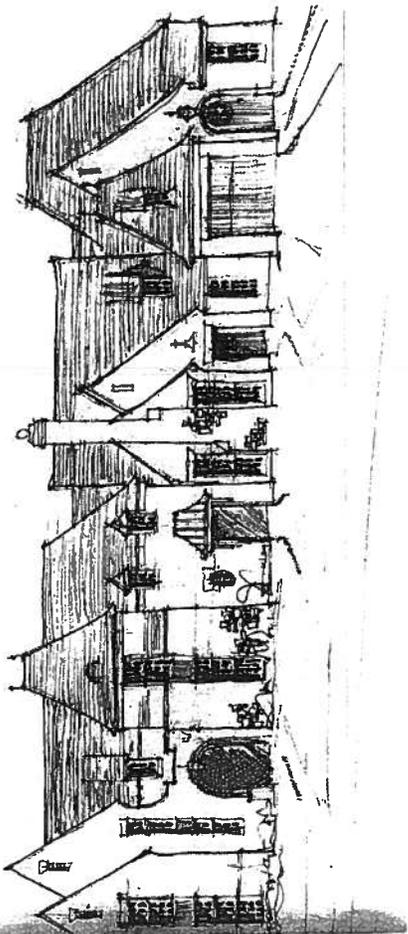
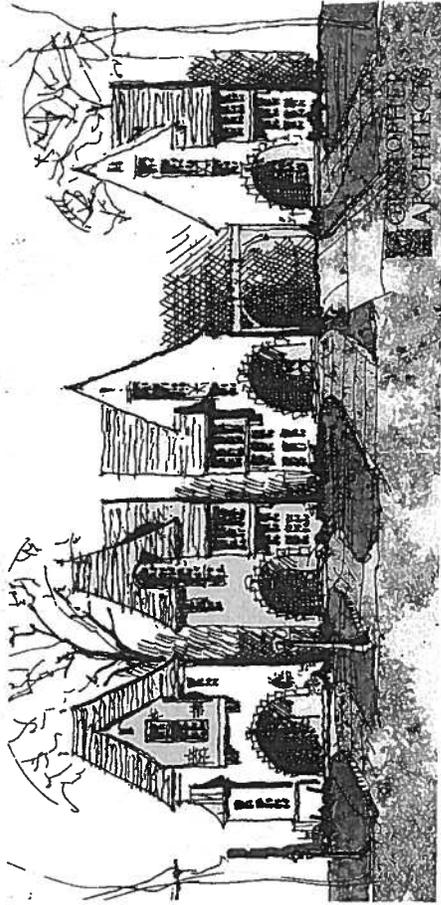
12. **Preliminary Site Plan.** Enclosed in the pocket.

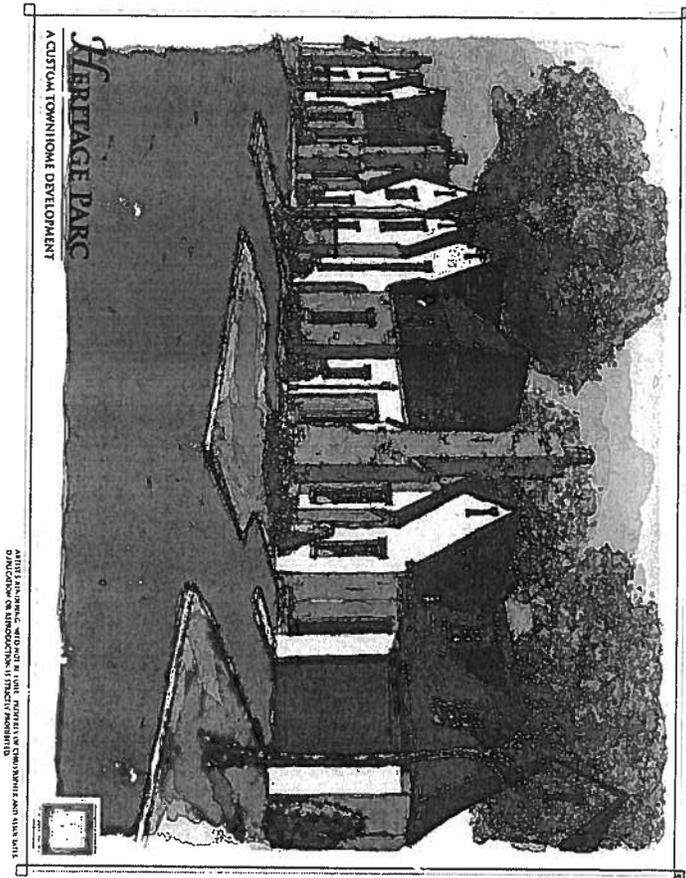
If you have any further questions, please call.

Sincerely,

 David N. Avery

APPENDIX 4







Owner's Policy of Title Insurance - Schedule A

Issued by Commonwealth Land Title Insurance Company



Commonwealth Land Title Insurance Company

File No: S13-1318

Policy No.: 81306-892-83095

Address Reference:

Amount of Insurance: Date of Policy: July 8, 2013 at 01:52 PM

Premium:

- Name of Insured: NIK, LLC
- The estate or interest in the Land that is insured by this policy is: Fee Simple
- Title is vested in: NIK, LLC
- The Land referred to in this policy is described as follows: SEE EXHIBIT A ATTACHED HERETO

Jefferson Title Corporation License #0288714
Robert S. Caliento License #0655320

Countersigned: *[Signature]*

JEFFERSON TITLE CORPORATION, AUTHORIZED SIGNATORY

APPENDIX 4

ALTA Owner's Policy Schedule A (Old 406) Fees \$180-\$340

(S13-1318-PPW/S13-1318/32)



EXHIBIT A LEGAL DESCRIPTION

1892

Policy No.: 81306-89283895

A parcel of land located in the Southwest 1/4 of the Southwest 1/4 of Section 33, Township 17 South, Range 2 West, more particularly described as follows:

Begin at the Northwest corner of the Southwest 1/4 of the Southwest 1/4 of Section 33, Township 17 South, Range 2 West and run in a Easterly direction along the Northern boundary line of said 1/4 - 1/4 section for a distance of 516.43 feet to a point; thence turn a deflection angle to the right of 142 degrees 49 minutes 46 seconds and run in a Southwesterly direction for a distance of 63.31 feet to a point and also a point on a curve to the left, said curve having a radius of 3744.83 feet, a central angle of 02 degrees 17 minutes 27 seconds, a chord distance of 149.72 feet and an interior chord angle from tangent of 181 degrees 08 minutes 43 seconds; thence run in a Southwesterly direction along the arc of said curve for a distance of 149.73 feet; thence turn an interior angle from chord of 181 degrees 08 minutes 44 seconds and run in a Southwesterly direction and parallel to the centerline of the Old L. & N Railroad (abandoned) for a distance of 436.01 feet; thence turn a deflection angle to the right of 127 degrees 47 minutes 35 seconds and run in a Northerly direction along West boundary of said Section 33 for a distance of 408.36 feet and the Point of Beginning.

"ax head"
"ax head"

Together with Lot 1, Brown Development, L.L.C. Addition to Mountain Brook, as recorded in Plat Book 207, Page 8B of the public records of Jefferson County, Alabama;

The aforesaid property being collectively described as follows:

A portion of the Southwest Quarter of the Southwest Quarter of Section 33, Township 17 South, Range 2 West, Jefferson County, Alabama, being more particularly described as follows:

Commence at the Northwest corner of the Southwest Quarter of the Southwest Quarter of said Section 33; thence run Southerly along the West line of said Section 33, for a distance of 408.36 feet; thence turn an interior angle to the right of 52 degrees 12 minutes 25 seconds for a distance of 426.46 feet; thence turn an angle to the left of 52 degrees 28 minutes 22 seconds for a distance of 332.05 feet to a point on a Northerly right of way line of Montclair Road (80' right of way) and a point on a curve being concave Northwesterly having a radius of 3759.82 feet; thence turn an interior angle to the right of 57 degrees 33 minutes 20 seconds along the chord of said curve for a chord length of 171.32 feet (Delta=02 degrees 36 minutes 40 seconds, Arc Length = 171.34 feet); thence departing said right of way line turn an interior angle of 122 degrees 32 minutes 38 seconds from chord of said curve for a distance of 17.16 feet; thence turn an interior angle to the right of 96 degrees 30 minutes 42 seconds and run Northwesterly for a distance of 63.31 feet; thence turn an interior angle to the right of 37 degrees 10 minutes 14 seconds and run Westerly for a distance of 516.43 feet to the point of beginning.

ALTA Owner's Exhibit A

(S13-1318-PPW/S13-1318/30)

SCHEDULE E
EXCEPTIONS FROM COVERAGE

Policy No.: 81306-89283895

File No.: 813-1318

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

- (1) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (2) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
- Rights or claims of parties in possession not shown by the Public records.
- Easements or claims of easements, any lien, or right to a lien, for services, labor, or material hereto or hereafter furnished, imposed by law and not shown by the public records.
- Discrepancies, conflicts in boundary lines, shortages in area, encroachments, and any facts which a correct survey and inspection of the premises would disclose and which are not shown by the public records.
- Any mineral or mineral rights leased, granted or retained by current or prior owners.
- Taxes and assessments for the year 2013 and subsequent years and not yet due and payable.
- Easements and building lines as shown on recorded map(s), including but not limited to any notes, conditions, and restrictions.
- Easement to Alabama Gas Corporation as recorded in Instrument No. 200404/2436.
- Right of Way granted to Alabama Power Company by instrument(s) recorded in Instrument No. 200318/4287 and Real Volume 724, Page 590.
- Restrictions appearing of record in Instrument No. 200408/2187; Instrument No. 200107/8800 (re-recorded in Instrument No. 200408/2436); Instrument No. 200408/2188 and Instrument No. 200004/3221, but deleting any restrictions based on race, color, creed or national origin.
- Right of way granted to the Water Works and Sewer Board of the City of Birmingham as recorded in Instrument No. 200311/8060 and Instrument No. 200107/9786.
- Easements for sanitary sewer as recorded in Instrument No. 200003/2609; Instrument No. 200003/2606 and Instrument No. 200301/5406.
- Restrictions appearing of record in Real Volume 1044, Page 874, but deleting any restrictions based on race, color, creed or national origin.
- Title to all minerals within and underlying the property, together with all mining rights and other rights, privileges, immunities and releases of damages relating thereto, as recorded in Volume 299, Page 574; Volume 6606, Page 83; Real Volume 120, Page 167; Volume 129, Page 599 and Volume 119, Page 427, and any damages relating to the records of such rights or the extraction of such minerals.
- Less and except any part of subject property lying within the right of way of a public road.
- Easement as recorded in Real Volume 2234, Page 129.
- Rights of utilities, if any, in and to that property vacated by Real Volume 1041, Page 249.

Exceptions 1-2 are hereby deleted from said Owner's Policy.

ALTA Owners
Schedule B

200408/2187

This instrument prepared by
Richard H. Broussard, Esq.
1000 Sky Tower & Tower
1117
100 Columbia Drive, Suite 200
Alabama, Georgia 36220

DECLARATION OF COVENANTS AGREEMENT

THIS DECLARATION OF COVENANTS AGREEMENT (the "Agreement") is made and entered into this 1st day of April, 2004, by and between RICHARD H. BROWN, III, an individual resident of the State of Alabama ("Brown") and RCGH MONTICLAIR I, LLC, a Georgia limited liability company ("RCGH").

WITNESSETH

THAT, WHEREAS, Brown owns certain real property described on Exhibit A attached hereto and made a part hereof (the "Brown Property"); and

WHEREAS, RCGH owns certain real property described on Exhibit B attached hereto and made a part hereof (the "RCGH Property"); and

WHEREAS, in connection with the development by Brown on the Brown Property of a townhome development commonly known as "Monticlair English Villas" Brown has obtained the agreement of the appropriate governmental authority to abandon 3rd Street (the "Abandoned Roadway") located between the Brown Property and the RCGH Property; and

WHEREAS, in connection with Brown's development of the Brown Property, RCGH has agreed, in consideration of Brown's agreement as hereinafter set forth, to quit-claim to Brown the east one-half of the Abandoned Roadway adjacent to the RCGH Property to allow the Abandoned Roadway to vest fully in Brown, conditioned upon Brown's complying with the terms of this Agreement.

NOW, THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) in hand paid, the receipt, adequacy and sufficiency of which are hereby acknowledged by the parties hereto, the parties hereto, intending to be legally bound, hereby promise, declare and agree as follows:

- The recital of facts set forth above are hereby incorporated as if hereinafter fully set forth.
- Brown shall construct, at its sole cost and expense and within the letter to occur of (1) two (2) years after the date of this Agreement, or (2) one hundred twenty (120) days after final judicial approval of the abandonment of said 3rd Street, on the Abandoned Roadway near the boundary line separating the Abandoned Roadway and the RCGH Property as shown on Exhibit C attached hereto and made a part hereof, a stone wall with brick columns and brick roll top (the "Wall") having a height of twelve (12) feet, plus or minus, at the Monticlair Road end of

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the Wall and stepping down to a height of not less than eight feet. Brown shall be responsible for and shall maintain the Wall at its sole cost and expense. The quality and design of the Wall shall be consistent with the portions of a wall already completed by Brown on the Brown Property along the Monticlair Road side of the Brown Property and along the side of the Brown Property on the west side of the Brown Property.

3. Brown covenants that Brown shall install on the portion of the Abandoned Roadway located between the Wall and the west boundary line of the RCGH Property, at Brown's sole cost and expense, landscaping (the "Landscaping") of the same quality and quantity as is installed and maintained by Brown on the balance of the Brown Property and the Abandoned Roadway, which installation shall be completed within the letter to occur 120 (120) days after the date of this Agreement or (2) one hundred twenty (120) days after final judicial approval of the abandonment of said 3rd Street. Brown shall, at its sole cost and expense, maintain (including watering by irrigation system) the Landscaping.

4. Prior to commencement of the installation of the Landscaping by Brown pursuant to this Agreement, Brown shall submit to RCGH, for RCGH's approval, a landscape plan showing the layout and materials to be used. Such plan shall be subject to the approval of RCGH, which approval will not be unreasonably withheld or delayed.

5. Brown covenants and agrees for the benefit of the RCGH Property, and as to a violation in respect of which covenants RCGH and its successors, successors-in-title to the RCGH Property and assigns shall have all rights and remedies allowed by law and equity, that whether or not 3rd Street is ever abandoned, the Abandoned Roadway (1) in perpetuity shall be developed and used only as a residential townhome development, for sale, with no more than five buildings or portions of buildings to be located on the Abandoned Roadway, provided that the above location and number of the buildings shown on Exhibit C may change, but shall in no event consist of more than five buildings or portions of five buildings, and (2) in perpetuity shall be used for construction by Brown of the Wall as described in Item 2 above.

6. In the event the owner of the Brown Property fails to maintain in good order and repair the Landscaping and the Wall, the owner of the RCGH Property may notify the owner of the Brown Property of such failure and the owner of the Brown Property shall have a period of ten (10) days after receipt of such notice to cure such failure, provided that in the event such failure cannot be cured within ten (10) days, the owner of the Brown Property shall have such additional time as is necessary to cure such failure so long as the owner of the Brown Property commences to cure and diligently prosecutes the cure to completion. In the event the owner of the Brown Property fails to complete such cure within such time period, the owner of the RCGH Property may correct such failure, advancing the costs thereof, and the owner of the Brown Property shall reimburse the owner of the RCGH Property for such costs within twenty (20) days after written demand from the RCGH Property for such costs (including reasonable documentation of the costs and expenses). In the event the owner of the Brown Property fails to reimburse the owner of the RCGH

-2-

HA18_LDC004623894VCLM

Property within such twenty (20) days, the owner of the RCGH Property shall have the right to place a lien against the Brown Property and the Abandoned Property and shall have such other and further rights and remedies as are allowed by law and equity.

7. Concurrently with the execution of this Agreement, RCGH has executed and delivered to Brown a quit-claim deed conveying to Brown the east one-half of the to be Abandoned Roadway adjacent to the RCGH Property.

8. Brown does hereby agree to unconditionally, irrevocably, defend and hold harmless RCGH, and each successor-in-title to the RCGH Property and assigns (collectively the "Indemnitees"), from and against and in respect of, any and all damages, losses, liabilities, expenses, costs, claims, actions, suits, proceedings, assessments, orders, judgments, fines and penalties (including without limitation, reasonable legal fees and expenses) (including engineering and other professional fees), which may be incurred by any of the Indemnitees, or imposed upon or asserted against any of the Indemnitees by any other party or parties (including, without limitation, any governmental entity), arising out of, in connection with, or related to the abandonment of the Abandoned Roadway and its use for townhomes, the Wall and the Landscaping, including anyone claiming the right to use the Abandoned Roadway for access. No delay or failure by any Indemnitee to exercise any right or remedy against Brown will be construed as a waiver of that right or remedy. All remedies available at law or in equity, are separate and cumulative, and do not, in any way, limit or preclude the exercise of any other. Without limitation of its obligations hereunder, Brown agrees that if it fails to pay or perform any of its obligations hereunder after a demand by an Indemnitee made when permitted under this Agreement, the Indemnitee shall be entitled to pay or perform, or cause to be paid or performed the obligations as if any time or from time to time for all costs and expenses incurred by the Indemnitees in paying or performing or causing to be paid or performed such obligations, including, without limitation, attorneys' fees and disbursements and fees of consultants and advisors. Brown's obligations under this paragraph 8 shall be binding upon its legal representatives, successors, successors-in-title, assigns, and shall inure to the benefit of the Indemnitees and their respective heirs, successors and assigns.

9. In the event Brown fails to perform its obligations under this Agreement, RCGH shall have all rights and remedies available to it in law or in equity.

10. All notices, consents and other communications required or permitted to be given pursuant to this Agreement shall be sufficient if hand-delivered or if mailed by United States Mail, postage prepaid, certified or registered mail, return receipt requested, or sent by commercial overnight courier, charges pre-paid, to the other party hereto at its address below stated or such other address as either of them may designate from time to time by notice to the other in the manner herein set

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HA18_LDC004623894VCLM

APPENDIX 4

forth. Any notice or consent or other communication required or permitted to be given pursuant to this Agreement sent in accordance with the foregoing portion of this Paragraph 10 shall be deemed given (i) on the day such is actually received by the addressee thereof, (ii) on the day the addressee returns to accept receipt of such; or (iii) if the addressee has abandoned the office to which such notice, consent or other communication is addressed without having notified the other party of a new address for purposes of notices hereunder, on the day after such is deposited in the United States Mail, postage prepaid or with a commercial overnight courier, charges prepaid.

The address of RCGI is:

Resource Capital Group, Inc.
419 Crossville Road, Suite 204
Atlanta, Georgia 30375
Attn: Mr. Albert G. Schenega, III

With a copy to:

Samuel H. Elliott, Esq.
Elliott Law Offices & Weinbaum, LLP
100 Oldfield Parkway
Suite 600
Atlanta, Georgia 30339

The address Brown is:

James N. Brown, III
JNB Brown Development, LLC
1240 Pine Ridge Road
Birmingham, Alabama 35213

With a copy to:

Wayne Moran, Jr.
Clark, Dolan, Moran, O'neal & Hair, P.C.
800 Shades Creek Parkway, Suite 850
Birmingham, Alabama 35209

- 11. The covenants contained in this Agreement shall run with and bind the Brown Property and the Abandoned Roadway, shall inure to the benefit of and be enforceable by RCGI and/or its successors, assigns or assignees in title, and shall remain in effect for a period of twenty (20) years from the date of this Agreement.
12. This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama. Any provision in this Agreement which shall prove to

-4-

Memorandum JCH18_13000042804CEN

STATE OF GEORGIA
FULTON COUNTY

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Albert G. Schenega, III, whose name, as President of Resource Capital Group, Inc., as the sole Member of RCGI Montclair I, LLC is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day, that being informed of the contents of the conveyance he/she executed the same voluntarily and with authority on the day the same bears date.

Given under my hand and official seal this 1 day of August, 2004.

Notary Public
My Commission Expires:

STATE OF ALABAMA
JEFFERSON COUNTY

I, the undersigned Notary Public in and for said County, in said State, hereby certify that James N. Brown, III, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day, that being informed of the contents of the conveyance he/she executed the same voluntarily and with authority on the day the same bears date.

Given under my hand and official seal this 27 day of March, 2004.

Notary Public
My Commission Expires: 3-18-7

UNOFFICIAL

APPENDIX 4

-6-

Memorandum JCH18_13000042804CEN

be invalid, void or illegal, shall in no way effect, impair or invalidate any other provisions hereof.

- 13. This is of the essence of this Agreement and each and every provision hereof. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute one and the same Agreement.
14. It is the intent that each of the covenants, covenants, conditions, restrictions, rights and obligations set forth herein shall run with the land and shall bind the party hereto and their respective successors, assigns and assignees in title.
15. No amendment to this Agreement shall be binding on any party to this Agreement unless such amendment is in writing and executed by the parties hereto and their respective successors or assignees in title with the same formality as this Agreement is executed. The benefit of this agreement and covenants created hereby are not assignable by the parties hereto except to their successors or successors-in-title to the benefited property.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed, sealed and delivered as of the day and year first above written.

RCGI:

RCGI MONTCLAIR I, LLC, a Georgia Limited Liability company

By: Resource Capital Group, Inc., a Delaware corporation
Albert G. Schenega, III, President

(CORPORATE SEAL)

BROWN:

James N. Brown, III

EXHIBIT A

TRACT I:

A parcel of land located in the Southwest 1/4 of the Southwest 1/4 of Section 33, Township 17 South, Range 2 West, more particularly described as follows:

Begin at the Northwest corner of the Southwest 1/4 of the Southwest 1/4 of Section 33, Township 17 South, Range 2 West, and run in an Easterly direction along the Northern boundary line of said 1/4 - 1/4 section for a distance of 516.43 feet to a point thence turn a deflection angle to the right of 142 degrees 49 minutes 46 seconds and run in a Southwesterly direction for a distance of 63.31 feet to a point and also a point on a curve to the left, with curve having a radius of 3744.83 feet, a central angle of 02 degrees 17 minutes 27 seconds a chord distance of 149.72 feet and an interior chord angle from tangent of 111 degrees 08 minutes 43 seconds; thence run in a Southwesterly direction along the arc of said curve for a distance of 149.73 feet; thence turn an interior angle from chord of 181 degrees 08 minutes 44 seconds and run in a Southwesterly direction and parallel to the centerline of the Old LAN Railroad (abandoned) for a distance of 436.01 feet; thence turn a deflection angle to the right of 127 degrees 47 minutes 35 seconds and run in a Northerly direction along West boundary of said Section 33 for a distance of 408.36 feet and the point of beginning.

TOGETHER with Lot 1 Brown Development, L.L.C. Addition to Mountain Brook, as recorded in Plat Book 207, page 68 of the Public Records of Jefferson County, Alabama;

The aforesaid property being collectively described as follows:

A portion of the Southwest Quarter of the Southwest Quarter of Section 33, Township 17 South, Range 2 West, Jefferson County, Alabama, being more particularly described as follows:

Commence at the Northwest corner of the Southwest Quarter of the Southwest Quarter of Section 33; thence run Southerly along the West line of said Section 33, for a distance of 408.36 feet; thence turn an interior angle to the right of 32 degrees 12 minutes 25 seconds for a distance of 362.46 feet; thence turn an angle to the left of 32 degrees 28 minutes 23 seconds for a distance of 352.09 feet to a point on the Northerly right-of-way line of Montclair Road (80' right-of-way) and a point on a curve being concave Northerly having a radius of 3759.82 feet; thence turn an interior angle to the right of 57 degrees 33 minutes 20 seconds along the chord of said curve for a chord length of 171.32 feet (chord = 02 degrees 36 minutes 40 seconds, arc length = 171.34 feet); thence departing said right-of-way line turn an interior angle of 122 degrees 32 minutes 38 seconds from chord of said curve for a distance of 332.79 feet; thence turn an interior angle to the right of 96 degrees 30 minutes 42 seconds and run Northwesterly for a distance of 17.16 feet; thence turn an exterior angle to the left of 41 degrees 50 minutes 52 seconds for a distance of 63.31 feet; thence turn an interior angle to the right of 37 degrees 10 minutes 14 seconds and run Westerly for a distance of 516.43 feet to the point of beginning.

-5-

Memorandum JCH18_13000042804CEN

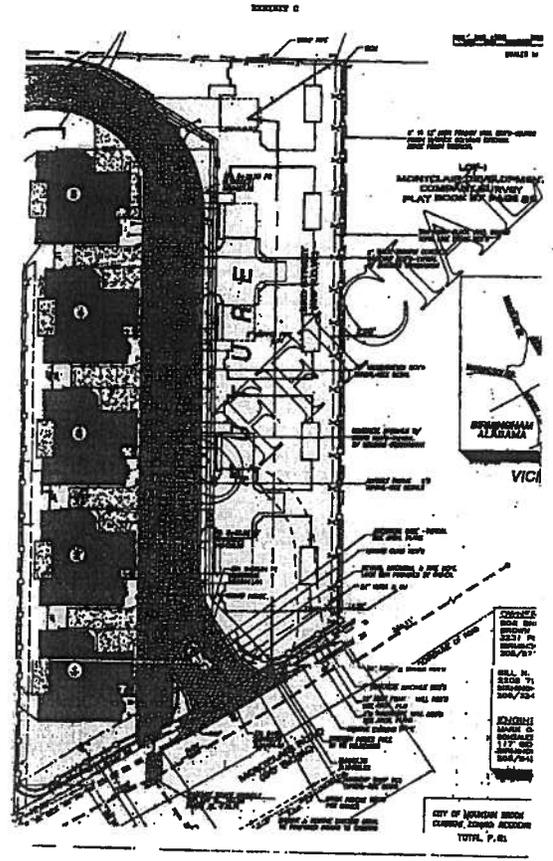
Memorandum JCH18_13000042804CEN

TRACT 2:

Lot 2, according to the Map of Montclair Development Company's Survey, Second Addition, as recorded in Map Book 102, page 106, in the Probate Office of Jefferson County, Alabama.

All being situated in Jefferson County, Alabama.

UNOFFICIAL



10/18_80027/4/11 7, 2004/02/04

APPENDIX 4

**EXHIBIT B
"RCGI PROPERTY"**

Lot 1, according to the Survey of Montclair Development Company Survey, as recorded in Map Book 97, page 86, in the Probate Office of Jefferson County, Alabama.

UNOFFICIAL

STATE OF ALABAMA)
JEFFERSON COUNTY)

200107/8800
200003/8886

COVENANTS

Recitals

1. James M. Brown, II (also known as James Mount Brown, II) ("Owner") is the owner of the real estate described in Exhibits A and Exhibit B, which are attached hereto and made a part hereof ("Property"). The Property is not subject to any other liens or encumbrances.
2. The Property is located in unincorporated Jefferson County.
3. Owner has requested City of Mountain Brook, an Alabama municipal corporation, ("City") to annex the Property to the City of Mountain Brook.
4. Owner has agreed to subject the Property to certain covenants, which covenants are hereinafter set forth in this document (a) for the protection and benefit of the purchasers of the Property; and (b) to facilitate to annex the Property to the City of Mountain Brook.

Assurances

Now, therefore, Owner does hereby subject the Property to the following covenants, which covenants shall run with the land and shall be binding on Owner and his heirs, successors and assigns until March 1, 2020, at which time the covenants shall be automatically renewed for successive periods of ten years unless the then owners of a majority of the lots or units into which the Property may have been subdivided agree to terminate or amend the covenants, as evidenced by an instrument signed by such owners and recorded in the office of the Judge of Probate of Jefferson County, Alabama.

Covenants

1. No more than eight dwelling units, consisting of four duplexes (each containing two dwelling units), (individually, "Dwelling Unit" and collectively, "Dwelling Units") may be constructed on the Property.
2. All eight Dwelling Units must be completely constructed, and certificates of occupancy issued therefor, by August 1, 2008.
3. Except as provided hereinafter, all Dwelling Units shall be pre-sold, that is, Owner must have entered into a contract for the construction and sale of the Dwelling Unit

before the construction of the Dwelling Unit may be commenced, and no Dwelling Unit may be built on a "spec" or speculative basis. Notwithstanding to paragraph (1) at any time after the commencement of the construction of a pre-sold Dwelling Unit in a cluster, the construction of the other dwelling unit in such cluster may be commenced, either on a speculative basis or a pre-sold basis, and (2) any of the eight Dwelling Units, construction of which has not been commenced on a pre-sold basis by October 1, 2002, may be built on a speculative basis.

4. Each of the eight Dwelling Units shall contain at least 2,000 square feet of heated and cooled living area.

5. Each of the eight Dwelling Units shall have an attached two-car garage.

6. The aggregate sales price of the eight Dwelling Units (exclusive of any rebate or credit) shall be at least three million two hundred thousand dollars (\$3,200,000.00).

(400,000 each)

7. These covenants may be enforced by any one or more of the following: (a) City; (b) the owner of any lot, parcel or other part of the Property, or any interest therein. Enforcement of these covenants shall be by a court of competent jurisdiction and no remedy shall be available in equity against any person or party violating or attempting to violate any covenant, either in violation of one or more of the covenants or to recover damages for the violation of one or more of the covenants.

8. The sections, paragraphs, sentences, clauses and phrases of this document are severable, and if any section, paragraph, sentence, clause or phrase of this document shall be declared unenforceable or otherwise invalid by the judgment or decree of any court of competent jurisdiction, the validity of the remainder of this document shall not be affected. The sections, paragraphs, sentences, clauses or phrases of this document, since the same would have been executed by the parties hereto in the absence of any such unenforceable section, paragraph, sentence, clause or phrase.

In witness whereof, the undersigned James N. Brown, III, by his duly authorized Attorney-in-Fact, has executed this instrument on the 13th day of October, 2000.

James N. Brown, III

William Robert Brown
William Robert Brown,
as Attorney-in-Fact
for James N. Brown, III

UNOFFICIAL

State of Alabama
Jefferson County
I, the Undersigned, as Judge of Probate in and for said County, in and to all Acts, hereby certify that the foregoing is a full, true and correct copy of the contents with the King of case as appears of record in the case of *James N. Brown, III vs. William Robert Brown*, Case No. *2000-10-13*, filed in said County on the *13th* day of *October*, *2000*.
Michael F. Bolin
Judge of Probate

APPENDIX 4

STATE OF ALABAMA
JEFFERSON COUNTY

I, *Frank C. Goffman, Jr.*, a notary public in and for said county in said county, do hereby certify that *James N. Brown, III* is the person who is known to me, acknowledged before me on this day that, being advised of the contents of the instrument, he, in his capacity as such Attorney-in-Fact, executed the same voluntarily on the day the same were due.

Given under my hand this *13th* day of *October*, *2000*.

Frank C. Goffman, Jr.
Notary Public

My commission expires

October 23, 2002

AFFIX SEAL

This instrument prepared by

Frank C. Goffman, Jr.
Suite 800
505 North 20th Street
Birmingham, Alabama 35203

State of Alabama - Jefferson County
Notary Public
2000 MAR 20 A.M. 10:17
Notary Seal
and
9.50 Notary Seal Fee
2000/0000

GONZALEZ WEBB STRENGTH, INC.
ENGINEERING & SURVEYING

LEGAL DESCRIPTION:

A PARCEL OF LAND LOCATED IN THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 17 SOUTH, RANGE 2 WEST, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 17 SOUTH, RANGE 2 WEST, AND RUN IN A SOUTHEASTERLY DIRECTION ALONG THE BOUNDARY LINE OF SAID SECTION FOR A DISTANCE OF 410.89 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE ALONG LAST DESCRIBED COURSE FOR A DISTANCE OF 102.34 FEET; THENCE TURN A DEFLECTION ANGLE TO THE RIGHT OF 143 DEGREES 41 MINUTES 46 SECONDS AND RUN IN A SOUTHWESTERLY DIRECTION FOR A DISTANCE OF 63.31 FEET AND THE BEGINNING OF A CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 3744.83 FEET, A CENTRAL ANGLE OF 6 DEGREES 17 MINUTES 27 SECONDS, A CHORD DISTANCE OF 149.73 FEET AND AN INTERIOR ANGLE FROM TANGENT OF 181 DEGREES 49 MINUTES 43 SECONDS; THENCE RUN IN A SOUTHWESTERLY DIRECTION ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 149.73 FEET; THENCE TURN AN INTERIOR ANGLE, FROM CHORD, OF 181 DEGREES 49 MINUTES 44 SECONDS AND RUN IN A SOUTHWESTERLY DIRECTION FOR A DISTANCE OF 436.81 FEET; THENCE TURN A DEFLECTION ANGLE TO THE RIGHT OF 127 DEGREES 47 MINUTES 13 SECONDS AND RUN IN A NORTHEASTERLY DIRECTION ALONG THE WEST BOUNDARY OF SAID SECTION FOR A DISTANCE OF 78.46 FEET; THENCE LEAVING WEST BOUNDARY LINE OF SAID SECTION 13; TURN A DEFLECTION ANGLE TO THE RIGHT OF 34 DEGREES 12 MINUTES 25 SECONDS AND RUN IN A NORTHEASTERLY DIRECTION FOR A DISTANCE OF 247.59 FEET AND THE BEGINNING OF A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 5000 FEET, A CENTRAL ANGLE OF 60 DEGREES 00 MINUTES 00 SECONDS, A CHORD DISTANCE OF 131.81 FEET, AND AN INTERIOR ANGLE AT THE RIGHT OF 141 DEGREES 10 MINUTES 25 SECONDS; THENCE RUN IN A NORTHEASTERLY DIRECTION ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 131.81 FEET AND THE POINT OF BEGINNING. SAID PARCEL CONTAINS 34,893 SQUARE FEET OR 0.813 ACRES (MORE OR LESS).

117 SEMINOLE CIRCLE - SUITE 407 - BIRMINGHAM, ALABAMA 35205
PHONE: (205) 948-2425 FAX: (205) 948-2022 E-MAIL: GW121@aol.com

Exhibit A

- 12. This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama. Any provisions in this Agreement which shall prove to be invalid, void or illegal, shall in no way affect, impair or invalidate any other provisions hereof.
- 13. This is of the essence of this Agreement and each and every provision hereof. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute one and the same Agreement.
- 14. It is the intent that each of the covenants, covenants, conditions, restrictions, rights and obligations set forth herein shall run with the land and bind each party hereto and their respective successors, assigns and licensees-in-title.
- 15. No amendment to this Agreement shall be binding on any party to this Agreement unless such amendment is in writing and executed by the parties hereto and their respective successors or successors-in-title with the same formality as this Agreement is executed. The benefit of the agreements and covenants created herein are not assignable by the parties hereto except to their successors or successors-in-title to the benefited property.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed, sealed and delivered as of the day and year first above written.

"RCCH":

RCCH MONTCLAIR I, LLC, a Georgia Limited Liability company

By: Resource Capital Group, Inc., a Delaware corporation, its sole member

By: Albert G. Schmege, III, President

(CORPORATE SEAL)

"BROWN":

James N. Brown, III

EXHIBIT A
to Declaration of Covenants Agreement

TRACT 1:

A parcel of land located in the Southwest 1/4 of the Southwest 1/4 of Section 33, Township 17 South, Range 2 West, more particularly described as follows:

Begin at the Northwest corner of the Southwest 1/4 of the Southwest 1/4 of Section 33, Township 17 South, Range 2 West, and run in an Easterly direction along the Northern boundary line of said N - 1/4 section for a distance of 516.43 feet to a point thence with a deflection angle to the right of 142 degrees 49 minutes 46 seconds and run in a Southwesterly direction for a distance of 63.31 feet to a point and also a point on a curve to the left, said curve having a radius of 3744.83 feet, a central angle of 02 degrees 17 minutes 27 seconds, a chord distance of 149.72 feet and an interior chord angle from tangent of 81 degrees 08 minutes 43 seconds; thence run in a Southwesterly direction along the arc of said curve for a distance of 149.72 feet; thence turn an interior angle from chord of 181 degrees 08 minutes 44 seconds and run in a Southwesterly direction and parallel to the centerline of the Old L&N Railroad (abandoned) for a distance of 436.01 feet; thence turn a deflection angle to the right of 127 degrees 35 seconds and run in a Northerly direction along West boundary of said Section 33 for a distance of 408.36 feet and the point of beginning.

TOGETHER with Lot 1, Brown Development, L.L.C. Addition to Mountain Brook, as recorded in Plat Book 207, page 44 of the Public Records of Jefferson County, Alabama;

The aforesaid property being collectively described as follows:

A portion of the Southwest Quarter of the Southwest Quarter of Section 33, Township 17 South, Range 2 West, Jefferson County, Alabama, being more particularly described as follows:

Commence at the Northwest corner of the Southwest Quarter of the Southwest Quarter of Section 33; thence run Southwesterly along the West line of said Section 33, for a distance of 408.36 feet; thence turn an interior angle to the right of 82 degrees 12 minutes 23 seconds for a distance of 146.46 feet; thence turn an angle to the left of 52 degrees 28 minutes 22 seconds for a distance of 322.02 feet to a point on the Northerly right-of-way line of Mountain Road (30' right-of-way) and a point on a curve being concave Northwesterly having a radius of 3759.82 feet; thence turn an interior angle to the right of 57 degrees 33 minutes 20 seconds along the chord of said curve for a chord length of 171.32 feet (delta = 02 degrees 36 minutes 40 seconds, arc length = 171.34 feet); thence departing said right-of-way line turn an interior angle of 122 degrees 32 minutes 38 seconds from chord of said curve for a distance of 332.79 feet; thence turn an interior angle to the right of 96 degrees 30 minutes 43 seconds and run Northwesterly for a distance of 17.16 feet; thence turn an exterior angle to the left of 41 degrees 50 minutes 52 seconds for a distance of 63.31 feet; thence turn an interior angle to the right of 37 degrees 10 minutes 14 seconds and run Westerly for a distance of 516.43 feet to the point of beginning.

14118_1200498 8, 2004CSM

APPENDIX 4

STATE OF GEORGIA)
FULTON COUNTY)

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Albert G. Schmege, III, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day, that being informed of the contents of the conveyance he/she executed the same voluntarily and with authority on the day the same bears date.

Given under my hand and official seal this _____ day of _____, 2004.

Notary Public
My Commission Expires:

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned Notary Public in and for said County, in said State, hereby certify that James N. Brown, III, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day, that being informed of the contents of the conveyance he/she executed the same voluntarily and with authority on the day the same bears date.

Given under my hand and official seal this _____ day of _____, 2004.

Notary Public
My Commission Expires:

TRACT 2:

Lot 2, according to the Map of Mountain Brook Development Company's Survey, Second Addition, as recorded in Map Book 102, page 106, in the Public Office of Jefferson County, Alabama.

All being situated in Jefferson County, Alabama.

UNOFFICIAL

14118_1200498 8, 2004CSM

The above described Property does not constitute the homestead of Grantor or his spouse.

THE PURPOSE OF THIS INSTRUMENT is to make and set covenants on the Property in favor of Crestbrook Plaza Partners and the adjacent estate of Crestbrook Plaza Partners, such covenants to run with the land and be binding upon all successors in interest of the Property.

NOW THEREFORE, the undersigned does hereby adopt the conditions, restrictions, covenants and limitations set forth in the agreement attached hereto as Exhibit A, which shall apply in its entirety to those portions of the Property referenced at Exhibit A. No other benefits be included as a part of the consideration in transferring and conveying any title or interest in or to any part of the Property.

DECLARANT DOES HEREBY COVENANT, for himself, his successors, heirs and assigns, with Crestbrook, its successors, and assigns: (a) that Declarant is, at the time of these presents, lawfully seized in fee simple of the Property; (b) that Declarant has a good right to create the restrictive covenants stated herein.

IN WITNESS WHEREOF, on this 27th day of January, 2000, James N. Brown, III, has hereto set his hand and put behind a notary public.

James N. Brown, III

STATE OF ALABAMA
COUNTY OF JEFFERSON

I, THE UNDERSIGNED AUTHORITY, a Notary Public in and for said county, hereby certify that James N. Brown, III, whose name 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 said instrument, he executed the same voluntarily as her individual act on the day and yet set forth above.

NOTARY PUBLIC
My Commission Expires: 12/31/2002

Begin at the northwest corner of the southwest 1/4 of the southwest 1/4 of section 33, Township 17 South, Range 2 West, and run a Southeastery direction along the northern boundary line of said section for a distance of 516.63 feet to a point; thence turn a deflection angle to the right of 142 degrees or 49 minutes 46 seconds and run in a southeasterly direction for a distance of 63.31 feet to a point and also a point on a curve to the left, said curve having a radius of 3744.83 feet, a central angle of 02 degrees 04 minutes 27 seconds, a chord distance of 149.72 feet and an interior angle from tangent of 181 degrees 08 minutes for three seconds; thence running in a southeasterly direction along the arc of said curve for a distance of 149.73 feet; thence turn an interior angle from left of 181 degrees 08 minutes 44 seconds and run in a southeasterly direction parallel to the centerline of the old L & N Railroad (Abandoned) for a distance of 436.81 feet; thence turn a deflection angle to the right of 127 degrees 47 minutes 35 seconds and run in a southeasterly direction along West boundary of said section 33 for a distance of 408.36 feet and the point of beginning. Said parcel contains 103,641 square feet (2.38 acres, more or less).

(description prepared by Gardner, White & Strong)

"Soil" shall mean grass, grass or similar ground covering substantially similar to the ground covering used for the general landscaping of the Crestbrook Property.

"Southeast Boundary" shall mean the registration property line separating the Development (and any other land owned or controlled by Developer) from the Crestbrook Property.

"Wall" shall mean the wall contemplated and planned by Developer to be constructed along or near the Southeast Boundary and depicted on the November 14, 1999 City Of Birmingham application for preliminary Site Plan Approval Z-99.

2. Wall. Developer is currently planning to construct a wall on or near the Southeast Boundary (hereinafter "Wall"). Developer shall either (a) complete the Development with no wall within 10 feet of the Southeast Boundary or, (b) if the Wall is constructed, Developer shall construct it to meet the following minimum specifications:

A. Construction. The Wall shall be constructed in such a manner as to be faced by 8" by 8" by 16" split face concrete block of a color and texture substantially identical to the Keystone "segmented" walls currently existing on the Crestbrook Property. Developer has provided Crestbrook with an exemplar of said block.

B. Location. The Wall shall be constructed at least four (4) feet back (towards the Development) from the Crestbrook curb, measured as a horizontal distance and perpendicular to the line of the Crestbrook curb. The Wall's "set back" shall disregard any footing thereof which is below the ground and covered by soil.

Prior to construction of the Wall described above, (a) Developer shall have a land surveyor licensed to practice in the State of Alabama examine and physically mark the location of the Wall on the property through use of stakes or flags, such markings to "locate" the

APPENDIX 4

STATE OF ALABAMA
COUNTY OF JEFFERSON

Exhibit A

This instrument prepared by David G. Brown, 2700 East Lake Blvd, Birmingham, Alabama 35208, 2000-07-08

AGREEMENT

THIS AGREEMENT, (hereinafter "Agreement") is made and executed on this 27th day of March, 2000, by and between Crestbrook Plaza Partners, an Alabama partnership with its principal place of business in Jefferson County, Alabama (hereinafter "Crestbrook") and Brown Development, L.L.C., an Alabama Limited Liability Company having its principal place of business in Jefferson County, Alabama. William R. Brown and James N. Brown, III (hereinafter collectively "Developer").

WHEREAS, Developer has undertaken to develop certain property located in Jefferson County and adjacent to the property owned by Crestbrook.

WHEREAS, Crestbrook believes that Developer's development plans will have an impact on Crestbrook.

WHEREAS, a dispute has arisen between Developer and Crestbrook concerning the zoning restrictions related to Developer's proposed development.

WHEREAS, the parties have agreed to settle this dispute based upon Developer making certain landscaping and construction concessions in exchange for Crestbrook's agreement to not otherwise contest Developer's activities as stated herein.

NOW THEREFORE, the parties acknowledge and agree as follows:

1. Definitions.

"Crestbrook Curb" shall mean the concrete curb of the parking lot owned or controlled by Crestbrook and located generally parallel to the Southeast Boundary.

"Crestbrook Property" shall mean the property owned by Crestbrook, located adjacent to the Development and having a street address of 3918 Montclair Road, Birmingham, AL 35213 which is more particularly described on Exhibit A.

"Developer" shall mean Brown Development, L.L.C., James N. Brown, III and William R. Brown, their collective successors, heirs and assigns, including without limitation, any condominium association or other homeowners or unincorporated association ultimately responsible for the common areas of the Development or any part of the Development.

"Development" shall mean the development proposed by Developer in the request for variance filed with the City of Birmingham, and docketed as variances request 99-141. This being one and the same development as that development made the subject matter of the request for site plan approval filed with the City of Birmingham and docketed as Request Z-45-99. All of the foregoing reflecting that land described as follows:

A parcel of land located in Jefferson County, Alabama, in the southwest 1/4 of the southwest 1/4 of section 33, Township 17 South, Range 2 West, more particularly described as follows:

Crestbrook side of the Wall, (b) Developer shall present the results of said survey and to Crestbrook and (c) Crestbrook shall pre-approve the location of the Wall, which such approval shall not be unreasonably withheld.

D. Vegetation. The Wall shall be vegetated with "weeping fig" or such other vine or vegetation screening that is to be pre-approved by Crestbrook, which such approval shall not be unreasonably withheld.

E. Soil. Any portion of the Development located on the Crestbrook side of the Wall shall be covered with soil within one hundred and twenty (120) days of the erection of the Wall.

F. Watering System. Developer shall install a watering system in the form of a "soaker" line or hose or such other appropriate in-ground, non-spraying, watering mechanism approved by Crestbrook (which such approval shall not be unreasonably withheld) and designed to water the Soil and the "weeping fig" (or other screening). The watering system shall be maintained by Developer in perpetuity within the meaning and requirements of the Mountain Brook Zoning Ordinance No. 1356, Section 18-1-B-4.1.

3. Landscaping. Developer shall place a Buffer between the Development side of the Wall and situated between the Wall and the structure of the Development and meeting the following specifications:

A. Trees. The Buffer or Buffer shall be composed of "Cherry Laurels" of an average initial above ground height of not less than 6 feet (as planted) or trees of such other variety approved by Crestbrook in advance (which such approval shall not be unreasonably withheld).

B. Buffer. The Buffer shall comply in all respects with City of Mountain Brook Ordinance No. 1356 (Section 18-1-B-4.1), which states as follows:

For a buffer or green belt, a planted a strip of land at least fifteen (15) feet in width, composed of living deciduous or evergreen trees spaced not more than ten (10) feet apart, and at least one (1) row of dense evergreen shrubs spaced not more than five (5) feet apart, all of which shall be maintained in perpetuity by the property owner who is required to establish such buffer or green belt, or his heirs, successors or assigns.

The actual location and density of the trees and shrubs shall be pre-approved by Crestbrook and such approval shall not be unreasonably withheld.

Developer shall have the right but not the obligation to erect a "privacy wall" or "screen" (hereinafter "Privacy Wall") within the Buffer provided that the following restrictions are met:

- (1) The Privacy Wall shall not be more than six feet in height.
(2) Crestbrook shall pre-approve the aesthetics of the Privacy Wall facing the Crestbrook Property and such approval shall not be unreasonably withheld.

- (3) The inclusion of the Privacy Wall shall not in any way reduce the requirements of the density of trees and shrubs in the Buffer as set forth above. That portion of the Buffer on the Crestbrook side of the Privacy Wall shall include at least one row of the trees and one row of the shrubs required in the above provision (City of Mountain Brook Ordinance No. 1354, Sections 19-18-4.1).

4. **Building Set-Back.** The "footprints" of the homes constructed by Developer in the Development shall be in substantial conformity with the locations depicted on the site plan application submitted by Developer to the City of Birmingham on or about November 16, 1998 in the application for preliminary Site Plan Approval Z-45-99, a copy of which is attached hereto as Exhibit B. Said plan application shall include a site to be constructed on the respective subsection "set-backs" from the Subdivision Boundary:

UNIT	Set-Back
5 & 6	10 feet
7 & 8	20 feet

Developer shall not alter the general location of the structures shown in the above described locations except to the extent that Developer may vary the siting of structures provided that the horizontal distance of the closest part of the structure measured at ground level from the Subdivision Boundary shall be the same or greater than that set forth on the above reference of the set-backs having the minimum setbacks stated above. The "set back" of the structures shall disregard any attached porches and appurtenances thereof provided that such appurtenances shall not be more than one foot in projection at their widest point.

Prior to construction of Units 5, 6, 7 & 8 described above (or any structures planned to be constructed in lieu of said structures), (a) Developer shall have a land survey licensed to practice in the State of Alabama confirm the locations of the building "footprints"; (b) Developer shall present or deliver the results of said survey to Crestbrook; and (c) Crestbrook shall preapprove the locations of those building footprints, which such approval shall not be unreasonably withheld.

5. **Contingencies.** Crestbrook's obligations under this paragraph 5 are contingent upon the following:

- A. **Restrictive Covenant.** Execution by the record owner of the property needs the benefit of the Development entailing or placing a restrictive covenant on the property embraced by the Development setting forth the requirements of this Agreement in such a manner as to make those requirements binding on all successors in interest to the land.

Upon satisfaction of the foregoing conditions, Crestbrook shall:

- B. **Litigation.** Move the court for leave to dismiss with prejudice its Petition For Judicial Review/Appeal filed in the Circuit Court for Jefferson County, Alabama and there docketed as CV 9904313. If the court does not grant leave to dismiss the same, then Crestbrook shall actively prosecute the action and will permit a judgment to be entered against it.
- C. **Municipal Approval.** Not further contest any application by Developer for zoning, permits and approvals (including variances) from Jefferson County, the City of Birmingham and the City of Mountain Brook in furtherance of the Development to the extent that (a) such applications, requests and activities of Developer are consistent with the terms of this

to create the easement contemplated herein and (c) that he will warrant and defend his title in the premises and the contents and substance of said easement and the rights thereof to said Crestbrook.

- (iv) Complete and Accurate Disclosure. Neither this Agreement nor any other statement or document delivered by Developer to Crestbrook in connection with this Agreement contains any statement which, at the time and under the circumstances under which it is made, is false or misleading with respect to any material fact or omits to state any material fact necessary to make the statements contained in this Agreement or therein not false or misleading.

7. Remedies.

- A. **Injunctions andTROs.** The parties expressly agree that legal remedies may be inadequate to compensate the aggrieved party, and, therefore, the parties further agree that equitable relief under Rule 65 of the Alabama and Federal Rules of Civil Procedure is and shall be available to both parties for the enforcement of this Agreement and that such relief shall be in addition to and not in lieu of any legal remedy to which the party may be entitled. Furthermore, and without in any way limiting the foregoing, Developer agrees that such injunctive relief shall be available to Crestbrook for a multiplicity of structures and that said injunctive relief shall require Developer to move and reconstruct any structure placed in a manner inconsistent with this Agreement and Developer hereby expressly waives the defenses of laches, undue hardship or other similar defenses to a demand by Crestbrook that a structure be removed and reconstructed in a manner consistent with this Agreement.

- B. **Attorney Fees.** The parties agree that if either party is required to bring legal action to enforce this Agreement, then the aggrieved party in such action shall be entitled to recover the expenses (including attorney fees and the expenses of any successful appeals) as part of the reasonable costs of such recovery of expenses that he in addition to any amount which the prevailing party is otherwise entitled to recover.

- C. **Jurisdiction & Venue.** Any action to enforce this Agreement shall be brought in the Circuit Court for Jefferson County, Alabama (Birmingham Division) or the United States District Court for the Northern District of Alabama unless subject matter jurisdiction is lacking. The parties hereby consent to the personal jurisdiction of such courts.

- D. **Disclaimer, Waiver & No Release.** This Agreement does not constitute a waiver, consent or release by Crestbrook with respect to any aspect of the Developer's activities at the Development or an assumption of risk or liability with respect to the engineering, construction, workmanship or any other aspect of the Development.

The parties' legal and equitable rights against each other, their collective agents, servants, contractors and affiliates and any other third parties are unaffected by this Agreement except to the extent expressly waived herein.

9. Miscellaneous.

- A. **Drawings.** The parties to this Agreement did not conduct a survey for the specific purpose of setting the terms of this Agreement. Consequently, the interests of the parties are to be determined in a manner consistent with the terms of this Agreement notwithstanding any

APPENDIX 4

Agreement and the Birmingham Preliminary Site Plan Approval Z-45-99 and (b) Developer is not then in breach of any term or condition of this Agreement.

6. Warranties

A. Crestbrook's Warranties.

- (i) **Organization and Qualification.** Crestbrook is a partnership duly organized, validly existing, and in good standing under the laws of the State of Alabama.

- (ii) **Authorization of Transaction.** Crestbrook has full power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement. This Agreement constitutes the valid and legally binding obligation of Crestbrook, enforceable in accordance with its terms and conditions. Crestbrook need not give any notice to, make any filing with, or obtain any authorization, consent, or approval of any Governmental Body in order to consummate the transactions contemplated by this Agreement.

- (iii) **Title.** Crestbrook, for itself, its successors, heirs and assigns, hereby covenants that Crestbrook Plaza Partners is, at the date of here recording, lawfully seized in fee simple of the Crestbrook Property.

- (iv) **Agent.** Ernie Wood shall be the designated agent of Crestbrook for the "approval" contemplated in and by this Agreement.

- (v) **Complete and Accurate Disclosure.** Neither this Agreement nor any other statement or document delivered by Crestbrook to Developer in connection with this Agreement contains any statement which, at the time and under the circumstances under which it is made, is false or misleading with respect to any material fact or omits to state any material fact necessary to make the statements contained in this Agreement or therein not false or misleading.

B. Developer's Warranties.

- (i) **Organization and Qualification.** Brown Development, L.L.C. is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Alabama.

- (ii) **Authorization of Transaction.** Developer has full power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement and this Agreement has been duly executed and delivered by Developer. This Agreement constitutes the valid and legally binding obligation of Developer, enforceable in accordance with its terms and conditions. Developer need not give any notice to, make any filing with, or obtain any authorization, consent, or approval of any Governmental Body in order to consummate the transactions contemplated by this Agreement.

- (iii) **Title.** James N. Brown, III, for himself, his successors, heirs and assigns, hereby covenants that (a) James N. Brown, III is, at the time of these presents, lawfully seized in fee simple of the property described herein as the "Development"; (b) that James N. Brown, III has a good right

matter depicted in a drawing or survey described in the definitions of Development which is inconsistent with this Agreement.

- B. **Entire Agreement.** This document, together with referenced exhibits and instruments, constitutes the entire agreement between the parties regarding the matters addressed in this Agreement and supersedes all prior discussions, negotiations and agreements between the parties, whether oral or written. No party, nor any third party, shall be bound by any understanding, agreement, promise, understanding or representation concerning the subject matter of this Agreement, expressed or implied not specified herein.

IN WITNESS WHEREOF, Crestbrook Plaza Partners has caused this instrument to be executed in its name and on its behalf all by its duly authorized general partner, Ernie Wood on this 2nd day of March, 2000.

CRESTBROOK PLAZA PARTNERS.

[Signature]
By Ernie Wood, its general partner

STATE OF ALABAMA
JEFFERSON COUNTY

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Ernie Wood, whose name as general partner of Crestbrook Plaza Partners, 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 said instrument, he, at such time and with full authority, executed the same voluntarily for and as the act of said partnership as of the date of this day.

GIVEN under my hand and official seal this 2nd day of March, 2000.

NOTARY PUBLIC
My Commission Expires: 15 NOV 2002

IN WITNESS WHEREOF, Brown Development, L.L.C. has caused this instrument to be executed in its name and on its behalf all by its duly authorized president (manager), William R. Brown on this 2nd day of March, 2000.

BROWN DEVELOPMENT, L.L.C.

[Signature]
By William R. Brown, its president (manager)

STATE OF ALABAMA
JEFFERSON COUNTY

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that William R. Brown, whose name as president (manager) of Crestbrook Plaza Partners, is signed to the

granting instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and in the name of said partnership on the date set forth above.

GIVEN UNDER MY HAND AND OFFICIAL SEAL THIS 27th day of March, 2000.

NOTARY PUBLIC
My Commission Expires: 15 NOV 2000

IN WITNESS WHEREOF, on this 27th day of March, 2000, William K. Brown, has hereunto set his hand and seal before a notary public.

William K. Brown

William K. Brown

STATE OF ALABAMA
COUNTY OF JEFFERSON

I, THE UNDERSIGNED AUTHORITY, a Notary Public in and for said county, hereby certify that, William K. Brown, whose name is placed to the foregoing instrument, and who is known to me, acknowledged before me on this day that being informed of the contents of the said instrument, he executed the same voluntarily as her individual act on the day and yet set forth above.

GIVEN UNDER MY HAND, this the 27th day of March, 2000.

NOTARY PUBLIC
My Commission Expires: 15 NOV 2000

IN WITNESS WHEREOF, on this the 27th day of March, 2000, James N. Brown, III, has hereunto set his hand and seal before a notary public.

James N. Brown, III

James N. Brown, III

STATE OF ALABAMA
COUNTY OF JEFFERSON

I, THE UNDERSIGNED AUTHORITY, a Notary Public in and for said county, hereby certify that, James N. Brown, III, whose name 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 said instrument, he executed the same voluntarily as her individual act on the day and yet set forth above.

GIVEN UNDER MY HAND, this the 27th day of March, 2000.

NOTARY PUBLIC
My Commission Expires: 15 NOV 2000

State of Alabama - Jefferson County
I certify this instrument filed on
2000 MAR 31 P.M. 12:59
Recorded and
and \$ 27.00
GEOFFREY R. WATKINS, Notary Public
400004/S223

Page 8 of 8 Pages.

way line of Montclair Road, formerly called Old Bankhead Highway; thence turn an angle to the left of 128°15' and run Southwesterly along the Northwest right of way line of said road for a distance of 234.97 feet for a point of beginning; thence turn an angle to the right of 128°47' and run Northwesterly a distance of 241.65 feet to an intersection with the Southeastern right of way line of Old L. S. Mineral Branch Railroad; thence turn an angle to the left of 112°23' and run Southwesterly along said old railroad right of way line for a distance of 110 feet; thence turn an angle to the left of 62°09' and run South parallel with the East boundary line of said NW 1/4 of 34 for a distance of 276.81 feet to the Northwest right of way line of Montclair Road or Old Bankhead Highway; thence turn an angle to the left of 128°15' and run Northwesterly along said road or highway right of way line for a distance of 145 feet to the point of beginning. Subject to easements for utilities, if any. Subject to assessment for sanitary sewer, if any. Minerals and mining rights excepted.

There is hereby expressly reserved unto grantor, his heirs, executors, administrators, successors, and assigns, an easement and right-of-way for the purpose of ingress and egress and utilities upon and across the property conveyed by this deed. The location of the reserved easement and right-of-way is described as follows: Commence at the Southeastern corner of Lot 2 of Map of a Subdivision of Mountain Brook Properties, Inc. as recorded in Map Book 65, Page 95 in the Office of the Probate Judge, Jefferson County, Alabama, and run in a Northeasterly direction along the Southeast line of said Lot 2, said line also being the Northwesterly right-of-way line of Montclair Road (Old Bankhead Highway), a distance of 55.18 feet to the POINT OF BEGINNING of the herein described parcel; thence deflect 58°13'00" to the left and run in a Northerly direction and parallel to the East line of Lot 1 that adjoins with Lot 1 of said subdivision a distance of 251.66 feet to a point on the Southeastern line of an abandoned railroad, right-of-way; thence turn an interior angle of 112°23', more or less, and run to the right in a Northeasterly direction along said Southeastern right-of-way a distance of 145 feet, more or less, to the Northwest corner of Lot 1 of said subdivision; thence turn an interior angle of 67°37', more or less, and run to the right in a Southerly direction along the common line between Lots 1 and 2 a distance of 241.65 feet, more or less, to the point of intersection of said common property line with the Northwest right-of-way line of said Montclair Road; thence run in a Southeasterly direction along the Northwesterly right-of-way line of Montclair Road a distance of 145 feet, more or less, to the point of beginning of the herein described easement and right-of-way; containing 0.3 acre, more or less.

TO HAVE AND TO HOLD to the said grantees, their successors and assigns forever.

And we do for ourselves and for our heirs, executors, and assigns forever.

APPENDIX

This Instrument Prepared By: Sand Tax Notice To:
M. Miller Peterson, Esq. Ed. J. Trust
4343 Altapark Road 4953 Altamont Road
Birmingham, Alabama 35213 Birmingham, Alabama 35213

CORRECTION DEED

STATE OF ALABAMA
JEFFERSON COUNTY

This CORRECTION DEED (composed of the herein-contained Correctio Warranty Deed and Correction Outlets Deed) made on April 23, 1991, of:

1. That certain Correction Deed dated December 18, 1978, executed by Edward J. Peterson and wife, Margaret A. Peterson, and recorded in Real Property Volume 1707 at Pages 167-168 in the Office of the Judge of Probate, Jefferson County, Alabama; and
2. That certain Correction Warranty Deed dated April 12, 1978, executed by Edward J. Peterson and wife, Margaret A. Peterson, as recorded in Real Property Volume 1646 at Pages 638-639 in the Office of the Judge of Probate, Jefferson County, Alabama; and
3. That certain Warranty Deed dated December 27, 1976, executed by Edward J. Peterson and wife, Margaret A. Peterson, and recorded in Real Property Volume 1385 at Pages 439-440 in the Office of the Judge of Probate, Jefferson County, Alabama;

THIS CORRECTION DEED BEING FOR the purpose of conveying, in its entirety, Lot Two (2) Mountain Brook Properties, Inc. as recorded in Map Book 65, Page 95 in the Office of the Probate Judge, Jefferson County, Alabama, as follows:

CORRECTION WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that in consideration of One Dollar (\$1.00) to the undersigned grantor, Edward J. Peterson, in hand paid by the grantees herein, the receipt whereof is acknowledged, we, the said Edward J. Peterson, and wife, Margaret A. Peterson, grant, bargain, sell and convey unto Margaret Ann Miller Peterson and Betty Marie Morrow, as trustees of the "E.J.P. Trust", (hereinafter referred to as grantees), the following described real estate, situated in Jefferson County, Alabama, to-wit:

Part of the Northwest quarter of the Southwest quarter of Section 33, Township 17 South, Range 2 West, Jefferson County, Alabama, more particularly described as follows: Commence at the Southeast corner of the NW 1/4 of said Section 33 and run North along the East boundary line thereof for a distance of 264.87 feet to an intersection with the Northwesterly right of

administrators covenant with the said grantor, his heirs, executors, administrators, successors, and assigns, that they are lawfully seized of the premises; that they are free from all claims, liens, mortgages, or other claims of all persons, and that we have a good and lawful title to the same as if granted; that we, the undersigned grantor, do hereby covenant and assign unto the said grantees, their successors and assigns, forever, against the lawful claims of all persons.

IN WITNESS WHEREOF, we have hereunto set our hands and seals, this 23rd day of April, 1991.

Edward J. Peterson (Seal)
Margaret A. Peterson (Seal)

AGREED TO AND ACCEPTED
this 23rd day of April, 1991:

Margaret Ann Miller Peterson
Margaret Ann Miller Peterson,
as trustee of the "E.J.P. Trust"
Betty Marie Morrow
Betty Marie Morrow,
as trustee of the "E.J.P. Trust"

(Acknowledgments Below)

CORRECTION QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, that in consideration of the sum of One Dollar (\$1.00) to the undersigned grantor, the receipt whereof is acknowledged, the undersigned grantor, Edward J. Peterson and wife, Margaret A. Peterson, hereby grant, bargain, sell, and convey to Margaret Ann Miller Peterson and Betty Marie Morrow, as trustees of the "E.J.P. Trust", all their right, title interest and claim in and to the following described real estate, situated in Jefferson County, Alabama, to-wit:

That part of Lot 2 according to a subdivision of Mountain Brook Properties, Inc. as recorded in Map Book 65, Page 95 in the Office of the Probate Judge, Jefferson County, Alabama, which line of the abandoned railroad, right-of-way of the abandoned L. S. Mineral Branch Railroad, being more particularly described as follows: Commence at the Southeastern corner of said Lot 2 according to the survey of

STATE OF ALABAMA)
JEFFERSON COUNTY)

DECLARATION OF PROTECTIVE COVENANTS AND AGREEMENTS OF CALTON HILL AT MOUNTAIN BROOK

This Declaration of Protective Covenants and Agreements ("this Declaration") is entered into by NJK, LLC, an Alabama limited liability company ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property located partially in the City of Mountain Brook and partially in the City of Birmingham ("the Property") situated in Jefferson County, Alabama (the Property will be more particularly described below); and

WHEREAS, Declarant filed a subdivision plat of that portion of the Declarant's Property which is located within the City of Mountain Brook, pursuant to which the property was resurveyed into five (5) lots referred to as Calton Hill at Mountain Brook, Sector 1, as recorded in Map Book at Page in the Office of the Judge of Probate of Jefferson County, Alabama (hereinafter "The Mountain Brook Subdivision"); and

WHEREAS, Declarant filed a subdivision plat of that portion of the Declarant's Property which is located within the City of Birmingham, pursuant to which the property was resurveyed into lots referred to as Calton Hill at Mountain Brook, Sector 2, as recorded in Map Book at Page in the Office of the Judge of Probate of Jefferson County, Alabama (hereinafter "The Birmingham Subdivision"); and

WHEREAS, The Mountain Brook Subdivision and The Birmingham Subdivision are adjacent to one another and are jointly referred to herein as the "Subdivisions" or "Calton Hill at Mountain Brook"; and

WHEREAS, Calton Hill at Mountain Brook consists of () subdivided building lots (hereinafter referred to collectively as "Lots"); and

WHEREAS, Declarant desires to subject the Subdivisions to the protective covenants, agreements, and easements set forth in this Declaration;

NOW THEREFORE, Declarant hereby declares, covenants, and agrees that the Subdivisions and each of the Lots included in the Subdivisions shall be subject to the covenants, conditions, restrictions, 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 Subdivisions in a desirable and uniform manner suitable in architectural design, and all of which shall run with the land and shall be binding on all parties having or acquiring any right, title, or interest in the Subdivisions or any part hereof, and shall be for the benefit of the owners of the Lots or any interest

therein, and shall inure to the benefit of and be binding upon each successor in interest to the owners thereof.

ARTICLE I LAND USE AND BUILDING TYPE

Land Use and Building Type. Each Lot will be used for residential purposes only, and no trade or business purposes, including all types of home industry, will be permitted. No building or structure other than one (1) single family dwelling house shall be erected on any Lot within the Subdivisions except any pool house or green house which is approved by the ARC (hereinafter defined) or as otherwise permitted herein.

ARTICLE II BUILDING RESTRICTIONS AND MAINTENANCE REQUIREMENTS

2.1 Design Criteria. The objective of the Association (as hereinafter defined) shall be to present a traditional architectural environment for the Subdivisions and to provide for maintenance and upkeep thereof. Improvements upon the Property shall be installed in accordance with this Declaration and plans and specifications which are approved by the ARC or its designee pursuant to the provisions of ARTICLE VII of this Declaration.

2.2 Temporary Structures. No trailer, tent, shack, barn, servant house, garage, or other outbuilding shall be erected on any Lot within the Subdivisions with the exception of Declarant's temporary construction office and sales trailer and Declarant's materials storage trailer.

2.3 Fences and Walls. No fences or walls shall be constructed on the Subdivisions unless first approved by the ARC. Declarant intends to construct a wall (the "Perimeter Wall") along the outside perimeter of a portion of the Subdivisions. The Association shall maintain the structure and exterior surface of the Perimeter Wall, and the owners of those of the Lots which are adjacent to the Perimeter Wall, shall maintain the interior surface (the surface facing the Lot) of the portion of the Perimeter Wall which is adjacent to each of their respective Lots.

2.4 Utilities, Wiring and Antennae.

(a) No external or outside antennae of any kind shall be maintained on any Lot. Satellite dishes may be maintained on a Lot provided that prior written approval of the size and location of same is obtained by the owner of the Lot from the ARC.

(b) Each Lot shall be connected to utility service lines (including, but not limited to, gas, water, sewer, cable television, and electricity) at the points designated by Declarant.

2.5 Mailboxes and Lamp Posts. All mailboxes, lamp posts, street lighting, and posts must be constructed and located according to Declarant's specifications.

2.6 Failure to Maintain or Obtain Approval. All structures and improvements shall be properly maintained in good condition and repair, and shall be used and occupied in full compliance with the provisions of this Declaration and otherwise in compliance with plans and specifications approved pursuant to the provisions of this Declaration. Any structure or

improvement on any Lot which is altered, erected, placed, maintained, used, or occupied upon any Lot in violation of the provisions of this Declaration, shall be removed, re-altered, or repaired, and any such use shall be terminated, so as to extinguish such violation, at the expense of the owners and occupants of any such Lot. Until the sale of all of the Lots by Declarant, the approval by Declarant shall be necessary to invoke the provisions of this paragraph. Subsequent to the sale of all of the Lots by Declarant, approval by the Board of Directors of the Association shall be necessary to invoke the provisions of this paragraph.

2.7 Drainage and Detention System. Declarant shall construct, at its sole expense, a storm water control, drainage, and detention system ("the Detention System"). The Detention System shall comply with all applicable federal, state, and local laws, ordinances, regulations, conditions, standards, and requirements applicable thereto. The Detention System shall be for the benefit of all of the Lots in the Subdivisions. Upon the completion of the installation of the Detention System by Declarant and the establishment of the Association, the maintenance of the Detention System shall be by and at the expense of the Association. At a minimum, Detention System maintenance shall include the following:

- (a) Regular inspection, repair, clearance, and maintenance of control structures and other inlets to the Detention System and removal of sediment deposits and other debris that may accumulate in the control structure and other inlets;
(b) Control, stabilization, or correction of erosion that may occur at the inlet or exit point for discharges to and from the Detention System; and
(c) Repair, replacement, or restoration of deteriorated, defective, worn, non-operative, or non-functioning components, elements, or features of the Detention System.

2.8 Garage and Parking. All homes located on the Lots shall have a two-car parking minimum capacity.

2.9 Minimum Square Footage. The minimum square footage of a home on a Lot in The Mountain Brook Subdivision is 3,000 square feet.

2.10 Landscaping. All landscaping on any Lots within the Subdivisions shall be subject to approval by the ARC, which approval shall not be unreasonably withheld or delayed.

2.11 Window Screens. Except as provided hereinbelow, screens shall not be allowed on the windows or doors of any dwelling unless they are approved by the ARC. If screens are approved by the ARC, then the design, materials, colors, locations, and other specifications with respect to any such screens shall also be subject to approval by the ARC.

2.12 Minimum Price. The Declarant shall list for sale any dwelling constructed on a Lot in The Mountain Brook Subdivision for a minimum of \$410,000 and any dwelling in The Birmingham Subdivision for a minimum of \$210,000.

2.13 Violations. If the owner of any Lot upon which any violation of the provisions of this Declaration exists shall not have taken reasonable steps toward the removal or repair of the same within thirty (30) days after written notice from the Association of such violation (or within

such additional period of time as is reasonably necessary to cure said failure, provided that the cure has commenced within said period of 30 days and is being diligently pursued), the Association shall have the right to enter upon such Lot and to take steps as may be necessary to extinguish any such violation, and the cost thereof shall be a binding, personal obligation of such owner as well as a lien (enforceable in the same manner as a mortgage) upon the Lot in question. The lien provided in this paragraph 2.14 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 of competent jurisdiction in Jefferson County and a lis pendens recorded in the Office of the Judge of Probate of Jefferson County, Alabama, prior to the recordation in said Probate Office of the deed (or mortgage) conveying the Lot in question to such purchaser (or subjecting the same to such mortgage).

ARTICLE III USE OF THE PROPERTY / EASEMENTS

3.1 Signs. No sign of any kind shall be displayed on any Lot to the public view except signs of not more than five (5) square feet to advertise a home for sale; provided, however, that the Declarant or its duly authorized agents may erect and maintain structures, improvements, or signs necessary or convenient to the development, sale, operation, or other disposition of the Lots.

3.2 Animals. No animals, birds, livestock or insects shall be kept, maintained, or bred on any of the Subdivisions except that not more than two (2) dogs, two (2) cats, and two (2) birds may be kept on each Lot as domestic pets, provided that such domestic pets are confined to the Lot of the owner of such pets.

3.3 Garbage and Refuse. No lumber, metals, or bulk material shall be kept, stored, or allowed to accumulate on any Lot within the Subdivisions, 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 except between scheduled pick-ups and in accordance with the provisions hereof. If trash or other refuse is to be disposed of by being picked up and carried away on a regular or recurring basis, such trash or refuse may be placed in sanitary containers. Such sanitary containers may be placed in the open, on any day that a pick-up is to be made, at such place on the Lot as to provide access to the persons making such pick-up. All other times such containers shall be stored in such manner so that they cannot be seen from adjacent surrounding property.

3.4 Outside Burning. Burning of trash, refuse or other materials on any Lot within the Subdivisions shall be prohibited.

3.5 Pipes. No water pipe, gas pipe, sewer pipe, or drainage pipe shall be installed or maintained above the surface of the ground of any Lot within the Subdivisions, except for garden hoses.

3.6 Oil and Mining. No Lot within the Subdivisions shall be used for the purpose of boring, mining, quarrying, exploring for, or removing oil or other hydrocarbons, minerals, gravel or earth.

APPENDIX 4

3.7 **Nuisance.** No obnoxious, offensive or illegal activity shall be carried on upon any Lot within the Subdivisions nor shall anything be done on any Lot within the Subdivisions which may become a nuisance to the owners or occupants of other Lots within the Subdivisions.

3.8 **Storage of Boats and Trailers.** Storage of boats, boat trailers, house trailers, campers, recreational vehicles, or similar equipment or vehicles in the open on any Lot shall not be permitted.

3.9 **Air Conditioning Units.** No window or thru-the-wall air conditioning units will be permitted on the Subdivisions.

3.10 **Clothes Lines.** No clothes lines of any kind will be permitted on the Subdivisions.

3.11 **Window Treatments.** No colored drapes or curtains may be visible in front or side windows. All such window treatments must be beige or neutral in color or else lined in beige or neutral color.

3.12 **Access and Utility Easements.** Easements across each Lot for the installation and maintenance of utilities and drainage facilities and for ingress and egress are reserved as shown on the record maps for the Subdivisions. Declarant does hereby grant to each owner of the Lots or any interest therein, their successors and assigns, a non-exclusive easement for ingress, egress, and utilities over, under, upon and across that certain "Private Drive" as shown on the map and survey of The Mountain Brook Subdivision and The Birmingham Subdivision ("Calton Hill Lane"). The easements herein granted shall be permanent and perpetual, non-exclusive, and appurtenant to, and shall pass and run with title to, each Lot.

3.13 **Private Road.** Calton Hill Lane shall be for use as permanent ingress and egress for all Lot owners and to the Additional Property (if any), and no owner shall block said road or impede the use thereof by any other Lot owner or other party to whom Declarant has granted a right of ingress and egress. Calton Hill Lane shall remain a private road and shall be permanently maintained by the Association.

3.14 **Additional Property.** Declarant reserves the right to add such additional property to the development as the Declarant shall determine ("the Additional Property"). The Additional Property and any lots and common areas created within the Additional Property may be added to the Subdivisions and to the provisions of this Declaration by the execution and recordation of an amendment to this Declaration, executed only by Declarant, in which the lots and common areas to be added as Additional Property are identified and are subjected to the terms and provisions of this Declaration, provided that Declarant, at the time of such amendment, owns at least one Lot in the Subdivisions. Upon the addition of the Additional Property by Declarant, the lots within the Additional Property shall be deemed to be Lots, and the common areas within the Additional Property shall be deemed part of the Common Areas, as defined in this Declaration. In the event of the submission of the Additional Property to the provisions of this Declaration by Declarant, then the lots within the Additional Property shall be subject to (a) the terms and provisions of this Declaration, (b) the payment of assessments pursuant to ARTICLE V of this Declaration, and (c) the provisions of the Articles of Incorporation and the Bylaws of the Association, in the same manner as the () Lots originally subject to this Declaration. Any residential dwellings

constructed upon the Additional Property shall be of an architectural style which is similar to that of dwellings on the original Lots and shall be subject to approval by the ARC. Declarant also reserves the right to access such Additional Property through Calton Hill Lane and to grant unto the owners and occupants of the Additional Property a non-exclusive easement for ingress, egress and utilities over, under, upon and across Calton Hill Lane.

3.15 **Buffer Easement.** There is hereby granted to the Association an easement for the planting and maintenance of a buffer, () feet in width, along the rear property line of all Lots within The Mountain Brook Subdivision and The Birmingham Subdivision (the "Buffer Easement"). Said landscaping shall be maintained by and at the expense of the Association. Lot owners and occupants shall not add, remove, cut, disturb, or destroy any trees, plants, landscaping material, or vegetation in the Buffer Easement. The Association will be entitled to charge and assess any owner who violates the provisions of this paragraph 3.17 for the cost of replanting said landscaping and shall have the right to place a lien against the Lot owned by such owner if necessary, which lien may be foreclosed in the same manner as the foreclosure of a mortgage, as described in paragraph 2.17 above.

3.16 **Common Areas and Common Expenses.** The following are hereby designated Common Areas and will be permanently maintained by and at the expense of the Association:

- (a) the Buffer Easement;
- (b) all curbs, gutters, and paving within Calton Hill Lane;
- (c) the Detention System including all surface water detention facilities;
- (d) the entrance features and fencing located at the entry to the Subdivisions, including any landscaping, lighting and irrigation installed as a part thereof, and the common grounds (including the gazebo, any water feature, and other such improvements, if any); and
- (e) Portions of the Perimeter Wall as described in paragraph 2.3.

The Association will also be responsible for the mowing, blowing, and edging of all front and side yards on all of the Lots twice per month or every other week and trimming the shrubs in the front and side yards twice per year. Any street lighting will also be permanently maintained by and at the expense of the Association, and the City of Mountain Brook shall have no responsibility or obligation for any cost or expense associated with the maintenance of or operation thereof. The owner of each Lot shall contribute to a reserve fund (the "Reserve Fund") in an amount to be determined by the Association for deferred maintenance of the Detention System and such other of the Common Areas as are determined by the Association. The owner of each Lot shall also contribute to a reserve fund (the "Road Reserve Fund") in an amount to be determined by the Association for deferred maintenance of Calton Hill Lane. Expenses of maintaining the Common Areas and as otherwise described in this paragraph 8 shall be deemed to be, and are hereby defined as, "Common Expenses."

3.17 **Trees: Removal of Scrub Vegetation.** No tree shall be moved from or added to any Lot without the express written authorization of the Association. No trees shall be removed from the Buffer Easement or from the Entry Common Area; however, Declarant or the Association may

remove weeds, brush, scrub vegetation, and any dead or diseased trees therefrom as necessary and appropriate to maintain the health and aesthetic quality of landscaping and vegetation within said areas.

3.18 **Conveyance of Common Areas.** Declarant shall have the right to convey such right, title, and interest as Declarant owns in and to Calton Hill Lane and any of the other Common Areas to the Association, subject to the restrictions, reservations, covenants, and conditions set forth in this Declaration.

ARTICLE IV
GENERAL

4.1 **Effects of Violation on Mortgage Liens.** No violation of any of the provisions 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 Subdivisions; provided, however, that any mortgagee in actual possession, or any purchaser at any mortgagees' or foreclosure sale shall be bound by and subject to this Declaration as fully as any other owner of any portion of the Subdivisions.

4.2 **No Reverter.** No restriction herein is intended to be or shall be construed as a condition subsequent or as creating a possibility of reverter.

4.3 **Duration and Amendment.** The restrictions and covenants contained in this Declaration shall run with and bind the Subdivisions, shall inure to the benefit of and shall be enforceable by Declarant (so long as Declarant owns at least one Lot), the Association, the owner of any Lot included in the Subdivisions, the City of Mountain Brook, and their respective legal representatives, heirs, successors and assigns for a period of twenty-five (25) years, after which time said restrictions shall be automatically extended for successive periods of ten (10) years; provided, however, that all easements granted herein shall be perpetual. This Declaration may not be amended in any respect except by the execution of an instrument signed by the owners of not less than 51% of the Lots and, with respect to the provisions of paragraph 3.14, pertaining to the Buffer Easement, approval by the owners of real properties (the "Adjacent Properties") which are outside of the Subdivisions and which are adjacent to the Buffer Easement, which instrument shall be recorded 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.

4.4 **Enforcement.** In the event of a violation or breach of any of these restrictions or any amendments thereto by any owner of a Lot, or employee, agent, or lessee of such owner, then the owners of any one or more of the Lots, Declarant, the Association, or their respective heirs, successors and assigns, or any party to whose benefit these restrictions inure, including the City of Mountain Brook, and, with respect to the Buffer Easement, including the owners of the Adjacent Properties, 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 take all such courses of action at the same time, or such other legal remedy as they may deem appropriate. 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 by that party of the right to object to any continuation of said violation or the occurrence of a different violation.

APPENDIX 4

4.5 **Damages.** 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.

4.6 **Attorneys' Fees.** The prevailing party in any proceeding to enforce a restriction or to enjoin the violation of a restriction against a Lot owner may be awarded a reasonable attorney's fee against the non-prevailing party.

4.7 **No Waiver.** The failure to enforce any of the 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 occurring prior or subsequent thereto; provided, however, that approval of plans pursuant to ARTICLE VII shall be binding on any and all parties as a conclusive determination that such plans are in conformity with these restrictions.

4.8 **Notices.** Notices provided for in this Declaration or the Articles or Bylaws of the Association shall be in writing and shall be addressed to any owner at the address of the Lot and to Declarant or the Association at the address of their respective registered agent in the State of Alabama. Any owner may designate a different address for notices to such owner by giving written notice to the Association. Notices addressed as above shall be deemed delivered three (3) business days after mailing by United States Registered or Certified Mail, postpaid, or upon delivery when delivered in person, including delivery by Federal Express or other reputable courier service.

ARTICLE V
ASSOCIATION

5.1 **Establishment and Definition.** "Association" shall mean and refer to Calton Hill Homeowners' Association, Inc. its successors and assigns.

5.2 **Membership and Voting Rights.** Subject to the terms of the Articles of Incorporation of the Association and the Bylaws of the Association, every owner of a Lot which is subject to assessment as hereinafter provided shall be a member of the Association. Membership shall be appurtenant to and may not be separated from the ownership which is subject to assessment. Subject to the provisions of ARTICLE VI of this Declaration, there shall be one (1) vote for each Lot as provided in the Articles of Incorporation, and Declarant shall retain one (1) vote for each Lot still unsold.

5.3 **Assessments.**

(a) Declarant with respect to each Lot it owns within the Subdivisions, hereby covenants and agrees, and each owner of any Lot, by acceptance of the deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay to the Association: (1) annual assessments of charges, (2) assessments for the Reserve Fund and the Road Reserve Fund, and (3) special assessments for capital improvements, such as assessments to be established and collected as hereinafter provided. The assessments, together with interest, costs and reasonable attorney's fees, shall be (i) personal obligations of the owners of such Lots at the time such assessments were made; said personal obligations for delinquent assessments shall not become the personal obligations of the successors in title of any Lot owners unless expressly

assumed by such successors; and (ii) secured by a lien upon each Lot, which lien is hereby declared and imposed, and, except as otherwise provided in this Declaration, shall be binding upon all successors in title and interest in and to each Lot.

(b) The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Lot owners and for the purposes of the Association as set out in the Articles of Incorporation, and shall include the Common Expenses.

(c) The amount of annual assessments shall be fixed and determined by the Association in accordance with the Articles of Incorporation and Bylaws of the Association.

(d) In addition to the annual assessments authorized herein, the Association may impose in any assessment year a special assessment applicable to that year, for the purpose of defraying, in whole or in part, the costs of any construction, reconstruction, repair, or replacement of a capital improvement upon any Common Areas, provided that any such assessment shall first have been approved and assented to by a majority of the votes of the membership which are present and entitled to vote at the time, in person or by proxy, at any regular meeting or special meeting called for the purpose of voting on such assessment and approval, in accordance with the terms of the Articles of Incorporation of the Association and the Bylaws thereof.

(e) Except as provided in subparagraph (f) below, both annual and special assessments must be fixed at a uniform rate for all Lots and must be collected on a monthly basis.

(f) The assessments provided for herein shall commence as to each Lot within the Property on the day on which the Lot is conveyed to a person other than Declarant. Assessments shall be fixed at one-half of such assessments until such time as (i) Declarant determines that the improvements on a Lot are substantially complete, or (ii) within twelve (12) months after the date of the commencement of construction of improvements on a Lot, whichever shall first occur, at which time the Lot shall be subject to the full assessments. 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 each annual assessment. Written notice of the annual assessment shall be sent to every one subject thereto, and the due dates thereof shall be established by the Board of Directors. 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 amount of the assessments on a Lot, shall be binding upon the Association as of the date of the issuance of such certificate.

(g) Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum. The Association may bring an action at law against any owner personally obligated to pay the same or may foreclose such lien by the commencement of a civil action. No Lot owner may waive or otherwise avoid or escape liability for the assessment provided herein by non-use of the Common Areas or abandonment of such owner's Lot.

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(h) The lien of the assessments 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 the assessments; provided, however, the sale or transfer of any Lot pursuant to mortgage foreclosure or any judicial proceeding in lieu thereof shall extinguish the lien of such assessments as to any assessment or part thereof which became due prior to such sale or transfer.

(i) In any event, no sale or transfer will relieve any Lot owner from personal liability or for any assessments becoming due prior to such sale or transfer.

5.4 **Amendments.** There shall be no amendment to the Bylaws or Articles of Incorporation of the Association which would detrimentally affect the Participating Lots without the prior written consent of the owners of the Participating Lots, which consent shall not be unreasonably withheld or delayed. The provisions of this paragraph 5.4 shall terminate with respect to each Participating Lot upon the conveyance of the Participating Lot by the current Participating Owner to any party other than the other Participating Owner.

ARTICLE VI CONTROL BY DECLARANT

6.1 Other provisions in the Declaration to the contrary notwithstanding, Declarant shall retain control of the Association as provided for in the Bylaws and Articles of Incorporation (including the right to appoint, remove and replace the Officers and Directors) and shall not be liable for payment of any assessments against Lots owned by Declarant until such time as Declarant relinquishes control of the Association. Declarant shall relinquish control of the Association upon the earlier of (i) the sale of seventy-five percent (75%) of the Lots to any party other than a successor Declarant, or (ii) five (5) years from the date of this Declaration. Until such time as (i) Declarant relinquishes control of the Association, or (ii) Declarant waives its right of exemption from payment of assessments as to Lots owned by Declarant, Declarant agrees to fund any amount by which the costs incurred by the Association for the maintenance of the Common Areas exceeds the amounts of assessments payable by the owners of Lots other than Declarant (the "Shortfall"). Upon the termination of Declarant's control of the Association, Declarant shall no longer be responsible for the Shortfall, and Declarant shall pay the assessments applicable to Lots owned by Declarant, except that the amount of the assessments shall be reduced by ____% (which is presently determined to approximate the percentage of the assessments applicable to the costs of maintenance of the front and side yards and the shrubs on the Lots), with respect to all of Declarant's Lots which are vacant. Declarant may assign its rights as Declarant under this ARTICLE VI and all other rights reserved by or granted to Declarant in this Declaration, to such entity as Declarant shall determine, who shall agree to assume the obligations of Declarant, by an instrument which specifically designates that said rights are intended to be assigned by Declarant and assumed by such entity.

ARTICLE VII ARCHITECTURAL REVIEW COMMITTEE; ARCHITECTURAL CONTROL

7.1 **Architectural Review Committee.** The Architectural Review Committee (the "ARC") shall be composed of three individuals designated and redesignated from time to time by

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the Board of Directors of the Association. Provided, until such time as Declarant no longer owns or has the right to acquire any portion of the Subdivisions, the ARC shall be composed of three (3) members who shall be appointed and who may be replaced by Declarant.

7.2 **Approval Required.** Except as provided in paragraph 2.1 of ARTICLE II with respect to the Participating Lots, before commencing the placement, construction, or alteration of any improvements upon any Lot or any other portion of the Subdivisions, including but not limited to dwellings, garages, outbuildings, parking areas, fencing, landscaping, antennas, or satellite dishes, (a) plans and specifications for any such improvements showing all exterior materials and colors thereof and including, when applicable, all exterior elevations, schedule of proposed materials, landscaping, and such other detail and information as the ARC might require, and (b) the builder or contractor selected to perform such construction or alteration must first be submitted and approved by the ARC.

THE SCOPE OF REVIEW BY THE ARCHITECTURAL REVIEW COMMITTEE IS LIMITED TO APPEARANCE ONLY AND DOES NOT INCLUDE ANY RESPONSIBILITY OR AUTHORITY TO REVIEW FOR STRUCTURAL SOUNDNESS, COMPLIANCE WITH BUILDING OR ZONING CODES OR STANDARDS, OR ANY OTHER SIMILAR OR DISSIMILAR FACTORS.

7.3 Application Process.

A. Except as provided in paragraph 2.1 of ARTICLE II with respect to the Participating Lots, no improvements shall be erected, placed, altered, maintained, or permitted on the Subdivisions until plans and specifications showing plot layout and all exterior elevations, with exterior materials and colors thereof, signs, and landscaping, irrigation, and drainage plans shall have been submitted to and approved in writing by both the ARC and the Declarant. Such plans and specifications shall be submitted in writing over the signature of the owner of any Lot or its authorized agent and shall specify for which part of such plans and specifications approval is sought.

B. In any case in which the ARC shall disapprove any plans and specifications or shall approve same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action is based. In any such event, the ARC shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal can be prepared and submitted for approval. Upon approval by the ARC of any plans and specifications submitted hereunder, a copy of such plans and specifications, as approved, shall be deposited for permanent record with the ARC.

C. If the ARC fails either to approve or to disapprove such plans and specifications within thirty (30) business days after the same have been submitted in writing to it or fails to include in any disapproval the statement required in subparagraph B above by written notice to the applicant, it shall be conclusively presumed that the ARC has approved said plans and specifications, subject, however, to the covenants contained herein.

D. In considering the requests for approval of the plans and specifications and related items described herein, the ARC shall be entitled to the use of its absolute discretion.

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7.4 **Inspection Rights.** Any agent of the Declarant, the Association, or the ARC may at any reasonable time or times enter upon and inspect any Lot and any improvements thereon for the purpose of ascertaining whether the maintenance of such Lot and the maintenance, construction, or alteration of structures thereon are in compliance with the provisions hereof; and the Declarant, the Association, the ARC, or any such agent shall not be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection. Any such inspection shall be for the sole purpose of determining compliance with this Declaration, and neither the making of any such inspection nor the failure to make any such inspection shall be relied upon by the owner of a Lot or any third persons or entities for any purpose whatsoever nor shall any such inspection obligate the Declarant, the Association, or the ARC to take any particular action based on the inspection.

7.5 **Waiver of Liability.** Neither the ARC nor any architect nor agent thereof, nor the Association, nor the Declarant, nor any agent or employee of the foregoing, shall be responsible in any way for any failure of structures to comply with requirements of this Declaration, although a certificate of compliance has been issued, nor for 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, and all persons relying thereon or benefitting therefrom agree not to sue or claim against the entities and persons referred to in this section for any cause arising out of the matters referred to in this section and further agree to and do hereby release said entities and persons from any and every such cause.

7.6 **Delegation by Architectural Review Committee.** The rights, duties and functions of the ARC may be delegated to the Association at any time by the written consent and declaration of all three of the members of the ARC. Upon such delegation, the rights, duties and functions of the ARC shall become those of, and shall be enforceable by, the Association.

7.7 **Additional Property.** Other provisions herein to the contrary notwithstanding, any Additional Property which is submitted to this Declaration shall be exempt from any approvals by the ARC and may be improved in accordance with such plans and specifications as are approved by Declarant.

ARTICLE VIII MISCELLANEOUS

8.1 **Termination of Liability.** In the event any owner of a Lot shall convey, transfer, assign or otherwise dispose of all of its interest in any portion of such Lot to a transferee who shall assume such owner's obligations and liabilities thereafter occurring, such owner shall thereupon be released and discharged from any and all obligations and liabilities thereafter occurring with respect to such portion of the Lot (except those accruing prior to such conveyance, transfer, assignment or other disposition), and such liabilities and obligations shall thereafter be binding upon the successor in title to such owner.

8.2 **Interpretation.** This Declaration shall be governed by and construed in accordance with the laws of the State of Alabama.

[Signatures appear on the following page.]

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IN WITNESS WHEREOF, the undersigned have caused this Declaration to be executed for and on its behalf as of the _____ day of _____, 2013.

NJK, LLC

By _____
Charles G. Kessler, Jr.
Its Managing Member

STATE OF ALABAMA)
)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Charles G. Kessler, Jr., whose name as Managing Member of NJK, LLC, an Alabama limited liability company 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, as such member and with full authority, executed the same voluntarily for and as the act of said company.

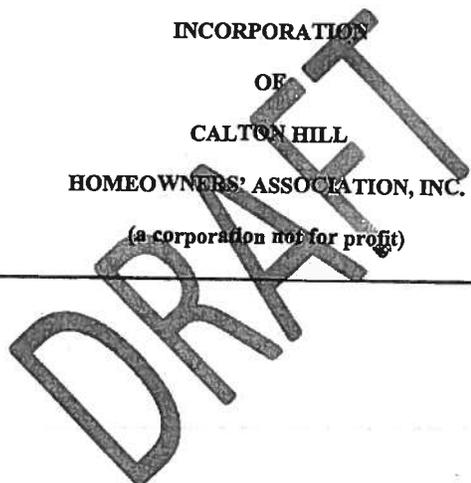
Given under my hand and official seal, this _____ day of _____, 2013.

Notary Public

[NOTARIAL SEAL]

My commission expires: _____

ARTICLES
OF
INCORPORATION
OF
CALTON HILL
HOMEOWNERS' ASSOCIATION, INC.
(a corporation not for profit)



This instrument prepared by:

David N. Averyt
David N. Averyt, LLC
2024 2nd Ave N, Ste 1002
Birmingham, AL 35203

APPENDIX 4

ARTICLES OF INCORPORATION

OF

CALTON HILL HOMEOWNERS' ASSOCIATION, INC.

(a corporation not for profit)

This is to certify that, for the purpose of forming a corporation pursuant to the provisions of the Alabama Nonprofit Corporation Act, Section 10-3A-1, et seq. Code of Alabama (1975), the undersigned do hereby make and file the following Articles of Incorporation.

ARTICLE I
NAME

The name of the corporation shall be Calton Hill Homeowners' Association, Inc. The corporation is sometimes referred to herein as the "Corporation" or the "Association."

ARTICLE II
DEFINITIONS

- 2.1 Association. Calton Hill Homeowners' Association, Inc., its successors and assigns.
- 2.2 Association Land. Any real property which may at any time hereafter be owned by the Association or so long as the Association or successor thereof may be the owner thereof.
- 2.3 Board. The Board of Directors of the Association.
- 2.4 Bylaws. The duly enacted bylaws of the Association.
- 2.5 Common Areas. Those portions of the Property which are conveyed to the Association or otherwise defined or designated as Common Areas pursuant to the provisions of the Declaration or by notation on any record map or plat of the Property.
- 2.6 Declaration. The Declaration of Protective Covenants and Agreements of Calton Hill at Mountain Brook, recorded in the Office of the Judge of Probate of Jefferson County, Alabama, in Book LR _____, page _____, as the same may from time to time be supplemented or amended in the manner described herein.
- 2.7 Deed. Any deed, court decree, or other instrument conveying fee title into any part of the property subjected to the Declaration.

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2.8 Declarant, NJK, LLC and any successor thereof and any purchaser from NJK, LLC of any portion of the Property to which NJK, LLC also conveys and assigns its rights hereunder as Declarant.

2.9 Lot. Any unit, lot, part, or parcel of the Property designed for a residence and platted of record, regardless of whether a dwelling has or has not been constructed thereon.

2.10 Lot Owner. The owner or owners of record title to any Lot.

2.11 Member. A person or other entity who is a record owner of fee simple title to any portion of the Property.

2.12 Property. The lands included within the survey of Calton Hill, as recorded in Map Book _____, page _____, in the Office of the Judge of Probate of Jefferson County, Alabama and any other real property which may be subjected to this Declaration by separate instrument executed by Declarant.

2.13 Resident. Any person or persons occupying a Lot.

ARTICLE III
PRINCIPAL OFFICE AND AGENT

The initial registered office of the Association shall be _____
The registered agent of the Association shall be _____

ARTICLE IV
OBJECTS, PURPOSES AND POWERS

4.1 Not for Profit. This Association shall be a corporation not for profit organized for non-profitable purposes and activities, and no part of its net earnings shall inure to the benefit of any private shareholder or member of the Association.

4.2 Objects and Purposes. The objects and purposes for which this Corporation is organized are as follows:

A. To establish, maintain, operate, and provide such community services as the Association shall deem appropriate with respect to the Property and any other property which shall be made subject to the jurisdiction of the Association by the Declaration or any amendment thereof, supplemental declaration thereto, or other declaration, deed, or instrument.

B. To own, acquire, build, operate, and maintain the Common Areas; fix assessments to be levied against the Lots and the owners of such Lots; enforce any and all covenants, restrictions, and agreements applicable to the Property or any or any portion thereof; enforce architectural restrictions and perform architectural reviews as provided in the Declaration at such time as such duties are delegated to the Association by Declarant; and pay utility bills and

taxes, if any, on the Common Areas; and, insofar as permitted by law, to do any other thing that, in the opinion of the Board, will promote the common benefit and enjoyment of the Members.

C. To own, operate, and manage the Common Areas located in the Property, to perform and carry out the acts and duties incident to the administration, operation, and management of the Common Areas in accordance with the terms, provisions, and conditions contained in the Declaration and these Articles of Incorporation, and to own, operate, lease, sell, mortgage, trade, and otherwise deal with such property, whether real or personal, as may be necessary or convenient to the objectives and purposes of the Association.

D. To perform and carry out the functions and obligations of the Association as described in the Declaration.

E. To do such other things as may be necessary and proper for the carrying out and accomplishment of the above objects and purposes and of such other objects and purposes as are deemed necessary and proper by its Directors. The objects and purposes expressed herein relate to services, benefits, and expenditures pertaining to, derived from, or in connection with the Property or areas thereof intended for and available for the common use and enjoyment or need of the Members.

4.3 Powers. In furtherance of the aforesaid objects, purposes, and powers, the Association shall have and exercise all of the powers of a Corporation Not for Profit organized and existing under the laws of the State of Alabama and all the powers reasonably necessary to implement the powers of the Association, which powers shall include but are not limited to the power:

A. To make, levy, and collect assessments and annual, monthly, or quarterly maintenance charges from its Members and to expend the proceeds of such assessments and charges for the benefit of its Members.

B. To contract with others, including Declarant or any other entities with which it or its members might be associated, to provide the services, benefits, and advantages deemed appropriate by the Association.

C. To enforce by legal action suits on behalf of the Association.

D. To make, establish, and enforce reasonable rules and regulations governing the use of the Common Areas.

E. To maintain, repair, replace, and operate those portions of the Property that the Association has the duty or right to maintain, repair, replace, and operate under the Declaration, these Articles, and the Bylaws of the Association.

F. To contract for the management of the Common Areas and the other portions of the Property to be maintained by the Association and to delegate to such contractors, including NJK, LLC or any other entities with which it or its members might be associated, all or a part of the powers and duties of the Association.

G. To employ personnel to perform the services required or authorized by these Articles, the Declaration, and the Bylaws of the Association.

H. To purchase liability and casualty insurance, if appropriate, with respect to the Common Areas for the protection of the Association and its Members.

I. To reconstruct improvements to be maintained by the Association after casualty, deterioration, or other loss.

J. To make additional improvements on and to the Common Areas or other areas to be maintained by the Association.

K. To acquire and enter into agreements whereby it acquires leaseholds, memberships, or other possessory or use interests in lands or facilities, including but not limited to recreational facilities, whether or not contiguous.

L. To enforce by legal action the provisions of these Articles, the Bylaws, and the Declaration.

ARTICLE V
MEMBERS

5.2 Members. The Members of this Association shall consist of all record owners of Lots, but shall not include mortgagees or other holders of security interests only. The members of the first Board of Directors named in these Articles of Incorporation and other Directors selected by Class B members, regardless of whether they are the owners of Lots, shall also be Members of the Association until there are no longer any Class B Members or until all the then Class B members so designate in a writing delivered to the Association, whichever shall first occur. Fees, dues, assessments, and charges required of Members shall be set in the manner prescribed by the Bylaws of the Association and in the Declaration.

5.3 No Assignment of Membership. Membership in this Association cannot be assigned, hypothecated, or transferred in any manner except as may be provided in the Bylaws.

5.4 Classes of Membership. The Association shall have two classes of voting memberships: Class A and Class B.

Class A members shall be all persons owning one or more Lots excepting those persons (or other entities) who are Class B members.

Class B members shall be the Declarant and the initial members of the Board of Directors. The Class B membership shall terminate at such time as (a) all the then Class B members so designate in a writing delivered to the Association, or (b) at such time as the Declarant no longer owns title to or any interest in any portion of the Property. Declarant may remove and replace any Class B member at any time in the sole discretion of Declarant.

APPENDIX 4

When entitled to vote, each Member shall have one (1) vote for each Lot owned by such Member; provided, in no event shall there be more than one (1) vote per Lot.

Until such time as the Class B membership shall terminate as provided herein, the Class B members shall be vested with the sole voting rights in the Association, except on such matters as to which the Declaration, these Articles of Incorporation, or the Bylaws specifically require a vote of each and every class of membership, or except as required by law.

ARTICLE VI
TERM

This Corporation shall exist perpetually.

ARTICLE VII
SUBSCRIBERS

The names and residences of the three (3) incorporators of the Corporation are as follows.

Table with 2 columns: Name, Address. Row 1: Charles G. Kessler, Jr., 3505 Bent River Road, Birmingham, Alabama 35216

[insert names and addresses]

ARTICLE VIII
BOARD OF DIRECTORS

The business and affairs of the Association shall be managed by a Board of Directors consisting of not less than three (3) nor more than five (5) Directors. The first Board of Directors shall consist of three (3) Members. Change in the maximum number of Directors shall be permitted by amendment to the Bylaws of the Association or by amendment to the Articles of Incorporation. The Board of Directors shall be elected by the Members of the Association entitled to vote. The names and addresses of the first Board of Directors who shall hold office until Class A Members shall become entitled to full voting privileges, or until all the then Class B members so designate in a writing delivered to the Association, whichever shall first occur, and thereafter until their successors are elected and have qualified, are as follows:

<u>Name</u>	<u>Address</u>
Charles G. Kessler, Jr.	3505 Bent River Road Birmingham, Alabama 35216
[insert names and addresses]	

Until the termination of Class B membership, Declarant may remove and replace the Directors at any time in the sole discretion of Declarant.

The Directors of the Association shall be elected at the time and in the manner provided for in the Bylaws.

Among other things, the Board of Directors shall have the authority to make and alter Bylaws and the further authority to exercise all such other powers and to do all such other lawful acts and things which this Association or its Members might do, unless prohibited from doing so by applicable laws, the Declaration, the Articles of Incorporation, or the Bylaws of this Association.

**ARTICLE IX
OFFICERS**

The officers of the Association shall consist of a President, a Secretary, and a Treasurer. The officers of the Association shall be elected by the Board of Directors of the Association in accordance with the provisions of the Bylaws of the Association. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary.

**ARTICLE X
INDEMNIFICATION**

Every Director and every officer of the Association shall be indemnified by the Association against all expenses and liabilities, including counsel fees reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a Director or officer of the Association, or any settlement thereof, whether or not he is a Director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties, provided that, in the event of a settlement, the indemnification herein shall apply only when the Board of Directors approves such settlement and reimbursement as being for the best interest of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such Director or officer may be entitled under Alabama law.

**ARTICLE XI
DISPOSITION OF ASSETS UPON DISSOLUTION**

No Member, Director, or officer of the Association or other private individual shall be entitled to share in the distribution of any of the Association assets upon dissolution of the Association. Unless agreed to the contrary by seventy-five percent (75%) of each and every class of membership, upon dissolution of the Association, the assets of the Association shall be granted, conveyed, and assigned to an appropriate public body, agency, or agencies, utility or utilities, or any one or more of them or to any one or more non-profit corporations, associations, trusts, or other organizations to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Association. No disposition of the Association's assets shall be effective to divest or diminish any right or title of any Member vested in him under recorded covenants and restrictions applicable to such assets unless made in accordance with the provisions of such covenants and restrictions.

**ARTICLE XII
AMENDMENT OF ARTICLES**

These Articles may be amended by an affirmative vote of two-thirds (2/3) of the Members of the Association entitled to vote.

**ARTICLE XIII
Bylaws**

The Association shall adopt Bylaws governing the conduct of the affairs of the Association. The Bylaws shall be altered, amended, or rescinded as provided in the Bylaws.

IN WITNESS WHEREOF, the subscribing incorporators have hereunto set their hands and seals and caused these Articles of Incorporation to be executed this _____ day of _____, 2013.

Charles G. Kessler, Jr.

STATE OF ALABAMA)
 :
JEFFERSON COUNTY)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Charles G. Kessler, Jr., whose name 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 executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this _____ day of _____, 200__.

Notary Public

[NOTARIAL SEAL]

My commission expires _____

APPENDIX 4

STATE OF ALABAMA)
 :
JEFFERSON COUNTY)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Gary E. Smith, II, whose name 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 executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this _____ day of _____, 200__.

Notary Public

[NOTARIAL SEAL]

My commission expires _____

STATE OF ALABAMA)
 :
JEFFERSON COUNTY)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Jane B. Richardson, whose name 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 executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this _____ day of _____, 200__.

Notary Public

[NOTARIAL SEAL]

My commission expires _____

**BYLAWS
OF
CALTON HILL
HOMEOWNERS' ASSOCIATION, INC.
(a corporation not for profit)**

DRAFT

This instrument prepared by:

David N. Averyt
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**BYLAWS
OF
CALTON HILL HOMEOWNERS' ASSOCIATION, INC.**

A Corporation not for Profit
under the Laws of the State of Alabama

These are the Bylaws of Calton Hill Homeowners' Association, Inc. (hereinafter for convenience called "Association" or "Corporation"), a corporation not for profit, incorporated under the laws of the State of Alabama.

**ARTICLE I
ASSOCIATION**

1.1 **Office.** The office of the Association shall be at _____ or at such other place as shall be selected by a majority of the Board.

1.2 **Fiscal Year.** The fiscal year of the Association shall be the calendar year.

1.3 **Seal.** The corporate seal of the Association, if deemed by the Association, shall consist of two concentric circles, between the edges of which shall be engraved the words: Calton Hill Homeowners' Association, Inc., Alabama, Not for Profit, and across the center thereof the words: Corporate Seal, all as shown by an imprint of such seal in the margin of these Bylaws. Said seal may be used by stamping thereon a facsimile thereof to be impressed, affixed, reproduced or otherwise.

**ARTICLE II
DEFINITIONS**

2.1 **Articles.** The Articles of Incorporation of Calton Hill Homeowners' Association, Inc. as recorded in the Office of the Judge of Probate of Jefferson County, Alabama, in Book LR _____, page _____.

2.2 **Association.** Calton Hill Homeowners' Association, Inc., its successors and assigns.

2.3 **Association Land.** Any real property which may at any time hereafter be owned by the Association for so long as the Association or successor thereof may be the owner thereof.

2.4 **Board.** The Board of Directors of the Association.

2.5 **Bylaws.** The duly enacted Bylaws of the Association.

2.6 **Common Areas.** Those portions of the Property which are conveyed to the Association or otherwise defined or designated as Common Areas pursuant to the provisions of the Declaration or by notation on any record map or plat of the Property.

2.7 **Declaration.** The Declaration of Protective Covenants of Calton Hill at Mountain Brook, recorded in the Office of the Judge of Probate of Jefferson County, Alabama, in Book LR _____, page _____, as the same may from time to time be supplemented or amended in the manner described herein.

2.8 **Deed.** Any deed, court decree, or other instrument conveying fee title into any part of the property subjected to the Declaration.

2.9 **Declarant.** NJK, LLC and any successor thereof and any purchaser from NJK, LLC of any portion of the Property to which NJK, LLC also conveys and assigns its rights hereunder as Declarant.

2.10 **Lot.** Any unit, lot, part, or parcel of the Property designed for a residence and plated of record, regardless of whether a dwelling has or has not been constructed thereon.

2.11 **Lot Owner.** The owner or owners of record title to any Lot.

2.12 **Member.** A person or other entity who is a record owner of fee simple title to any portion of the Property.

2.13 **Property.** The lands included within the survey of Calton Hill at Mountain Brook, as recorded in Map Book 225, page 56, in the Office of the Judge of Probate of Jefferson County, Alabama, and any other real property which may be subjected to this Declaration by separate instrument executed by Declarant.

2.14 **Resident.** Any person or persons occupying a Lot.

**ARTICLE III
MEMBERSHIP**

3.1 **Membership.** The Members of the Association shall consist of all Lot Owners together with all those persons or other entities as set forth in ARTICLE V of the Articles.

3.2 **Classes of Membership.** The Association shall have two classes of membership, Class A and Class B, each such Class consisting of those members meeting the applicable qualifications for membership in each respective Class, as set forth in ARTICLE V of the Articles.

3.3 **Rights and Obligations of Membership.** The Members shall have all the rights, privileges, duties, and obligations applicable to their respective Class of membership as set forth in the Declaration, the Articles, and elsewhere in these Bylaws.

3.4 **Assessments.** The rights of membership are subject to the payment of such assessments, fees, and charges as might be imposed, levied, or set by the Association. The

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obligation for the payment of such assessments and charges is imposed against each Lot Owner, and is a lien upon, the Lot against which such assessment or change is made, as provided by the Declaration, which in substance provides as follows:

A. **Continuing Liens.** All Lots shall be subject to a continuing lien for assessments levied by the Association in accordance with the provisions of the Declaration, the Articles, and these Bylaws. The assessments and charges together with interest thereon and the costs of collection thereof (including reasonable attorney's fees) as hereinafter provided, shall be a charge on, and shall be a continuing lien upon, the Lot against which each such assessment or charge is made. All Lots shall be held, transferred, sold, conveyed, used, leased, occupied, mortgaged, and otherwise encumbered subject to all the terms and provisions of the Declaration, the Articles, and these Bylaws, including, but not limited to, the continuing lien herein described.

B. **Personal Obligations of Members.** Unless otherwise provided in a deed or other conveyance, each Member, by acceptance of a Deed or other conveyance to a Lot, whether or not it shall be so expressed in any such Deed or other conveyance, shall be deemed to covenant and agree to pay to the Association the assessments and charges, such assessments to be fixed, established, and collected from time to time as provided in the Declaration, the Articles, and these Bylaws. Each such assessment, together with interest and cost of collection, including reasonable attorney's fees, shall be the personal obligation of the person who is the owner of such Lot at the time when the assessment fell due.

C. **Purpose of Assessments.** Except as otherwise provided for herein, the assessments levied by the Association shall be used exclusively for the purpose of (i) providing any and all of the services and activities as may be to the mutual benefit of the Members; (ii) maintaining, operating, and repairing of the Common Areas and other areas and structures beneficial or useful to the Property; (iii) the payment of utility bills, taxes, liability insurance, and insurance on all property of the Association, and the repair, replacement, and additions thereto, and for the cost of labor, insurance, equipment, materials, management, and supervision thereof; (iv) for other purposes beneficial to the Members as determined by the Association; and (v) carrying out the functions, purposes, responsibilities, and duties of the Association as set forth in the Declaration, the Articles, and these Bylaws. The Association does not assure that such services will be provided and nothing herein shall be construed as an obligation to provide any such services, except to the extent required in the Declaration.

D. **Amounts of Assessments.** The assessment applicable to Lots shall be set by the Board as set forth in the Declaration.

E. **Effect of Non-Payment of Assessments; Remedies of the Association.** Any assessments not paid within thirty (30) days after the due date shall bear interest from the due date at such rate of interest as the Association might reasonably determine. The Association may bring an action at law against the Member personally obligated to pay the same, or foreclose the lien against the Lot owned by the Member. No Member may waive or otherwise escape liability for the assessments provided for in the Declaration or in these Bylaws by non-use of the Common Areas or other areas to which assessments are applied or abandonment of the Lot owned by such Member.

F. Subordination of Lien to Mortgages. The lien of any assessment or charge authorized by the Declaration or this ARTICLE III of these Bylaws with respect to a Member's Lot is subordinate to the lien of any *bona fide* mortgage; provided that all assessments or charges falling due on or prior to the date such mortgage is recorded have been paid. The sale or transfer of any Member's Lot pursuant to a sale under power contained in a mortgage on such Lot or pursuant to a deed in lieu of foreclosure thereof or pursuant to a judicial foreclosure thereof shall extinguish the lien for assessments falling due prior to the date of such sale, transfer, or foreclosure, but the Association shall have a lien on the proceeds of such sale senior to the equity of redemption of the mortgagor. The foregoing subordination shall not relieve a Member whose Lot has been mortgaged of his personal obligation to pay all assessments and charges falling due during the time he is the owner of such Lot. The Board may at any time, either before or after the mortgaging of any Member's Lot, waive, relinquish, or quitclaim in whole or in part the right of the Association to assessments and other charges collectible by the Association with respect to such Lot coming due during the period while such Lot is or may be held by a mortgagee or mortgagees pursuant to such sale or transfer.

3.5 Suspension of Membership Rights. The membership rights of any Member, including the right to vote, may be suspended by the Board (i) for any period during which any assessment or charge owed to the Association by such Member remains unpaid, and (ii) for a period not to exceed thirty (30) days for any infraction of the Association's published rules and regulations. Any such suspension shall not affect such Member's obligation to pay assessments coming due during the period of suspension and shall not affect the permanent charge and lien on the Member's Lot in favor of the Association. Any suspension of a Member's right to vote pursuant to this Section 3.5 shall result in that Member's vote being removed from the calculation of a quorum as described in these Bylaws.

**ARTICLE IV
VOTING RIGHTS**

Each class of membership shall have those voting rights as set forth in ARTICLE V of the Articles.

When entitled to vote, each Member shall have one (1) vote for each Lot owned by such Member.

When more than one (1) person (or other such entity) holds an ownership interest or interests in any Lot, the vote for such Lot shall be exercised as they among themselves shall determine, but in no event shall more than one (1) person be entitled to cast the vote with respect to any Lot. In the event of disagreement among such persons (or other entities) and an attempt by more than one to cast the vote of such Lot, such persons (or other entities) shall not be recognized and the vote with respect to such Lot shall not be counted.

**ARTICLE V
ASSOCIATION POWERS**

5.1 Additions to Common Areas. The Association shall accept the conveyance to it of additional Common Areas by Declarant; provided that the property to be so conveyed meets all the requirements for becoming Common Areas set forth in the Declaration. No approval from any Member of the Association or anyone else is required for Declarant or its above described successors and assigns, to convey as additional Common Areas property otherwise meeting the requirements for becoming additional Common Areas.

5.2 Other Property Owned by the Association. In addition to acquiring additional Common Areas in the manner described in Section 5.1 hereof, the Association may, in the discretion of the Board, accept the conveyance to it by Declarant of property which shall not be held by the Association as Common Areas under the terms and provisions of the Declaration, but, rather, which may be used or leased by the Association for any purpose which the Board shall choose.

5.3 Mortgages. The Association shall have the power to mortgage or otherwise burden or encumber all or part of its properties, provided that any such mortgaging or encumbering shall be authorized by a fifty-five percent (55%) affirmative vote, on a class basis, of the Members entitled to vote.

5.4 Dedication or Transfer of Properties. The Association shall have the power to transfer the ownership of all or part of its properties, by dedication to a public authority or otherwise, provided that any such transfer shall be authorized by fifty-five percent (55%) affirmative vote, on a class basis, of the Members entitled to vote.

**ARTICLE VI
BOARD OF DIRECTORS**

6.1 Selection; Terms of Office. Until such time as Declarant no longer owns any interest in any portion of the Property or at such earlier time as determined by the Class B membership, the Board shall consist of three (3) Directors, who shall be elected at the times and in the manner set forth in Section 6.2 hereof. After such time the Board shall consist of three (3) Directors, who shall be elected at the time set forth in Section 6.3 and in the manner set forth in ARTICLE VII of these Bylaws.

6.2 Election of Directors by the Class B Members. Until such time as Class A Members shall be entitled to full voting privileges, as provided in ARTICLE VIII of the Articles, the Board shall consist of three (3) Directors who shall be elected in the following manner:

A. The initial Board set forth in ARTICLE VIII of the Articles shall hold office until such time as Class A Members shall be entitled to full voting privileges or until removed by and at the discretion of Declarant. In the event any named Director ceases to be a Director prior to the time specified above in this Section 6.2A, his replacement shall be by and at the discretion of Declarant.

B. Any Director or Directors elected by the Class B Members may be removed and replaced at any time, with or without cause, by the Declarant.

6.3 Election of Directors by the Class A Members. After such time as Class A Members shall be entitled to full voting privileges, the number of Directors shall be increased to three (3), and the Class A Members shall be entitled to elect all three (3) of the new members of the Board. Election of such Directors by the Class A Members shall be in the manner set forth in ARTICLE VII and Sections 6.3A and 6.3B of these Bylaws. The election of the Directors by the Class A Members shall occur as follows:

A. The incumbent Board elected by the Class B Members shall hold office until the election of their successors by the Class A Members at the annual meeting of the Class A Members to be held for this purpose within sixty (60) days after the date upon which Class A Members shall be entitled to full voting privileges, or the termination of the Class B membership, whichever is sooner.

B. At the first annual meeting of the Class A Members, there shall be elected in the manner set forth in ARTICLE VII of these Bylaws, three (3) Directors, such Directors being elected for a term of three (3) years.

6.4 Vacancies. After the date upon which Class A Members shall be entitled to full voting privileges, vacancies in the Board shall be filled by the majority of the remaining Directors, any such appointed Director to hold office until his successor is elected by the Class A Members at the next annual meeting of the Members or at any special meeting duly called for that purpose. Prior to the date upon which Class A Members are entitled to full voting privileges, vacancies in the Board shall be filled by Declarant.

**ARTICLE VII
ELECTION OF DIRECTORS BY CLASS A MEMBERSHIP**

7.1 Election of Directors. Elections to the Board by the Class A membership shall be by written ballot as hereinafter provided. At such elections, the Class A Members or their proxies may cast as many votes as there are vacancies to be filled on the Board for each Lot in which they hold any interest required for membership by ARTICLE V of the Articles, and such Member shall have the right to cumulate his vote and to give one candidate a number of votes equal to his vote multiplied by the number of Directors to be elected, or by distributing such votes on the same principle among any number of such candidates. The names receiving the largest number of votes shall be elected.

7.2 Nominations Committee. Nominations for a full slate of Directors for election to the Board by the Class A Members shall be made by the Nominations Committee. The Nominations Committee shall consist of three (3) persons appointed each year by the Board, one (1) of whom shall be a Director and two (2) of whom shall be non-directors. Members of the Nominations Committee shall be appointed each year by the Board of Directors at least forty-five (45) days before the date on which the election for the members of the Board is to be held, and the slate of Directors to be nominated by the Nominations Committee shall be nominated at least thirty

(30) days before the date of such election. No member of the Nominations Committee shall be eligible for nomination for the Board by such Committee.

In addition, nominations for the Board may be made by petition signed by more than five (5) Members of the Association, provided that such petitions are filed with the Secretary of the Association at least thirty (30) days before the date of the meeting at which the Directors are to be elected.

7.3 Ballots. All elections to the Board shall be made on a written ballot which shall: (a) describe the vacancies to be filled; (b) set forth the names of those nominated by the Nominations Committee for such vacancies and those nominated by petition timely filed with the Secretary of the Association; and (c) containing a space for a write-in vote by the Members for each vacancy. Such ballots shall be prepared and mailed by the Secretary of the Association to the Members at least fourteen (14) days in advance of the date set forth therein for a return (which shall be a date not later than the date for the annual meeting or special meeting called for election).

7.4 Voting Procedures. Each Class A Member shall receive one (1) vote for each Lot with respect to which he is the record owner (subject to the provisions of ARTICLE III and ARTICLE IV hereof). Each Member shall indicate next to the name of each nominee on the ballot the number of votes he casts for the election of such nominee to the Board or shall write in the name of a person not so nominated in the space on the ballot provided for this purpose, together with the number of votes he wishes to cast for said person. All ballots shall be signed by the Member casting it and returned to the Secretary of the Association, who, upon receipt of each ballot, shall immediately place it in a safe or other locked place until the day set forth for the annual or other special meeting at which the elections are to be held. On that date, the ballots shall be turned over to an Elections Committee which shall consist of three (3) Members appointed by the Board. The Elections Committee shall then adopt a procedure which shall:

- A.** Establish that the number of ballots turned in by each Member corresponds with the number of Lots owned by such Member or his proxy identified on the ballot; and
- B.** Establish that the signature of the Member or his proxy on the ballot is genuine; and
- C.** If the vote is by proxy, establish that a proxy has been filed with the Secretary as provided in ARTICLE XIII of these Bylaws and that such proxy is valid.

Said procedure by the Elections Committee shall be taken in such a manner that the vote of any Member or his proxy shall not be disclosed to anyone, including the Elections Committee.

If any ballot is found to contain more than the number of votes which the Member signing such ballot is entitled to cast, all votes on such ballot shall be disqualified and shall not be counted. After the announcement of the results by the Elections Committee, unless a review of the procedure is demanded by thirty-five percent (35%) of the Members casting ballots in the election within ten (10) days after the election, the ballots shall be destroyed.

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**ARTICLE VIII
POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

8.1 Powers. The Board shall have the powers:

A. To call special meetings of the Members whenever it deems necessary, and it shall call a meeting at any time upon written request of one-fourth (1/4) of the voting membership, as provided in Section 12.2.

B. To appoint and remove at pleasure all officers, agents, and employees of the Association, prescribe their duties, fix their compensation, and require of them such security or fidelity bond as it may deem expedient. Nothing contained in these Bylaws shall be construed to prohibit the employment of any member, officer, or Director of the Association in any capacity whatsoever.

C. To establish, levy, assess, and collect the assessments and charges set forth in ARTICLE III.

D. To adopt and publish rules and regulations governing the use of the Common Areas and the facilities, and the personal conduct of the Members and their guests thereon.

E. To exercise for the Association all powers, duties, and authorities vested in or delegated to the Association, except those reserved to Members in the Declaration, in the Articles, or elsewhere in these Bylaws.

F. To appoint such committees, as it deems in the best interests of the Association to carry out the functions and duties of the Board.

8.2 Director Absence. In the event that any member of the Board of the Association shall be absent from three (3) consecutive regular meetings of the Board, the Board may by action taken at the meeting during which said third absence occurs, declare the office of said absent Director to be vacant, and the provisions relating to the filling of a vacancy of the Board as set forth in Section 6.4 shall become operative.

8.3 Duties. It shall be the duty of the Board:

A. To cause to be kept a complete record of all its acts and corporate affairs and to present the statement thereof to the voting Members at the annual meeting of the voting Members or at any special meeting when such is requested in writing by one-fourth (1/4) of the total voting membership, as provided in Section 12.2.

B. To supervise all officers, agents and employees of the Association, and to insure that their duties are properly performed.

C. As more fully provided in the Declaration and ARTICLE III of these Bylaws, to fix the amount of the assessment against each Lot owned by a Member at least thirty (30) days in advance of the date of any payment of such assessment is due.

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D. To prepare a roster of the Lots and assessments applicable thereto which shall be kept in the offices of the Association and which shall be open to inspection by any Member thereof, and, to send written notice of each assessment to every Member subject thereto.

E. To issue, or cause an appropriate officer to issue upon demand by any person, a certificate setting forth whether any assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

F. To obtain and maintain a liability insurance policy or policies for the protection of the Association covering the Common Areas and covering such risks and with such deductible amounts as the Board shall determine.

**ARTICLE IX
DIRECTORS MEETING**

9.1 Time and Place. Meetings of the Board may be held at any place within or without the State of Alabama. The annual meeting of the Board shall be held immediately following the close of the annual meeting of the Members and at the place thereof, or the Board may hold such annual meeting at such place and time as shall be fixed by the consent in writing of a majority of the Directors. Regular meetings of the Board may be held at such time and place (within or without the State of Alabama) as shall from time to time be determined by the Board.

9.2 Notice. Notice of regular meetings of the Board is hereby dispensed with. If the day for a regular meeting shall fall upon a holiday, the meeting shall be held at the same hour on the first day following which is not a holiday, and no notice thereof need be given.

9.3 Special Meetings. Special meetings of the Board shall be held when called by any officer of the Association or by any two (2) Directors after not less than three (3) days' notice to each Director.

9.4 Waivers, Consents and Approvals. The transaction of any business at any meeting of the Board, however called and noticed, or wherever held, shall be as valid as though made at a meeting duly held after regular call and notice if a quorum is present and, if either before or after the meeting, each of the Directors not present signs a written waiver of notice, or a consent to the holding of such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records and shall be made a part of the minutes of the meeting.

9.5 Quorum. The majority of the Board shall constitute a quorum thereof.

9.6 Adjourned Meetings. If at any meeting of the Board there is less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present. At any adjourned meeting any business that might have been transacted at the meeting as originally called, may be transacted without further notice.

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**ARTICLE X
OFFICERS**

10.1 Officers. The officers shall be a President, a Secretary, and a Treasurer. The President shall be a member of the Board.

10.2 Majority Vote. The officers shall be chosen by majority vote of the Directors.

10.3 Term. All officers shall hold office at the pleasure of the Board.

10.4 President. The President shall preside at all meetings of the Board, and shall see that orders and resolutions of the Board are carried out, and sign all notes, checks, leases, mortgages, deeds and all other written instruments as may be incidental to the orders and resolutions of the Board.

10.5 Vice President. The Vice President shall perform all the duties of the President in his absence.

10.6 Secretary. The Secretary shall be "ex-officio" the Secretary of the Board, and shall record the vote and keep the minutes of all proceedings in a book to be kept for such purpose. He shall keep the records of the Association. He shall record in a book kept for such purpose the names of all Members of the Association together with their addresses as registered by such Members. The Secretary shall give notice of meetings as required, and shall receive and file proxies of Members as provided in ARTICLE XIII hereof.

10.7 Treasurer. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board; provided, however, that a resolution of the Board shall not be necessary for disbursements made in the ordinary course of business conducted within the limits of a budget adopted by the Board. The Treasurer shall sign all checks and notes of the Association, provided that such checks and notes shall also be signed by the President or the Vice President in his absence.

10.8 Bookkeeping. The Treasurer shall keep proper books of account and cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year. The Treasurer shall prepare the annual budgets and an annual balance sheet statement and the budget and balance sheet statement shall be presented to the membership at its regular annual meeting.

**ARTICLE XI
COMMITTEES**

11.1 Standing Committees. Until such time as Class A Members are entitled to full voting privileges, there shall be no requirement of standing committees of the Association. From and after the first annual meeting of the Class A Members, the Board may delegate its duties to standing committees of the Association as described in this ARTICLE XI.

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Unless otherwise provided herein, each committee shall consist of a Chairman and two (2) or more members, one (1) of which three (3) total committee members shall be a member of the Board. The committees shall be appointed by the Board immediately after each annual meeting to serve until the close of the next annual meeting. The Board may appoint such other committees as it is deemed desirable.

11.2 Budget Committee. The Budget Committee shall advise the Board on all matters pertaining to the budget and operating expenses of the Association and shall perform such other functions as the Board, in its discretion, shall determine.

11.3 Maintenance Committee. The Maintenance Committee shall advise the Board on all matters pertaining to the maintenance, repair, or improvement of the Common Areas and shall perform such other functions as the Board shall, in its discretion, determine.

11.4 Audit Committee. The Audit Committee shall supervise the annual audit of the Association books and approve the annual budget and balance sheet statement to be presented to the membership at its regular annual meeting as provided in Section 10.8 hereof. The Treasurer shall be an "ex-officio" member of this Committee.

11.5 Subcommittees. Each Committee shall have the power to appoint a subcommittee from among its membership and may delegate to any such subcommittee any of its powers, duties and functions set forth in this ARTICLE XI, and as delegated by the Board.

11.6 Review of Complaints. It shall be the duty of each committee to receive complaints from Members on any matter involving Association functions, duties and activities in its field of responsibility. It shall dispose of such complaints as it deems appropriate or refer them to such other committee, Director or officer of the Association as is further concerned with the matter presented.

**ARTICLE XII
MEETINGS OF MEMBERS**

12.1 Annual Meeting. Until the time at which the Class B membership terminates, as provided in ARTICLE V of the Articles, the regular annual meeting of the Class B Members shall be on the first Monday in February of each year, or within two (2) weeks thereafter, at a time and place to be agreed upon by the Class B members.

Until the time at which the Class B membership terminates, there shall be no annual or regular meeting of the Class A membership.

The first annual meeting of the Class A Members shall be held within sixty (60) days after the date upon which Class A Members shall be entitled to full voting privileges. Thereafter, the regular annual meeting of the members shall be held at 8:00 o'clock P.M. on the second Monday in February of each year (beginning the year in which said meeting date is more than twelve months following the initial meeting), provided, however, if that day is a legal holiday, the meeting shall be held at the same hour on the following Friday. The place of the annual meetings shall be determined by the Board.

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12.2 Special Meetings. Special meetings of either class of membership for any purpose may be called at any time by the President, the Vice President, the Secretary or the Treasurer, or by any two (2) or more members of the Board. In addition, special meetings of the voting membership must be called upon the written request of the Members who have a right to vote one-fourth (1/4) of the total votes entitled to be cast under the provisions of ARTICLE V of the Articles at the time such written request is made.

12.3 Notice. Notice of any meetings of a class of membership shall be given to the Members of that class by the Secretary. Notice may be given to the Members either personally, or by sending a copy of the notice through the mail, postage thereon fully prepaid, to his address appearing on the books of the Association. Each Member shall register his address with the Secretary, and notices of meetings shall be mailed to him at such address. Notice of any regular or special meeting shall be mailed at least six (6) days in advance of the meeting, and shall set forth in general the nature of the business to be transacted; provided, however, that if the business of any meeting shall involve an election governed by ARTICLE VII, notice of such meeting shall be given or sent as therein provided.

12.4 Quorum. The presence at the meetings of Members entitled to cast, or of proxies entitled to cast, one-third (1/3) of the vote of the class of membership so meeting shall constitute a quorum for any actions governed by these Bylaws unless it is provided otherwise in the Declaration, or the Articles, or elsewhere in these Bylaws.

**ARTICLE XIII
PROXIES**

13.1 Form of Vote. At all meetings of Members, each Member entitled to vote may vote in person or by proxy.

13.2 Proxies. All proxies shall be in writing filed with the Secretary of the Association. No proxy shall extend beyond a period of eleven (11) months, and every proxy shall be automatically cease upon the sale by the Member of his Lot or other interest in Member's Property.

**ARTICLE XIV
INSPECTION OF BOOKS AND PAPERS**

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to the inspection of any Member.

**ARTICLE XV
PARLIAMENTARY RULE**

Robert's Rules of Order (latest edition) shall govern the conduct of the Association proceedings when not in conflict with the Declaration or the Articles.

**ARTICLE XVI
AMENDMENTS**

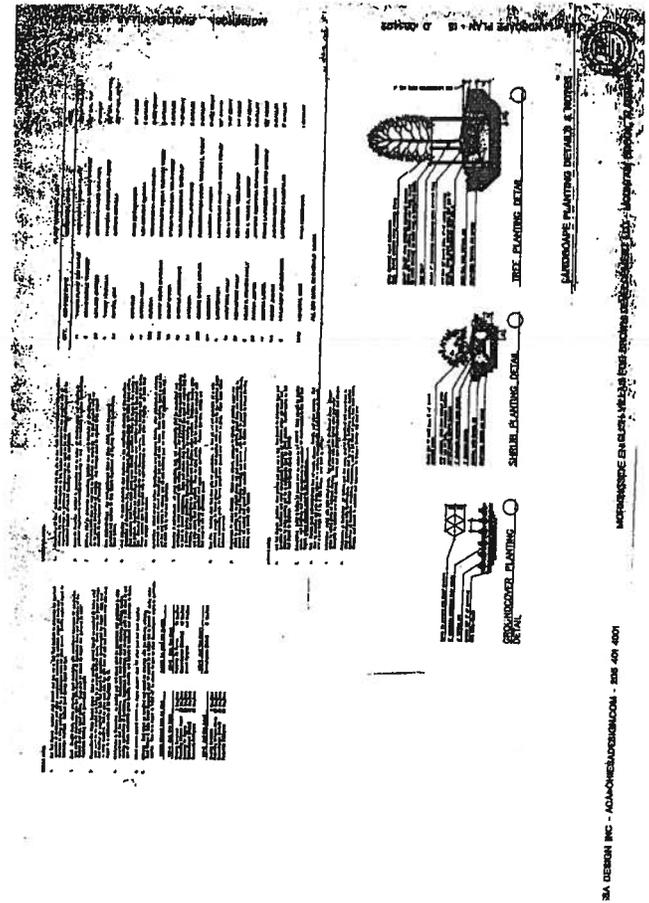
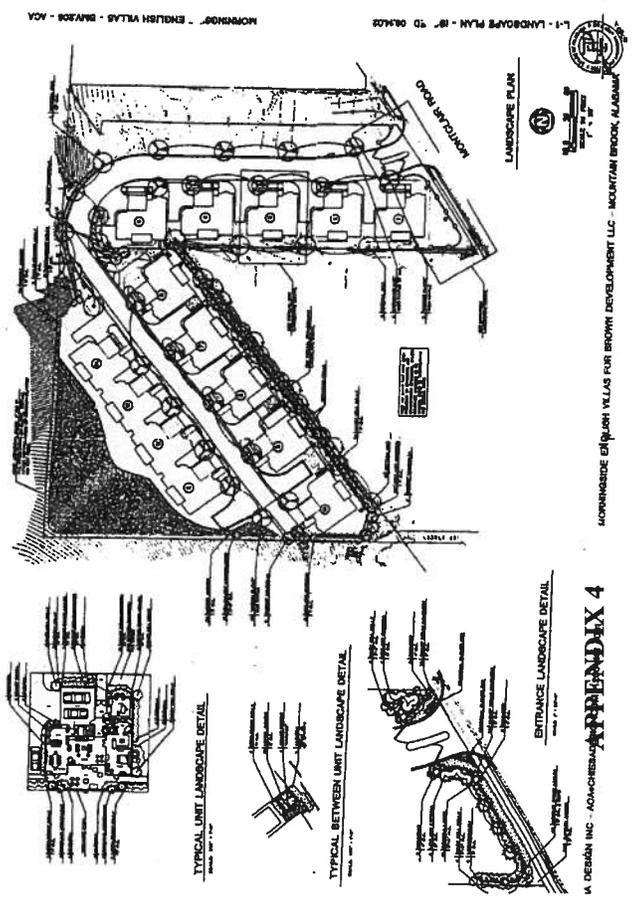
Until the time at which the Class B membership terminates, at which time the Class A membership is entitled to full voting privileges, as provided for in ARTICLE V of the Articles, these Bylaws may be amended upon a majority vote of the Board in any respect. After such time as the Class A members shall be entitled to full voting privileges, these Bylaws may be amended in any respect upon recommendation of the Board and subsequent approval at a regular or special meeting of the Members by a sixty percent (60%) vote of the total vote of all the then existing classes of membership, present in person or by proxy; provided, however, that these provisions of these Bylaws which are governed by the Articles may not be amended except as provided therein or except as provided by applicable law; and provided further, that any matter stated herein to be or which is in fact governed by the Declaration may not be amended except as provided in the Declaration.

**ARTICLE XVII
CONFLICTS**

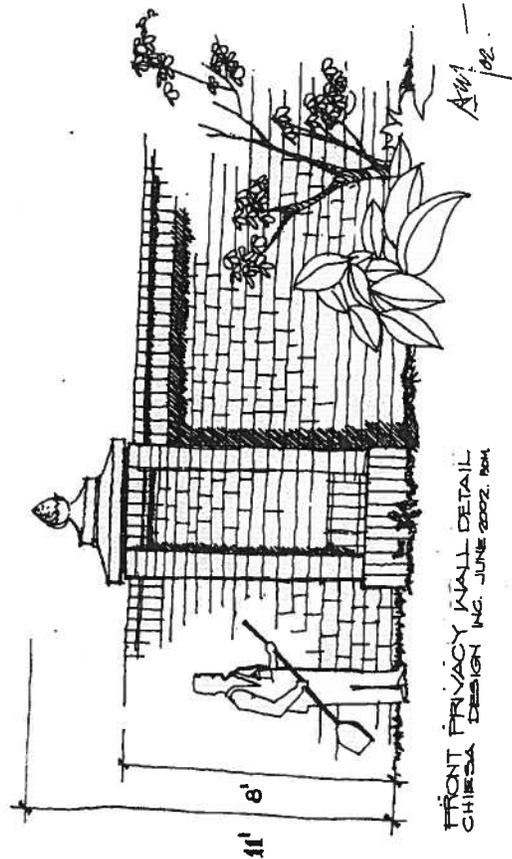
In the case of any conflict between the Articles and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

IN WITNESS WHEREOF, we, being all of the directors of Calton Hill Homeowners' Association, Inc., have heretofore set our hands this _____ day of _____, 2013.

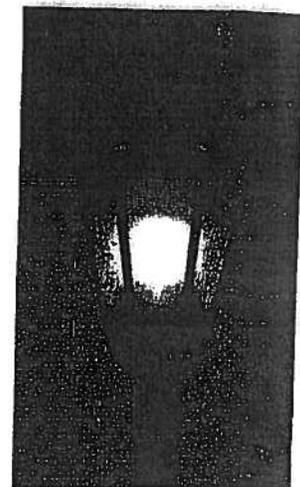
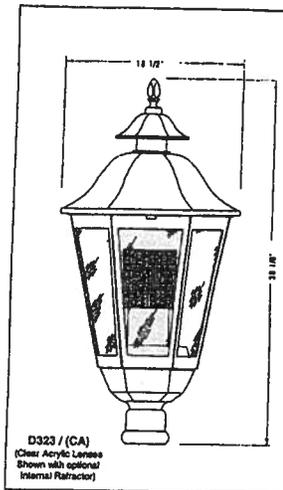
Charles G. Kessler, Jr.



LANDSCAPE PLAN - 12 - 04/12/13
 LANDSCAPE PLAN - 13 - 04/12/13
 LANDSCAPE PLAN - 14 - 04/12/13
 LANDSCAPE PLAN - 15 - 04/12/13
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 LANDSCAPE PLAN



Type III or V Light Distributor D323 LUMINAIRE



D323 Luminaire

The D323 Luminaire is a classically styled cast aluminum six sided cage that offers a choice of several different lenses. A Type III or Type V Boreolite glass refractor may be used with Clear or Smoke tinted Acrylic lens panels. Clear prismatic lenses may be used for standard symmetrical distribution.



Recommended Maximum Wattage

Luminaire / Lens*	High Pressure Sodium	Metal Halide	Incandescent
D323 / (PA)	250	250	300
D323 / (PP)	250	175	300
D323 / (CA or SA)	100	100	100
D323 / (CA or SA) with Type III or V Refractor	250	250	300

*Lens descriptions are on the following page

Note: Acrylic lenses will have longer service life in areas where vandalism is not a concern. Polycarbonate lenses are more vandal resistant but are subject to yellowing with time.

APPENDIX 4

LU-32

(800) 384-0088 DYNAMIC LIGHTING INC.

Cast Aluminum Posts / Sign

FEETWATER SERIES

Description

Features

- Corrosion resistant cast aluminum base (A319 Alloy)
- Deeply fluted & tapered cast aluminum shaft (A319 Alloy)
- Strong yet lightweight for ease of installation
- Tamper resistant stainless steel hardware
- Hot dipped Galvanized anchor bolts included

Finish

Post is finished with a superior quality acrylic enamel in a variety of colors.

- BLK - Black
- VRD - Verde
- WHT - White
- BRZ - Brushed Bronze
- GRN - Dark Green
- ABR - Architectural Bronze
- CD - Custom Color
- Optional Polyester Powder Coat

Accessories (Optional)

- BA - Banner Arms (Consult factory)
- SS - Street Signage (Consult factory)

Ordering Procedure

Post - Color - Accessories

D1012-20 - BLK - XXX

Anchor Details

1/2" x 1/2" x 1/2" Minimum L-Type Anchor Bolt

1/2" x 1/2" x 1/2" Bolt with 20 Degree

CC-6 (800) 384-0088 DYNAMIC LIGHTING INC.

Traffic Information

Traffic generated from this site may be estimated using the Institute of Transportation Engineer's publication *Trip Generation* (9th ed.). The trip generation for this proposed development is as follows:

	Single Family	Townhome	Total
Number of Units	4	16	20
Daily Generated Trips	38	93	131
AM Peak In	1	1	2
AM Peak Out	2	6	8
PM Peak In	3	6	9
PM Peak Out	1	3	4

During non-peak hours, traffic on Montclair Road is moderate and access to Montclair may be achieved with normal caution. During morning peak traffic hours, heavy use of Montclair Road is made. The primary direction of traffic flow is towards Birmingham to the west. This reverses during the afternoon peak travel.

Of traffic leaving the site during the AM peak, as much as 70% or ___ trips will be making a right hand turn on to Montclair Road. Adequate breaks in the traffic are created by the nearby traffic signal at Montclair and 3rd Street to accommodate the right hand turning motion. The left hand turning motion will require that driver's wait for an appropriate space to turn left. For PM peak, a protected center turn lane exists to allow for left hand turning motion to enter the subdivision.

Given the above and the small size of this development, Montclair Road shall continue to operate at its current level of service.

ORDINANCE NO. 1546

trial street

APPROVED: This ^{29th} 26th day of August, 2002.

Lawrence T. Oden
Lawrence T. Oden, Mayor

AN ORDINANCE TO REZONE A PARCEL OF LAND IN THE CITY OF MOUNTAIN BROOK, ALABAMA FROM RESIDENCE D TO RESIDENTIAL INFILL DISTRICT AND APPROVE THE MASTER DEVELOPMENT PLAN

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 August 26, 2002, as same appears in the minutes of record of said meeting, and published by posting copies thereof on August 27, 2002, at the following public places, which copies remained posted for five (5) days as required by law.

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

Joe Muggs Newsstand, 2037 Cahaba Road
CVS/Pharmacy, 49 Church Street

Steven Boone
Steven Boone, City Clerk

WHEREAS, the following described real estate is presently zoned Residence D:

A parcel of land located in the Southwest 1/4 of the Southwest 1/4 of Section 33, Township 17 South, Range 2 West, more particularly described as follows:

Begin at the Northwest corner of the Southwest 1/4 of the Southwest 1/4 of Section 33, Township 17 South, Range 2 West, and run in a easterly direction along the northern boundary line of said quarter-section for a distance of 516.43 feet to a point; thence turn a deflection angle to the right of 142 degrees 49 minutes 46 seconds and run in a Southwesterly direction for a distance of 63.31 feet to a point and also a point on a curve to the left, said curve having a radius of 3744.83 feet, a central angle of 02 degrees 17 minutes 27 seconds, a chord distance of 149.72 feet and an interior chord angle from tangent of 181 degrees 08 minutes 43 seconds; thence run in a Southwesterly direction along the arc of said curve for a distance of 149.73 feet; thence turn an interior angle from chord of 181 degrees 08 minutes 44 seconds and run in a Southwesterly direction and parallel to the centerline of the old L&N Railroad (abandoned) for a distance of 436.01 feet; thence turn a deflection angle to the right of 127 degrees 47 minutes 35 seconds and run in a Northerly direction along West boundary of said Section 33 for a distance of 408.36 feet and the point of beginning. Said parcel contains 103,561 square feet or 2.38 acres (more or less).

WHEREAS, after due consideration, the City Council has determined that the zoning classification of the Real Estate should be Residential Infill District.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Mountain Brook as follows:

Section 1. The zoning map of the City of Mountain Brook, as referred to in Section 19-2-7 of the Mountain Brook City Code, as amended from time to time, is hereby further amended by zoning the following described property Residential Infill District:

A parcel of land located in the Southwest 1/4 of the Southwest 1/4 of

PC 1495

Section 33, Township 17 South, Range 2 West, more particularly described as follows:

Begin at the Northwest corner of the Southwest 1/4 of the Southwest 1/4 of Section 33, Township 17 South, Range 2 West, and run in a easterly direction along the northern boundary line of said quarter-section for a distance of 516.43 feet to a point; thence turn a deflection angle to the right of 142 degrees 49 minutes 46 seconds and run in a Southwesterly direction for a distance of 63.31 feet to a point and also a point on a curve to the left, said curve having a radius of 3744.83 feet, a central angle of 02 degrees 17 minutes 27 seconds, a chord distance of 149.72 feet and an interior chord angle from tangent of 181 degrees 08 minutes 43 seconds; thence run in a Southwesterly direction along the arc of said curve for a distance of 149.73 feet; thence turn an interior angle from chord of 181 degrees 08 minutes 44 seconds and run in a Southwesterly direction and parallel to the centerline of the old L&N Railroad (abandoned) for a distance of 436.01 feet; thence turn a deflection angle to the right of 127 degrees 47 minutes 35 seconds and run in a Northerly direction along West boundary of said Section 33 for a distance of 408.36 feet and the point of beginning. Said parcel contains 103,561 square feet or 2.38 acres (more or less).

Section 2. The rezoning hereby approved shall be subject to and conditioned upon compliance with the master development plan submitted in conjunction with and as a part of the application for rezoning of the property described above, which master development plan shall remain on file at Mountain Brook City Hall, and which is incorporated herein by reference.

Section 3. The provisions of this ordinance are severable. If any provision of this ordinance is held by a court of competent jurisdiction to be invalid, such invalidity shall in no way affect the remaining provisions of this ordinance.

Section 4. This ordinance shall become effective when published by posting the same as required by law.

ADOPTED: This 26th day of August, 2002.

Alice M. Williams
Alice M. Williams, Council President



VICINITY MAP
(NOT TO SCALE)

APPENDIX 4



GONZALEZ - STRENGTH & ASSOCIATES, INC.
ENGINEERING • LANDPLANNING • SURVEYING

August 26, 2002

Sam Gaston, City Manager
City Of Mountain Brook
56 Church Street
Mountain Brook, Alabama 35213

Re: Rezoning RID Application
Morningside Condominiums
99BRN01

Dear Sam:

As part of our request for rezoning from Residence D to Residential Infill District (RID), we are submitting in accordance with Ordinance # 1526 section 7 the following:

- A) **Master Plan**- The current master plan does not include any lands not now currently owned or under option by the Browns. The intent of the Browns is to modify the master plan to include 3 rd. Street if the ROW is vacated in the future
- i) **Legal Description**- Attached is the record map "Brown Development, LLC - Addition to Mountain Brook."
 - ii) **Owner Name and Address**- See Attached letter by James N. Brown III
 - iii) **Project Objectives**- See Attached letter by James N. Brown III
 - iv) **Covenants, Easements, etc.**- See Attached letter by James N. Brown III
 - v) **Perpetual Ownership & Maintenance**- See Attached letter by James N. Brown III
 - vi) **Buffers, Landscaping etc.**- Landscape plans are attached which depict landscaping at entrance, and in typical yard are attached. Buffers are shown on the Master Plan.
 - vii) **Contact with Neighbors**- See Attached letter by James N. Brown III
 - viii) **Traffic Information** - See attached Traffic report.
- B) **Site Plan**- The Master Plan attached also constitutes the site plan for the project.
- i) **North Arrow, Scale**: Shown on Site Plan
 - ii) **Access, Easements, etc.** Access to all buildings shall be by private gated drive. Easements will be granted for all utilities.
 - iii) **Area Uses**- Area uses are shown on the Site Plan.

117 GEMINI CIRCLE - SUITE 407 - BIRMINGHAM, ALABAMA 35209
PHONE: (205) 942-2486 FAX: (205) 942-3033
www.gonzalez-strength.com

James N. Brown III
3231 Pine Ridge Road
Tel 205-871-1524 & Fax

TO: City of Mountain Brook
Attn: Sam Gaston, City & Zoning Manager
& Planning Commission Members

Dear Sirs:

As part of our application for Residential Infill Zoning, these comments address Paragraph 7 requirements of Residential Infill Districts. Comments are directed to the application generally and also to specific sections of Paragraph 7.

- 1) Paragraph 7A.ii. The owner of the parcels involved is James N. Brown, III "Brown". Brown has one parcel under contract from the Mountain Brook Bible Chapel, which will close after approval of the development plan. Brown Development, LLC, owned by James N. Brown, III will be the general contractor. William Robert Brown is president of Brown Development, LLC. James N. Brown, III is the sole director.
- 2) 7A.iii. Morningside English Villas "MEV" is an upscale gated condominium community designed for mature couples who usually have no children at home and desire a modern home and a carefree lifestyle. The current plan to build single family detached homes rather than duplex buildings reflects market preferences in this area and adoption of the RID Ordinance. Proximity to Crestline Village and local clubs is a crucial factor in MEV. Drawings of typical proposed units, which will be very traditional in architecture, are included in this application. Across Montclair Road from MEV are duplex residential units, similar in approach, but smaller in size, less expensive and not detached.
- 3) 7A.iv & v. MEV is restricted to single family residential with common areas owned by a nonprofit charged with exterior maintenance and owned and governed by the condo owners. Covenants and easements are standard in scope to all residential condo ownership developments, with the owners financially responsible to each other through annual assessments for all

APPENDIX 4

- iv) **Location of Open Areas**- The project is a condominium all area beyond the buildings shall be owned by the association. Open areas are shown on the Site Plan.
- v) **Streets, drives, etc.**- Streets, drives, sidewalks are shown on the Site Plan.
- vi) **Grading Plan**- See attached Grading Plan.
- vii) **Landscape Plan**- See attached Landscape Plan and attached letter by James N. Brown III
- viii) **Exterior Lightings**- Exterior shall be antique bronze finish with a total height 12.5'. See attached specification sheet.
- ix) **Preliminary Drainage plan**- Drainage is shown on the attached Grading Plan. Also, attached are drainage calculations in compliance with Ordinance 1496.
- x) **Utilities, fire hydrants, etc.** - See attached Utility plan.
- xi) **Structure Information**- Maximum structure height is 37.5 or 2 1/2 stories, minimum 1 st. floor sq ft - 2400 sq. ft., minimum total sq. ft. all floors 3200 sq. ft. See Master Plan for location of buildings.
- xii) **Rendering**- See attached rendering of proposed buildings
- xiii) **Building Setbacks, etc.**- Building setbacks meet or exceed the required 10' separation from adjacent residential property. All access is via a private drive. Refer to the Master Plan for additional information.
- xiv) **Parking**- All home in Mountain Brook are provided with a two car garage and space outside to accommodate 2 additional visitors cars.
- xv) **Paving materials**- currently planned is an all asphalt access drive. Final design may include stained, stamped concrete and/or concrete pavers.

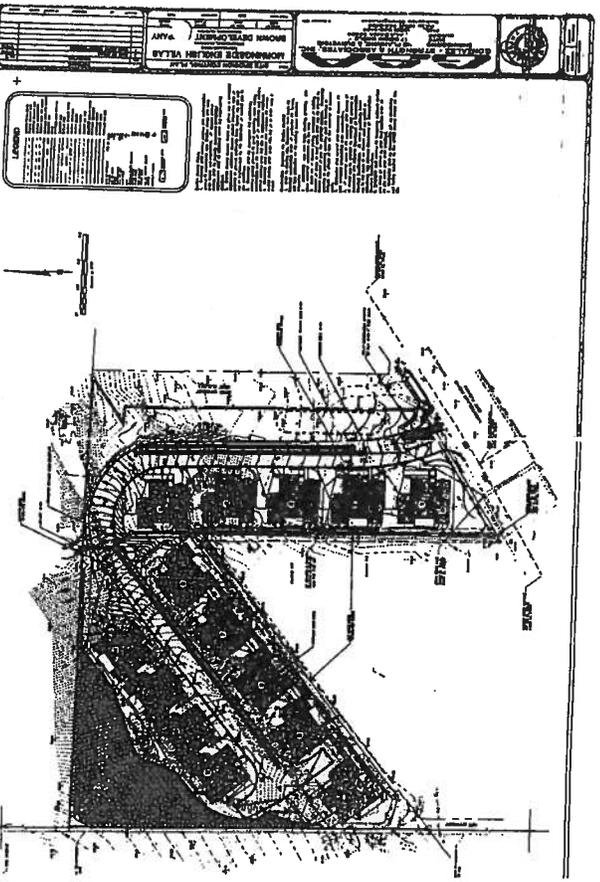
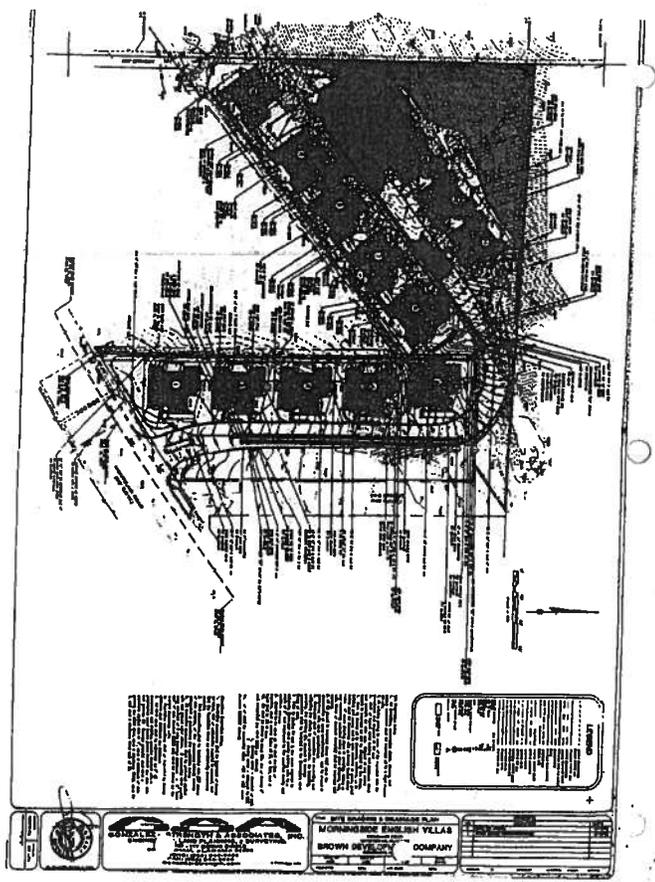
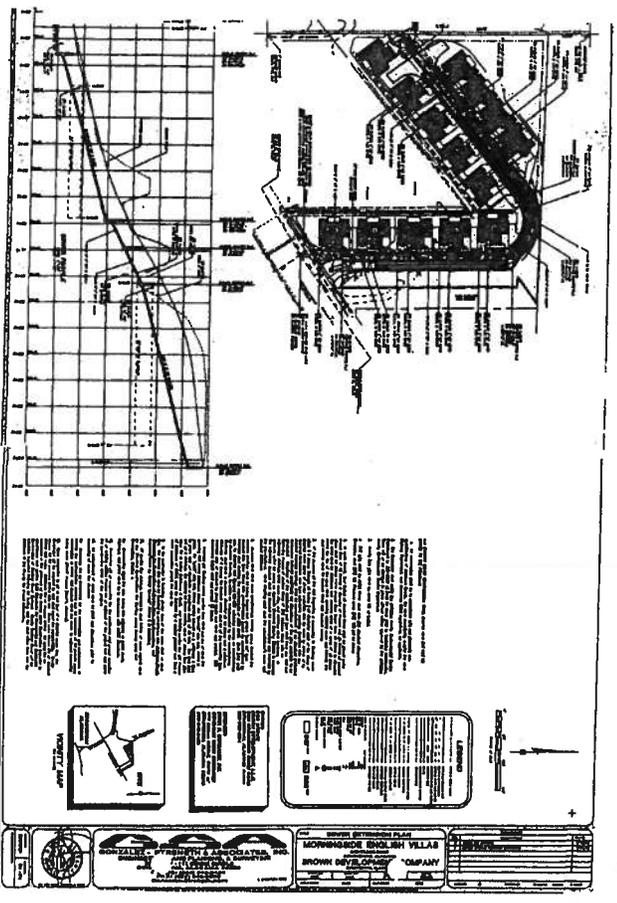
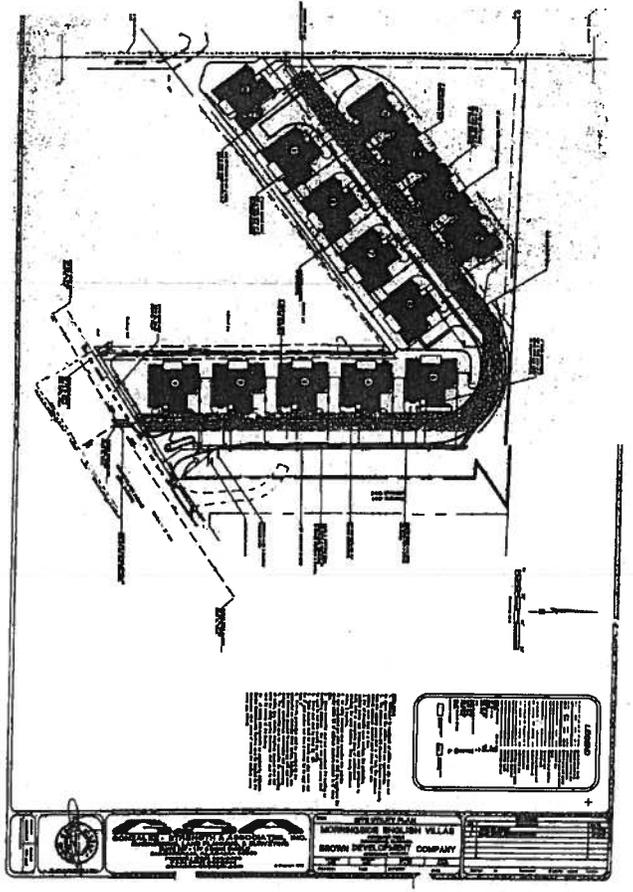
If you have any questions, please call.

Sincerely,

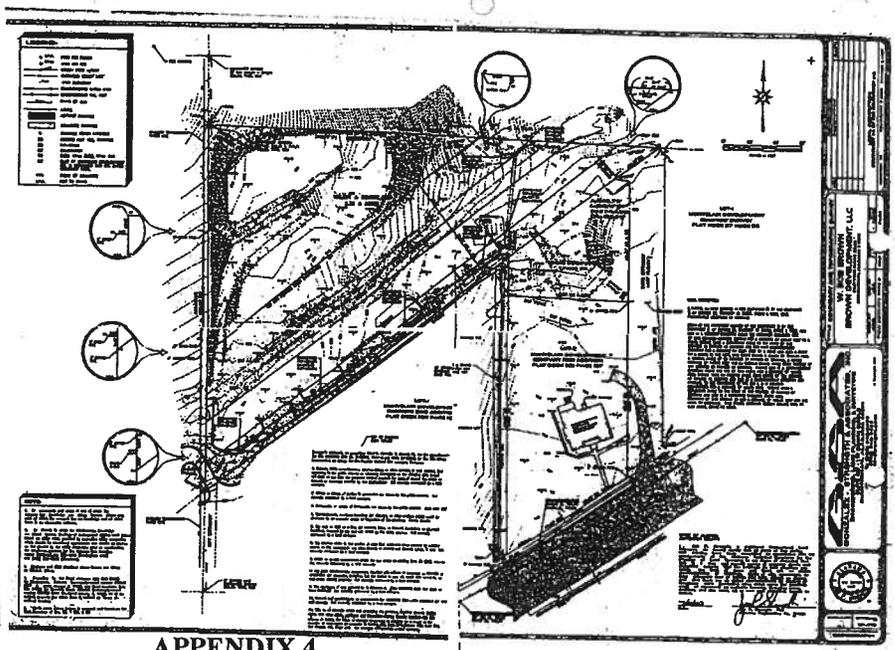
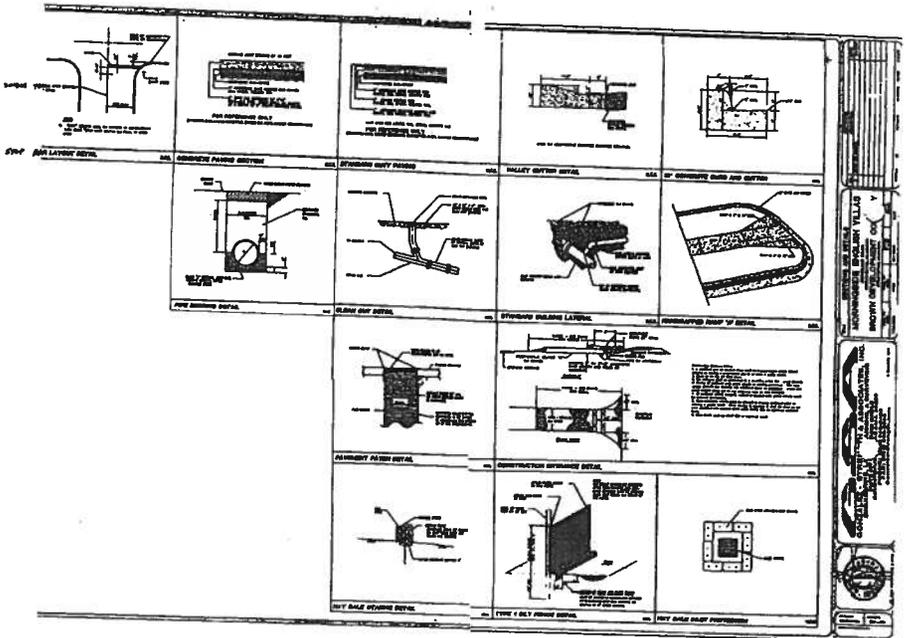

Mark N. Gonzalez, P.E.
President of Engineering

exterior upkeep and maintenance of, inter alia, all items mentioned in v. This is enforced by contract and runs with all ownership.

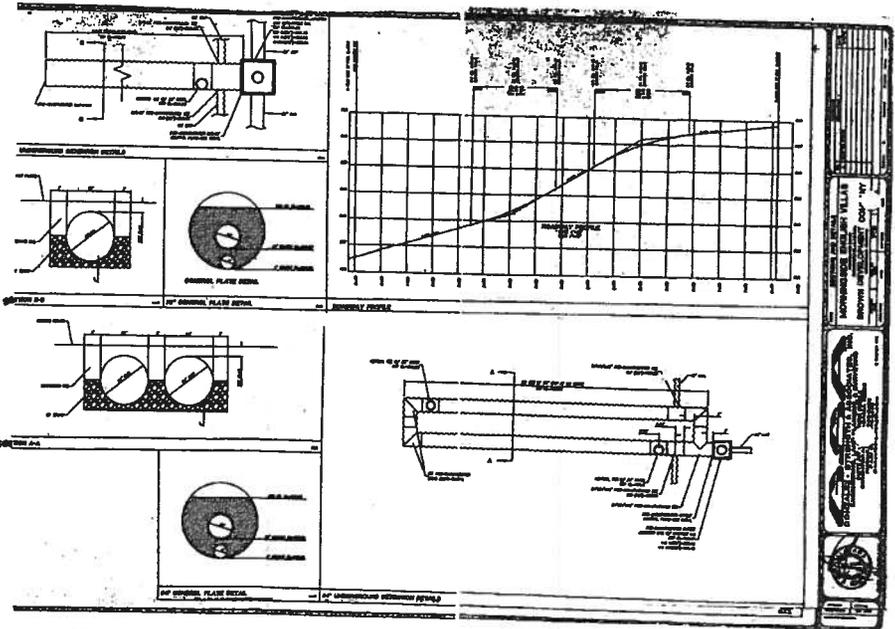
4) 7A.vii. All contiguous owners have been repeatedly talked with over a period of 2+ years and their concerns have been incorporated into design of this development. These concerns were addressed with specific wall designs and landscaping agreements. An owner North of the development in the City of Birmingham, the "Peterson Trust" has opposed all aspects of the development, and has erroneously claimed a 40-foot easement access to 3rd Street, which the Trust simply does not have.



APPENDIX 4



APPENDIX 4



FRANK C. GALLOWAY III
JOHN S. GALLOWAY III
STACY CLARK DEAN

October 17, 2002

GALLOWAY & SOMERVILLE, LLC

PROFESSIONAL ARCHITECTS
11 Oak Street
BIRMINGHAM, AL 35203-4418
TELEPHONE (205) 971-1144
FACSIMILE (205) 971-1144

Via Hand Delivery
Ced E. Johnson, Jr., Esq.
Bishop Colvin Johnson & Kent
1910 First Avenue North
Birmingham, AL 35203

Re: James N. Brown III development on Montclair Road

Dear Carl:

Enclosed herein please find a proposed final version of the comments for Jim Brown's development off of Montclair Road. I ask that you review the documents and call me so that we can discuss whether any additional changes need to be made thereto.

Sincerely,

Frank C. Galloway III

Frank C. Galloway III
Enclosure

cc: Mr. Steve Boone (re Hand Delivery) ✓

STATE OF ALABAMA)
JEFFERSON COUNTY)

This instrument was prepared by:
Frank C. Galloway III
Galloway & Somerville, LLC
11 Oak Street
Birmingham, Alabama 35213

COVENANTS

FIRST AMENDMENT TO EXISTING COVENANTS
AND DECLARATION OF COVENANTS

COME NOW the undersigned James N. Brown, II ("Brown"), a married man, and
Mountain Brook Bible Church ("the Church") and, as owners of the real properties referred
hereinafter (such properties are collectively referred to hereinafter as the "Property"), agree and
declare as follows:

1. Brown is the owner of the real property located in the City of Mountain
Brook, Alabama, (the "City") which is more particularly described in the attached Exhibit "A"
("Property #1"). Property #1 is presently subject to a set of restrictive covenants recorded in the
Office of the Judge of Probate of Jefferson County, Alabama (the "Probate Office") in Volume
200003 at Page 8686 (the "Initial Covenants").

2. Since executing the Initial Covenants, Brown has purchased a tract of land
(more particularly described in the attached Exhibit "B" and referred to as "Property #2") that
adjoins Property #1. Additionally, Brown has a contract to purchase a third tract of land that adjoins
Property #2 (more particularly described in the attached Exhibit "C" and referred to as "Property
#3") which is owned by the Church. Property #1, Property #2 and Property #3 are collectively
referred to hereinafter as the "Property".

3. Brown and the Church seek (i) to have the Property collectively rezoned to
the City's newly created "Residential Infill District" ("RID") zoning, and (ii) modify the Covenants

1 The subject property owned by Brown is not the homestead of Brown nor his spouse.

so as to adopt them as to all of the Property and make certain changes thereto so that the
contemplated residential development on the Property will conform with the City's RID zoning.

WHEREFORE, Brown, by his signature hereunder, agrees to modify the Initial
Covenants in their entirety so as to (i) expand the lands burdened thereby, and (ii) change certain of
the provisions therein, and the Church, as owner of Property #3, seeks to burden Property #3 with
these covenants (the "Covenants") so as to allow Property #3 to be developed under a RID zoning
in conjunction with the remaining portions of the Property; accordingly, Brown and the Church
(collectively referred to hereinafter as "Declarants") do hereby burden all of the Property with the
following restrictive covenants:

AGREEMENTS

NOW, THEREFORE, Declarants do hereby subject the Property to the following
Covenants, which Covenants shall run with the land and shall be binding on the owners and their
heirs, successors and assigns until October 1, 2022, at which time the Covenants shall be
automatically renewed for successive periods of ten (10) years, unless the then owners of a majority
of the lots or parcels into which the Property may have been subdivided agree to terminate or amend
the Covenants, as evidenced by an instrument signed by such owners and recorded in the Probate
Office.

2 To the extent this document concerns Property #1, these Covenants are intended to replace in full the
Initial Covenants.

- 1. No more than fifteen (15) dwelling units (each such unit is hereinafter referred
to as a "Dwelling Unit"), each being a detached structure, may be constructed on the Property.
2. All Dwelling Units must be completely constructed, and certificates of
occupancy issued therefor, by April 1, 2005, except, for situations due to economic downturns and/or
force majeure.
3. The average sales price of the Dwelling Units shall be at least Four Hundred
Ten Thousand and 00/100 Dollars (\$410,000.00). It is anticipated that fifteen (15) Dwelling Units
will be constructed, producing an aggregate sales price of the Dwelling Units (exclusive of any
rebates or credits) of approximately Six Million One Hundred Fifty Thousand and 00/100 Dollars
(\$6,150,000.00).
4. The owners of the Property agree that consistent with the City's RID
ordinance, prior to filing a final plat of the Property, they shall create a homeowner's association
for which every owner of a lot or unit in the Property must be a member and which association shall
be solely responsible for the perpetual maintenance of private streets, driveways, parks, buffers,

3 This restriction will not apply if additional adjoining property (such as all or part of Third Street if
it is vacated) is later added to the Property. Provided, however, that the lifting of such a restriction shall in no way imply
that the Property (and any acreage added thereto) is to be viewed by the City as a potential development site that merits
a variance to allow for more density than whatever the applicable zoning would allow.

4 Declarants acknowledge that section 6(B) of the Residential Infill District contemplates that:

Prior to final plat approval of a subdivision for a Residential
Infill Development, the developer shall submit to the City Clerk
appropriate legal documents that provide for adequate
maintenance of private streets and driveways, parks, recreational
facilities, planted or forested areas, and all other improved or
unimproved real property and improvements located within the
common areas.

Declarants acknowledge that a plat of a subdivision must be presented for approval to the City Planning Commission,
regardless of whether the Property is developed in the form of condominium ownership.

recreational facilities, planted or forested areas, detention systems, and all other improved or
unimproved portions of common area within the Property. Such association shall have the power
to levy assessments against property owners, and file liens on such property(ies). The owners of the
Property further agree that they shall submit to the City Clerk all such documentation regarding the
creation and operation of a homeowner's association contemporaneous with their submissions to the
City Clerk as contemplated by section 6(E) of the Residential Infill District Ordinance (#1526).

5. Declarants covenant that the height of homes built on the Property under the
City's RID zoning shall not exceed 37 1/2 feet in height (as currently measured by the City). The
undersigned anticipate that the height of the majority, if not all, of the homes built on the Property
under the City's RID zoning will be 37 to 37 1/2 feet.

6. Each of the Dwelling Units shall contain at least 3,000 square feet of heated
and cooled living area.

7. Each of the Dwelling Units shall have an attached two-car garage.

8. The Declarants agree that they shall follow and abide by the City's ordinances
regarding storm water detention. If the City's ordinances ever become less stringent than those
currently in place, the owners of the Property shall still be obligated to comply with the City's storm
water detention ordinances now in place.

9. These covenants shall run with the land and may be enforced by any one or
more of the following: (a) the City, (b) the owner of any lot, parcel or other part of the Property, or
any interest therein. Enforcement of these covenants shall be by proceedings at law or in equity
against any person or party violating or attempting to violate any of the Covenants, either to restrain
the violation of one or more of the Covenants or to recover damages for the violation of one or more
of the Covenants.

APPENDIX 4

10. The sections, paragraphs, sentences, clauses and phrases of this document are severable and, if any section, paragraph, sentence, clause or phrase of this document shall be declared unconstitutional or otherwise invalid by the judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the other section, paragraphs, sentences, clauses or phrases of this document, since the same would have been executed by Owner without the incorporation in this document of any such unconstitutional or invalid section, paragraph, sentence, clause or phrase.

IN WITNESS WHEREOF, the undersigned by have executed this instrument on the ____ day of _____, 2002.

MOUNTAIN BROOK BIBLE CHURCH

By: _____

Its: _____

STATE OF ALABAMA)
 :
 JEFFERSON COUNTY)

I, the undersigned Notary Public in and for said County, in said State, hereby certify that _____ as _____ of Mountain Brook Bible Church, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day, that being informed of the contents of the conveyance, and with full authority as such officer, he/she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this ____ day of _____, 2002.

 Notary Public
 My Commission Expires: _____

STATE OF ALABAMA)
 :
 JEFFERSON COUNTY)

 James N. Brown, II

I, the undersigned Notary Public in and for said County, in said State, hereby certify that James N. Brown, II, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day, that being informed of the contents of the conveyance he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this ____ day of _____, 2002.

 Notary Public
 My Commission Expires: _____