Minutes of the City of Calera Council Meeting January 17, 2023

The Council of the City of Calera met in the Council Chambers of the City Hall at 7901 Highway 31 on Tuesday, January 17, 2023, at 6:30 p.m., in a regular meeting. Mayor Graham residing.

Mayor and Council Members Present:

Jon G. Graham, Mayor
Philip Busby, Council Member
Kenny Dale Cost, Council Member
Ernest Montgomery, Council Member
Calvin Morgan, Council Member
Kay Snowden Turner, Council Member
Alan Watts, Council Member

City Attorney:

Bent Owens

Guests:

James Fuller, Reggie Darden, Seth Gandy, Kelly Ellison, Sean Kendrick, David Hyche, Alison Powers, Bill Hilyer, Chris Pappas, Donna and Autrey McMillian, Bill and Ann Davis, Jackie Batson, Dennis Torrealba, Debbie and Richard Byers, Dawn Gragg, Melody Whitten, Rod Kanter, Don Spurlin, Calera High School Varsity Cheerleaders and Coaches

Mayor Graham called the meeting to order at 6:30 p.m.

Word of Prayer and Pledge of Allegiance:

Council Member Watts opened the meeting with prayer and the Pledge of Allegiance.

Approval of Minutes:

Council Member Watts made a motion to approve and dispense with the reading of the following minutes:

Regular Meeting – January 3, 2023
Work Session – January 3, 2023

Council Member Morgan seconded said motion and upon vote, the results were as follows:

AYES: Busby, Cost, Graham, Montgomery, Morgan, Turner, Watts

NAYS: None

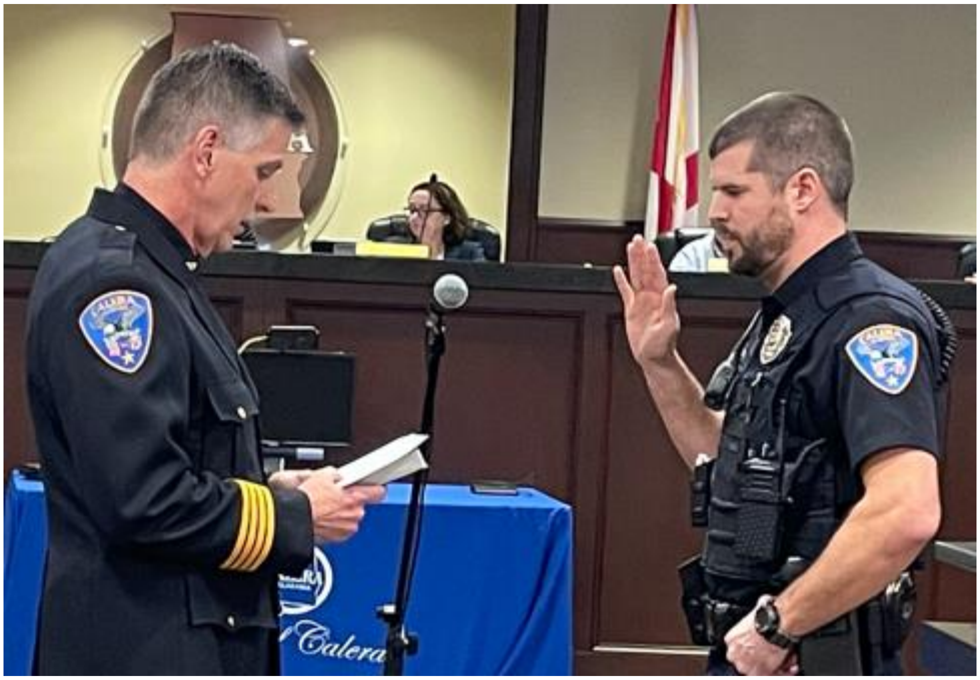
Motion Passed

Old Business:

No old business

New Business:

David Hyche, Police Chief Introduction and Swearing in for Officer. Michael Roberts



Ordinance No. 2023-01 - Zamora / Garcia Request to De-Annex

Council Member Cost moved that unanimous consent of the Council be given for the immediate action upon said Ordinance. Council Member Busby seconded said motion and upon vote the results were:

AYES: Busby, Cost, Graham, Montgomery, Morgan, Turner, Watts

NAYS: None

The Mayor declared said motion carried and unanimous consent given.

Council Member Cost moved that Ordinance No. 2023-01 be denied, which motion was seconded by Council Member Montgomery and upon vote the results were as follows:

AYES: Busby, Cost, Graham, Montgomery, Morgan, Turner, Watts

NAYS: None

Motion Passed - Adopted this 17th day of January 2023.

The property will remain inside the city limits.

Resolution No. 2023-02 Agreement for Examination Services – Rivertree Systems, Inc.

Council Member Watts moved that Resolution No. 2023-02 is adopted. Council Member Busby seconded the motion and upon vote, the results were as follows:

AYES: Busby, Cost, Graham, Montgomery, Morgan, Turner, Watts

NAYES: None

Motion Passed- Adopted this 17th day of January 2023

Resolution No. 2023-03 Hotel Development Agreement

Council Member Turner moved that Resolution No. 2023-03 is adopted. Council Member Cost seconded the motion and upon vote, the results were as follows:

AYES: Busby, Cost, Graham, Montgomery, Morgan, Turner, Watts

NAYES: None

Motion Passed- Adopted this 17th day of January 2023

Planning Commission – Board Appointment – George Marling – Term to Expire August 2026

Council Member Watts made a motion to appoint George Marling to the Planning Commission with a Term to Expire August 2026. Council Member Morgan seconded the motion and upon vote, the results were as follows:

AYES: Busby, Cost, Graham, Montgomery, Morgan, Turner, Watts

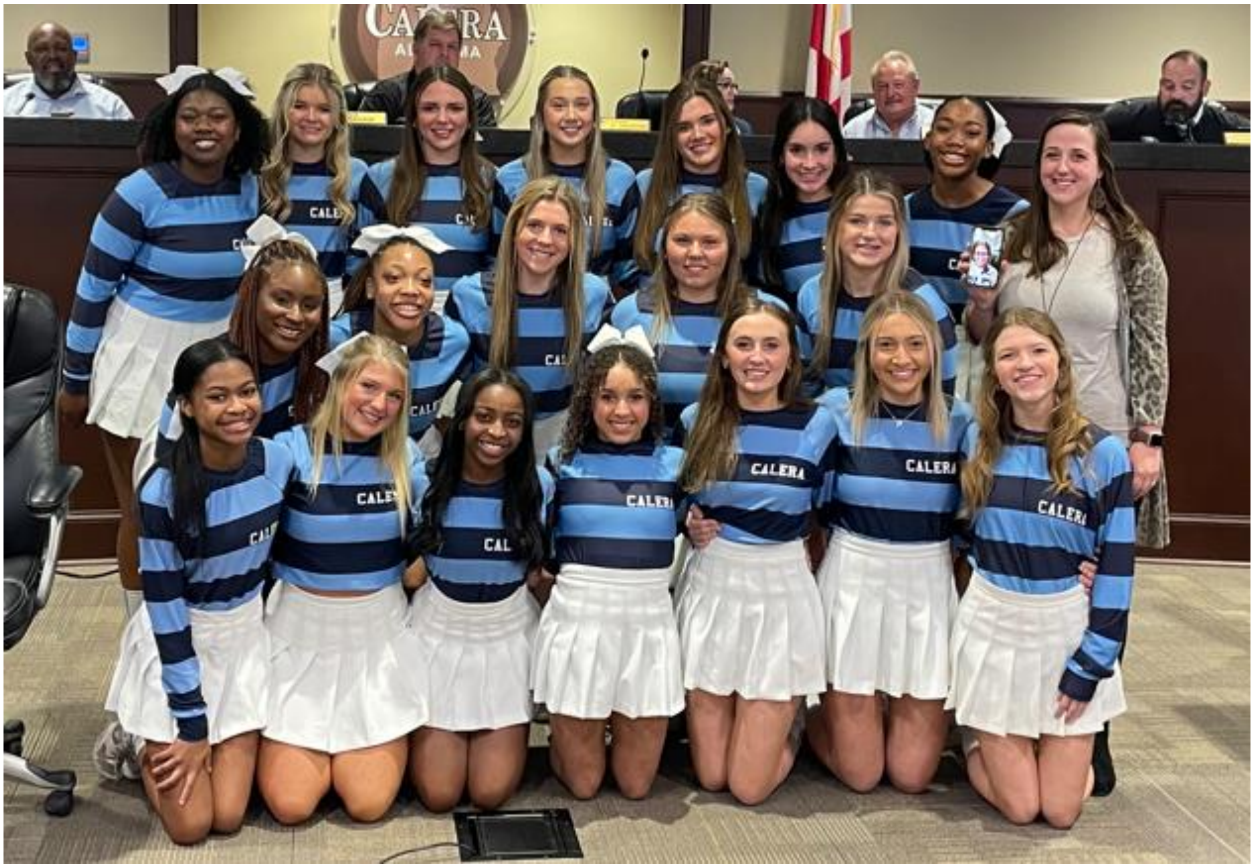
NAYES: None

Motion Passed

Guests:

Congratulations to the Calera High School Varsity Cheerleaders and Coaches on the following accomplishments: UCA 2022 Camp Awards – 1st Place Camp Routine, 2nd Place Gameday

Routine, UCA Regionals – 4th Place, AHSAA Regionals – 1st Place, AHSAA State Competition – 2nd Place



Varsity Cheerleaders – Tamirah Johnson, Kate Cockrell, Avery Baldassaro, Ana Johnson, Katelyn Miller, Kyla Banks, Blakley Werner, Emily McGrady, Emma Drolet, Kayla Ledlow, Sadie McNamee, Rylan Pickett, Kaitlyn Peebles, LaShari Jones, Brooke Busby, Katie Grace Carlee, Kylie Deason, Kamey Mesamore, Addison Popwell

Jackie Batson, Calera Main Street Update

Council Member Busby made a motion to adjourn the meeting at 7:13 p.m.

Approved this 6th day of February 2023.

____
Jon G. Graham, Mayor

ATTEST:

____
Connie B. Payton, City Clerk

To view our City Council Meeting please click the link below:
https://www.youtube.com/watch?v=MZDkwJqWzEw

Mayor Graham introduced the following Ordinance:

ORDINANCE NO. 2023-01

AN ORDINANCE TO ALTER, REARRANGE AND REDUCE THE CORPORATE LIMITS OF THE CITY OF CALERA, ALABAMA

WHEREAS, a certain petition signed by the property owner requesting territory therein described be deannexed from the City of Calera, together with a map of said territory showing its relationship to the corporate limits of the city has been filed with the City Clerk of the City of Calera; and

WHEREAS, the Council has determined and found that the matters set forth and alleged in said petition are true, and that it is in the public interest that said property be deannexed from the City of Calera;

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

Section 1. That said Council hereby assents to the deannexation of said territory from the City of Calera, Alabama, the corporate limits of the City to be reduced and rearranged pursuant to the provisions of Chapter 42, Article 2, Code of Alabama 1975 (Sections 11-42-20 through 11-42-43, as amended) so as to exclude said territory from the territory already with its present corporate limits, within the corporate area of said City. Said territory is described as follows:

See Attached

Section 2. That the City Clerk shall file a certified copy of this ordinance containing an accurate description of said deannexed territory with the Probate Judge of Shelby County, Alabama, and also cause a copy of this ordinance to be posted in three public places.

Council Member Cost moved that unanimous consent of the Council be given for the immediate action upon said Ordinance. Council Member Busby seconded said motion and upon vote the results were:

AYES: Busby, Cost, Graham, Montgomery, Morgan, Turner, Watts

NAYS: None

The Mayor declared said motion carried and unanimous consent given.

Council Member Cost moved that Ordinance No. 2023-01 be denied, which motion was seconded by Council Member Montgomery and upon vote the results were as follows:

AYES: Busby, Cost, Graham, Montgomery, Morgan, Turner, Watts

NAYS: None

Adopted this 17th day of January 2023.

Mayor Graham declared Ordinance No. 2023-01 denied.

The property will remain inside the city limits.

_________________________ ________________________

Connie B. Payton, City Clerk Jon G. Graham, Mayor

To the City of Calera, My name is Benjamin Zamora and I have recently purchased the property at 3469 Smokey Rd Alabaster, AL 35007. We moved from 390 Smokey Rd Alabaster, AL 35007, we have 3 children currently attending the Alabaster City Schools, and we would like to keep them attending Alabaster City Schools. I had the impression when we purchased the property that we would be able to keep our children in the Alabaster City Schools system, but we have been ordered to transfer them to Calera City Schools because the property is in the Calera zone, we are also next to both Calera and Alabaster City limit, so in conclusion i write this letter with the wish that you can deannex our home from Calera City and annex to Alabaster city to be able to keep our children in the same schools they are currently attending. Sincerely from the Zamora family.

Benjamin Zamora
205-586-5812

Ramon Zamora
205-586-1194

Amparo Garcia Amparo Garcia
205-586-5856

DON ARMSTRONG
PROPERTY TAX COMMISSIONER
P. O. BOX 1269
COLUMBIANA, ALABAMA 35051

PA083569S

ParcelNo: 23 7 36 0 002 001.000 | **Appl. Date:** 12/2/2022 2:35:39 PM | **Case No.:** PA083569
Owner: ZAMORA BENJAMIN & GARCIA AMPARO & ZAMORA RAMON | **Tax Year:** 2024 | **Assessor:** AMANDA EBERT
Address: 3469 SMOKEY RD ALABASTER AL 35007 | **Status:** COMPLETED | **Old Owner:** BROWN KENNETH W & RHONDA E

Assessment Summary

AssessmentInfo

Exempt Code:	10
Mun Code:	03
Over65 Code:	
Disability Code:	
Prop Class:	3
School Dist:	2
School Dist2:	
ClassTax Year:	2024
ExemptTax Year:	2024
Class Use:	BENJAMIN HS
Eff. Date:	11-30-2022
Instr.Nbr:	
Sale Price:	$790,000.00
Remarks:	RB 333 P 977;

Property Address
3469 SMOKEY ROAD

ALABASTER AL 35007

Legal Desc

SEC:	36
TWP:	21S
RNG:	03W
Deed Acr:	5.030
Est Acr:	5.030
Plat Bk:	46
Page:	058
SubName:	HIGHPOINT ESTATES RES LOTS 1 & 2
Lot:	1A
Block:	000
Sector:	
Phase:	
Tract:	
Remarks:	1999 ANNEX ORD #99-02

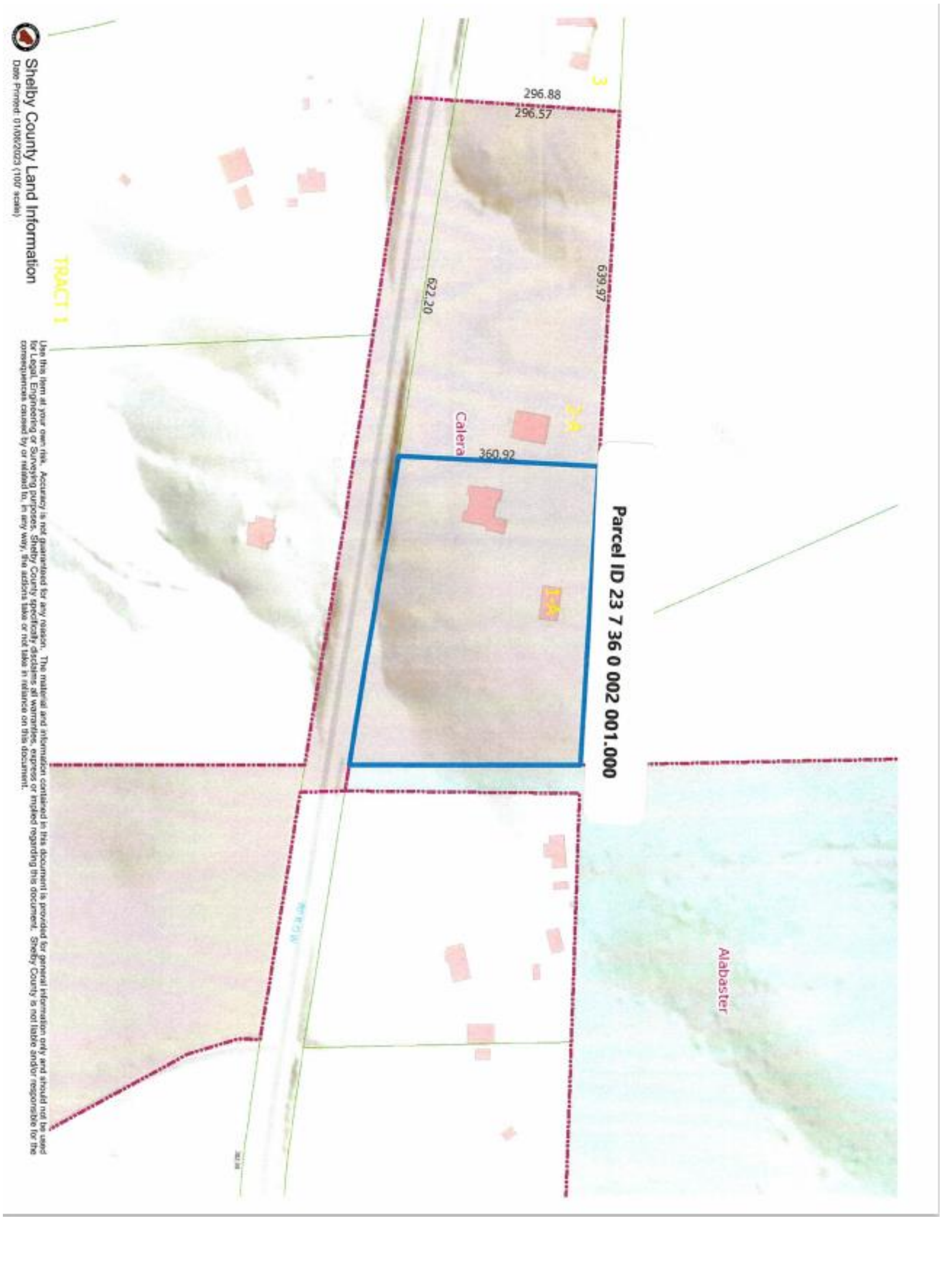
Improvement

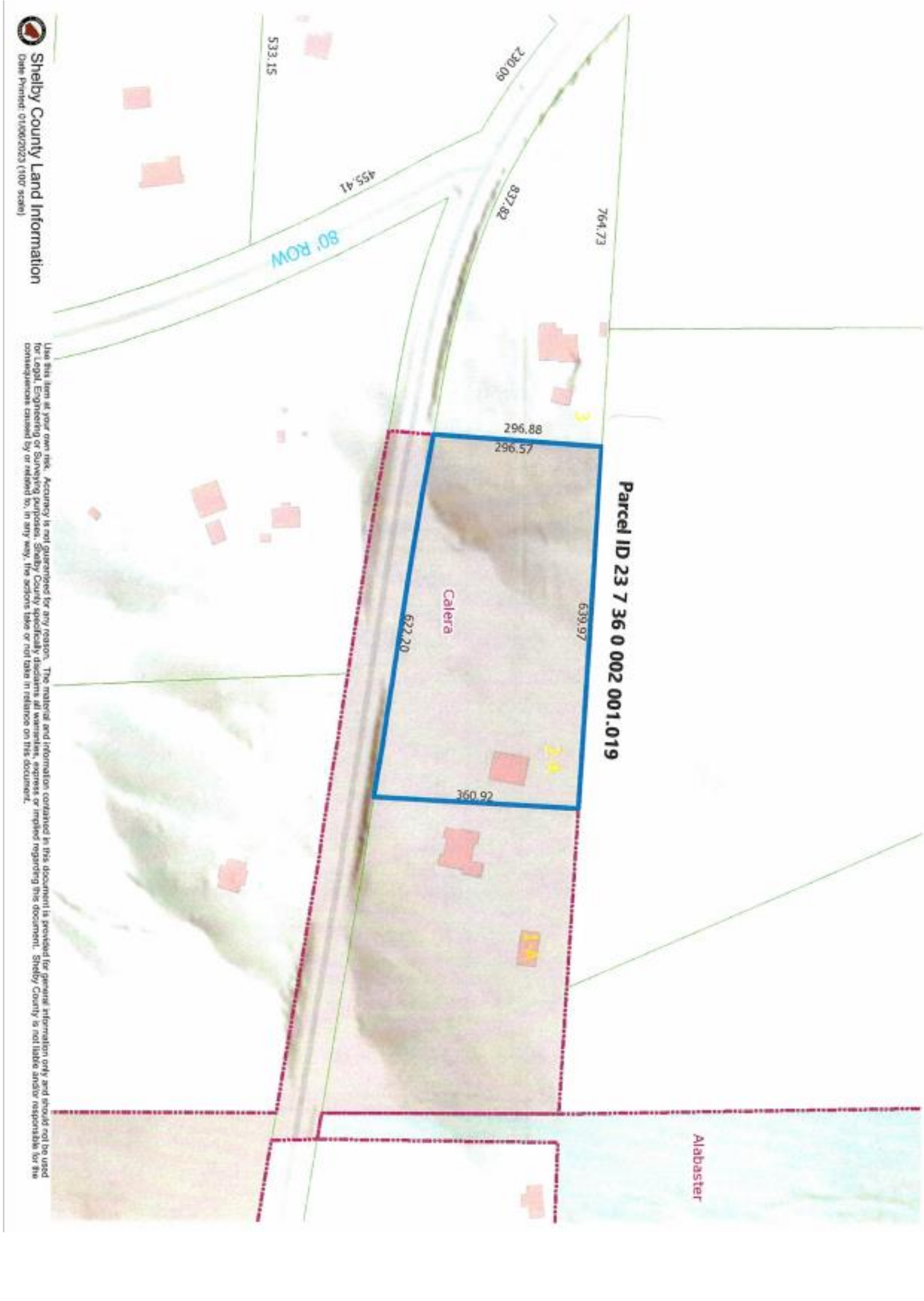
Const Began:		Const Completed:	
SQ.FT:		Story:	1
Rooms:	8		
BathRooms			
FullBath:	4	Half Bath:	1
Fx5WHP:		5Fx:	
4FxWP:		4Fx:	
3Fx:	4	2Fx:	1
Ext. Type:		HVACType:	
Flooring			
FLCarpet:		FLVinyl:	
FLHarwood:	100	FLEtc.:	
Fire Place			
FPPrefab:	1	FPRegular:	
Basement			
BSMTFull:		BSMTPartial:	X
BSMTUnfinished:			
Upper Floor			
UP2:		H075:	
H050:		HUnfinished:	

Decal Number

Oath to be administered to Taxpayer, "I do solemnly swear that the foregoing list of property returned by me **ZAMORA BENJAMIN & GARCIA AMPARO & ZAMORA RAMON** is a full And complete return of all the property owned by **ZAMORA BENJAMIN & GARCIA AMPARO & ZAMORA RAMON** Or in which **ZAMORA BENJAMIN & GARCIA AMPARO & ZAMORA RAMON** had any interest whatever, the situs of which for taxation, or exemption from Taxation is This county, on the first of October of the present year, and that the statement of the amount of fire insurance carried hereon is correct, and that the names and, where known, the addresses of companies, firms, associations, exchanges or other organizations carrying such insurance are correct to my personal knowledge, and of the improvements on lands listed in the foregoing scheme so help me God. **ZAMORA BENJAMIN & GARCIA AMPARO & ZAMORA RAMON** Subscribed and sworn to before me this the 2 day of DECEMBER 2022.
AMANDA EBERT I hereby certify that before taking the foregoing assessment list, I administered the oath required to be administered under Section 32, Revenue Act 1935, to taxpayer or agent making this return that I interrogated the said party as the law directs in regard to the same.

OWNER	ACCEPTED BY	PROPERTY TAX COMMISSIONER
	Amanda Ebert	Don Armstrong


Parcel ID 23 7 36 0 002 001.000
296.88
296.57
639.97
622.20
360.92
Calera
Alabaster
TRACT 1
Shelby County Land Information



Parcel ID 23 7 36 0 002 001.019
296.88
296.57
639.97
622.20
360.92
Calera
Alabaster
764.73
837.82
230.09
455.41
533.15
80' ROW
Shelby County Land Information
Use this item at your own risk. Accuracy is not guaranteed for any reason. The material and information contained in this document is provided for general information only and should not be used for Legal, Engineering or Surveying purposes. Shelby County specifically disclaims all warranties, express or implied regarding this document. Shelby County is not liable and/or responsible for the consequences caused by or related to, in any way, the actions take or not take in reliance on this document.

20221201000438630
12/01/2022 02:10:53 PM
DEEDS 1/3

This instrument prepared by:
Michael Galloway, Esq.
3500 Blue Lake Drive, Suite 320
Birmingham, AL 35223

SEND TAX NOTICE TO:
Benjamin Zamora and Amparo Garcia
3469 Smokey Road
Alabaster, AL 35007

WARRANTY DEED

Joint With Right Of Survivorship

STATE OF ALABAMA)
)
SHELBY COUNTY)

KNOW ALL MEN BY THESE PRESENTS, That in consideration of the sum of Seven Hundred Ninety Thousand And No/100 Dollars ($790,000.00) paid by the grantee herein, the receipt of which is hereby acknowledged, I/we, Kenneth W. Brown and Rhonda E. Brown, a married couple (hereinafter grantor, whether one or more), do grant, bargain, sell and convey unto Benjamin Zamora and Amparo Garcia and Ramon Zamora (hereinafter Grantees), as joint tenants with rights of survivorship, all of my/our right, title and interest in the following described real estate, situated in Shelby County, Alabama.

Lots 1A & 2A, according to the map and Resurvey of Lots 1 & 2 of Highpoint Estates, as recorded in Map Book 46, Page 58, in the Office of the Judge of Probate of Shelby County, Alabama.

Subject to current taxes, all matters of public record, including, but not limited to easements, restrictions of record, and other matters which may be viewed by observation.

Subject to a third party mortgage in the amount of $700,000.00 executed and recorded simultaneously herewith.

TO HAVE AND TO HOLD unto the said Grantees as joint tenants, with rights of survivorship, their heirs and assigns, forever; it being the intention of the parties to this conveyance that (unless the joint tenancy created is severed or terminated during the joint lives of the grantees herein) in the event one grantee herein survives the other, the entire interest in fee simple shall pass to the surviving grantee, and if one does not survive the other, then the heirs and assigns of the grantees herein shall take as tenants in common.

Grantor does, for Grantor and for Grantor's heirs, executors and administrators covenant with the said Grantees as joint tenants, with rights of survivorship, their heirs executors and administrators, that Grantor is lawfully seized in fee simple of said premises; that it is free from all encumbrances, unless otherwise noted above; that Grantor has a good right to sell and convey the same as aforesaid; that Grantor will and Grantor's heirs, executors and administrators shall warrant and defend the same to the said Grantees, and their heirs, executors and administrators forever, against the lawful claims of all persons.

Parcel ID 23 7 36 0 002 001.019 **Parcel ID 23 7 36 0 002 001.000**

FILE NO.: CT-2201991

IN WITNESS WHEREOF, the undersigned have hereunto set our hands and seals on this 30th day of November, 20 22.

Kenneth W. Brown

Kenneth W. Brown

Rhonda E. Brown

Rhonda E. Brown

STATE OF ALABAMA
COUNTY OF Jefferson

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Kenneth W. Brown and Rhonda E. Brown whose name(s) is(are) signed to the foregoing conveyance, and who is(are) known to me, acknowledged before me on this day that, being informed of the contents of the conveyance he/she/they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal on this 30th day of November, 20 22.

Notary Public
My commission expires:

My Commission Expires:
July 24, 2023

DAVIS HANSON UNDERWOOD
NOTARY
PUBLIC
STATE OF ALABAMA

20221201000438630 12/01/2022 02:10:53 PM DEEDS 3/3

Real Estate Sales Validation Form

This Document must be filed in accordance with Code of Alabama 1975, Section 40-22-1

Grantor's Name	Kenneth W. Brown and Rhonda E. Brown	Grantee's Name	Benjamin Zamora and Amparo Garcia and Ramon Zamora
Mailing Address	13000 Monte Vedra Rd SE Huntsville, AL 35803	Mailing Address	3469 Smokey Road Alabaster, AL 35007
Property Address	3469 Smokey Road Alabaster, AL 35007	Date of Sale	November 30, 2022
		Total Purchase Price	$790,000.00
		or Actual Value	$
		or Assessor's Market Value	$

The purchase price or actual value claimed on this form can be verified in the following documentary evidence: (check one) (Recordation of documentary evidence is not required)

___ Bill of Sale
___ Sales Contract
X Closing Statement
___ Appraisal
Other:

If the conveyance document presented for recordation contains all of the required information referenced above, the filing of this form is not required.

Instructions

Grantor's name and mailing address - Kenneth W. Brown and Rhonda E. Brown, , .

Grantee's name and mailing address - Benjamin Zamora and Amparo Garcia and Ramon Zamora, 3469 Smokey Road, Alabaster, AL 35007.

Property address - 3469 Smokey Road, Alabaster, AL 35007

Date of Sale - November 30, 2022.

Total purchase price - The total amount paid for the purchase of the property, both real and personal, being conveyed by the instrument offered for record.

Actual Value - if the property is not being sold, the true value of the property, both real and personal, being conveyed by the instrument offered for record. This may be evidenced by an appraisal conducted by a licensed appraiser or the assessor's current market value.

If no proof is provided and the value must be determined, the current estimate of fair market value, excluding current use valuation, of the property as determined by the local official charged with the responsibility of valuing property for property tax purposes with be used and the taxpayer will be penalized pursuant to Code of Alabama 1975 & 40-22-1 (h).

I attest, to the best of my knowledge and belief that the information contained in this document is true and accurate. I further understand that any false statements claimed on this form may result in the imposition of the penalty indicated in Code of Alabama 1975 & 40-22-1 (h).

Date: November 30, 2022

Sign ________ Agent

SHELBY COUNTY ALABAMA

Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County Clerk
Shelby County, AL
12/01/2022 02:10:53 PM
$119.00 PAYGE
20221201000438630

Allie S. Boyd

Validation Form CT-2201991

Mayor Graham introduced the following Resolution:

RESOLUTION NO. R-2023-02

AGREEMENT FOR EXAMINATION SERVICES

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF CALERA, ALABAMA

WHEREAS, the Council hereby agrees to authorize Mayor Jon G. Graham to sign a contract with RiverTree Systems, Inc. for examination services. Said contract attached to minutes.

The City of Calera adopted this Resolution at the regular meeting on January 17, 2023. This Resolution is effective as of January 17, 2023

Council Member Watts moved that Resolution No. R-2023-02 be adopted.
Council Member Busby seconded said motion and upon vote, the results were as follows:

AYES: Montgomery, Watts, Morgan, Graham, Cost, Busby, Turner

NAYS: None

Mayor Graham declared Resolution No. R-2023-02 adopted.

Adopted this the 17th of January 2023.

____
Jon G. Graham, Mayor

ATTEST:

____
Connie B. Payton, City Clerk

STATE OF ALABAMA

COUNTY OF SHELBY

AGREEMENT FOR EXAMINATION SERVICES

THIS AGREEMENT made and entered into on this the __ day of _________ 2023 by and between the **CITY OF CALERA,** hereinafter referred to as the "Client", and **RIVERTREE SYSTEMS, INC.**, an Alabama corporation (hereinafter referred to as "**RIVERTREE**").

1. The Client desires to provide for the collection of all local taxes and fees, regardless of the jurisdiction in which a taxpayer subject to the Client's taxing power maintains its principal office, to provide that all taxpayers are treated equally and to provide that all tax related ordinances are uniformly and consistently applied. In order to accomplish these goals and objectives, the Client desires to retain the services of a company legally qualified as a "private auditing or collecting firm" as defined in the Alabama Taxpayers' Bill of Rights and Uniform Revenue Procedures Act, Code of Alabama (1975) §40-2A-1 et seq. (hereinafter the "Taxpayers' Bill of Rights") to perform audits and examinations of such taxpayers' books and records.

2. RIVERTREE is qualified as a private auditing or collecting firm under the Taxpayers' Bill of Rights and, as such, provides collection, examining and consulting services for local governments throughout the State of Alabama. RIVERTREE has represented to the Client that (i) it is knowledgeable of all laws and regulations applicable to private auditing or collecting firms, (ii) it provides its services in full compliance with all applicable laws and

regulations, and (iii) it obtains all of the legally required certifications, fidelity bonds, and legal letters of authority to act as a private auditing or collecting firm.

3. The Client desires to retain RIVERTREE as a private auditing firm to provide tax auditing and examination services under the terms and conditions, of this Agreement.

NOW, THEREFORE, PREMISES CONSIDERED, RIVERTREE and the Client hereby agree as follows:

1. **RIVERTREE SYSTEMS, Inc**. The Client and RIVERTREE hereby agree that RIVERTREE will provide the following services:

a) Identify and prepare a written list of "taxpayer candidates for examination "based on objective criteria to be agreed upon by RIVERTREE and the Client in advance of such work.

b) Pursuant to Code of Alabama (1975) §40-2A-13(d) upon first contact with the taxpayer, RIVERTREE shall disclose in writing the identity of the Client and all other clients represented by RIVERTREE and shall provide a copy of appropriate written authorization of RIVERTREE's representation from the Client and from any such other client.

c) Inspect and examine on behalf of the Client, all books, records and other documents of taxpayers assigned to be examined by the Client to determine to what extent, if any, the taxpayer owes the Client sales and use taxes, occupational taxes, license fees, lease taxes, tobacco taxes, gasoline taxes, and any other city tax, plus interest, penalties and other charges thereon, as directed by Client and in accordance with the ordinances, resolutions and regulations of the Client.

d) RIVERTREE acknowledges that Code of Alabama (1975) §40-2A-13(f) provides that when a private examining or collecting firm represents more than one county, city or town on the date it first contacts a taxpayer, the private examining or collecting firm shall examine the taxpayer's books and records for all such counties, cities or towns simultaneously. Therefore, when conducting examinations initiated by other RIVERTREE clients (counties or other cities and towns), RIVERTREE will include Client on the list of entities for which the examination is being conducted. In the event RIVERTREE examines a taxpayer on behalf of other RIVERTREE clients who have not enacted the same taxes as Client, then RIVERTREE's audit of such taxpayer shall include all such taxes of Client.

e) Perform examinations of taxpayer's records in accordance with "*The Minimum Standard Examination Program*" established by the Alabama Local Tax Institute of Standards and Training (the "Minimum Standards").

f) Report to the Client that information necessary for the Client to assess the taxpayer's sales and use taxes, license fees, lease taxes, and all other County taxes, plus interest, penalties and other charges thereon for transactions which RIVERTREE reasonably believes may have resulted in an obligation of the taxpayer to pay such taxes to the Client.

g) Prepare and present to the Client a "Findings Report," which shall include, at a minimum, all information required to prepare a written report under the Minimum Standards and a summary thereof on each examination performed. In the event RIVERTREE's audit indicates that a particular taxpayer has no tax Liability to the Client, RIVERTREE shall provide the Client a written report including the name of the taxpayer audited, the types of tax for which the taxpayer was examined and found to have no liability, and the audit period.

h) Provide full cooperation to the Client in the preparation of any legal documents, attend any judicial, administrative, departmental, appellate or other legal hearings and be available to testify at hearings that may be required to collect any amounts due to the Client from the taxpayer.

i) Pursuant to the Code of Alabama (1975) §40-2A-1 3(h) RIVERTREE shall notify the taxpayer if any tax overpayments are discovered and the taxpayer is due any refunds from the Client, or if the taxpayer owes any tax to the Client.

j) Any additional or incidental services which are allowable by law and are reasonably necessary in order to carry out RIVERTREE's obligations under this Agreement.

RIVERTREE shall collect all taxes with checks payable to the CITY OF CALERA.

2. Compensation. It is understood that each RIVERTREE client will only pay a prorated portion of total audit costs when RIVERTREE is conducting examinations for multiple clients at one time. Client agrees to pay RIVERTREE its prorated portion of each audit's total audit costs which shall consist of **seventy-five dollars ($75.00) per hour**.

RIVERTREE shall be paid monthly based upon hours worked submitted to the Client by the fifteenth (15th) day of the month for the month next proceeding. The parties acknowledge that the Code of Alabama (1975) §40-2A-6 specifically prohibits the Client from entering into any contract or arrangement with a private examining or contracting firm for the examination of a taxpayer's books on a contingency fee basis and agree that RIVERTREE's compensation under this Agreement is not in any way contingent upon or otherwise related to the amounts discovered during examinations nor contingent upon or related to amounts finally received by the Client.

Billing to Clients

1. The client will receive an Invoice Billing along with a check (made to client) for billable worked hours.
2. The client will receive a Billing Invoice on Final Assessments once a certified mail receipt is received for the Taxpayer. The audit package will be forwarded to the clients to provide an Administrative Law Judge Hearing, if self-administered, or start Legal Action. Rivertree will assist on all hearing matters.
3. Erroneously "Paid Tax" audits, Rivertree Systems will hold the "Notice of Tax Due" for 90-days to allow a refund from the "wrong jurisdiction." Once the 90-days has expired, the Refund Petition, Notice of Tax Due, tax billings, and audit work papers will be forwarded to the client to handle the "underpayment." An invoice will be attached for hours worked.
4. On Client Requested Reviews, at a minimum of 4-hours will be invoiced even if "No Findings."

3 Representations and Warranties. RIVERTREE represents and warrants as follows:

a. RIVERTREE is a corporation valid and existing and in good standing under the laws of the State of Alabama.

b. As of the effective date of the Agreement, RIVERTREE and any employee, agent, or independent auditor/examiner of RIVERTREE providing services under this Agreement, shall have obtained all licenses and bonds necessary or appropriate to perform RIVERTREE's obligations under this Agreement and all such licenses and bonds shall be current and in good standing, and shall be maintained throughout the term of this Agreement.

c. RIVERTREE and its employees, agents and independent auditors/examiners agree to comply with all current and future laws, rules and regulations applicable to all services provided by RIVERTREE under this Agreement, including, but not limited to, the Local Tax Simplification Act of 1998, the Alabama Local Tax Procedures Act of 1998 and the Taxpayers' Bill of Rights are currently in effect and hereafter amended.

d. RIVERTREE agrees to comply with all laws and regulations relating to the employees of RIVERTREE, including, without limitation, all tax withholding requirements and worker's compensation laws.

4. **Change in Law.** The parties agree that in the event of any conflict between the requirements of any applicable law and the terms of this Agreement, then the requirements of such applicable law shall control. If any law applicable to the services provided by RIVERTREE under this Agreement shall be amended, or otherwise changed following the effective date of this Agreement, and the Client, in its sole discretion, determines that such amendment, modification or change in the law shall impair or frustrate the Client's purposes for entering into this Agreement, then the Client shall have the option to terminate this Agreement as provided in Paragraph 10 below.

5. **Requirements of Examiners.** All examiners employed by RIVERTREE shall meet all requirements of the Taxpayers' Bill of Rights and other current or future applicable law. At a minimum, all such examiners shall (i) be certified public accountants or accountants licensed by the State Board of Public Accountants, or (ii) be certified by the Alabama Local Tax Institute of Standards and Training, and (iii) maintain fidelity bonds in accordance with the Code of Alabama (1975) §40-23-30, as currently in effect and hereafter amended, and (iv) maintain a business license as required by Code of Alabama (1975) §40-12-2, as currently in effect and hereafter amended. If any assessment based on an audit by RIVERTREE is invalidated due to lack of proper certification of RIVERTREE's auditors, RIVERTREE must either provide an audit of the assessed taxpayer conducted by a certified auditor or reimburse Client for all amounts paid to RIVERTREE in connection with the audit. RIVERTREE shall

indemnify and hold Client harmless from any loss in revenues arising from or in connection with any invalidated assessment based upon an audit conducted by RIVERTREE if such invalidation is due to lack of proper certification of RIVERTREE 's auditors or due to any other fault of RIVERTREE.

6. **<u>Inspection.</u>** The Client reserves the right at all reasonable times to inspect the documents, information, taxpayer examination system and procedures of RIVERTREE to ensure that RIVERTREE and its employees, agents, and independent auditors/examiners are complying with the terms of this Agreement and all applicable laws. Any such inspection or any lack of inspection by the Client, however, shall not be deemed to waive the requirements of, or excuse the foregoing from complying with, the terms of this Agreement and all applicable laws.

7. **<u>Confidentiality of Tax Information.</u>** RIVERTREE and its employees, agents, and independent auditors/examiners shall not print, publish or divulge the return of any taxpayer or any part of a return or any information or data supplied by the Client or secured in arriving at the amount of the tax value reported and shall act in conformance with all current and future federal, state and local laws and regulations concerning the confidentiality of tax information, including, but not limited to, the Taxpayers' Bill of Rights (collectively, the "Confidentiality Laws"). All principals, officers, employees and independent auditors/examiners of RIVERTREE involved with the services provided by RIVERTREE under this Agreement, prior to undertaking such services, shall execute an agreement in form and context acceptable to the Client binding such principals, officers, employees and independent auditors/examiners to observe the Confidentiality Laws.

8. Independent Contractor. The parties agree that RIVERTREE is and shall at all times be considered an independent contractor and neither it nor its employees or its independent auditors/examiners shall be considered employees of the Client or entitled to any rights or benefits accorded to employees of the Client. RIVERTREE and the Client affirm that this Agreement does not create a partnership or joint venture and that no expressed, implied or apparent rights are intended to inure to any third parties under the terms and conditions herein.

9. Term. This Agreement shall be effective as of the date set forth in the preamble and will continue for a period of ____3____ year(s) from the date unless terminated as herein provided. Pursuant of the Code of Alabama (1975-40-2A-12, this Agreement shall not be renewed or extended beyond such one-year term: provided, however, that parties may negotiate a new contract concerning the subject matter of this Agreement to become effective following expiration of this Agreement.

10. Default. If RIVERTREE shall fail in any respect to comply with the terms of this Agreement, the Client shall notify RIVERTREE in writing of the matters with regard to which default is asserted, and RIVERTREE shall have thirty (30) days to cure such default. If RIVERTREE fails to either cure such default within said time, then the Client may terminate this Agreement at any time thereafter by giving written notice to RIVERTREE of its election to terminate.

11. Termination. Either party may terminate this Agreement by giving the other party written notice of termination at least ninety (90) days prior to the effective date of termination. Notwithstanding the foregoing, this Agreement shall be terminated automatically, without notice, if RIVERTREE, for any reason loses or foregoes its license required under Code of Alabama (1975) §40-2A-13 or §40-2A-14. RIVERTREE shall provide the Client all documentation, records, reports, and examinations as of the effective date of the termination with a final itemized statement of fees due.

12. Assignment; Subcontracting of Services. Client acknowledges and agrees that RIVERTREE may retain auditors or examiners on an independent contractor basis to provide the services described in this Agreement and Client consents to RIVERTREE's retention of such auditors or examiners provided, however, that any such auditor or examiner must meet all criteria applicable to auditors and examiners under law or under this Agreement and provided further that all terms and conditions of this Agreement, including but not limited to indemnities, applicable to services provided by RIVERTREE shall apply to any work performed by such auditors and examiners. RIVERTREE shall maintain and, upon Client's request, shall provide to Client a list of all auditors and examiners authorized to provide services on behalf of RIVERTREE. Except as provided in this Paragraph 12, RIVERTREE shall not assign any of its rights or obligations under this Agreement or enter into an agreement with any person, entity or subcontractor to perform the obligations of RIVERTREE under this Agreement. Any such assignment or other agreement by RIVERTREE shall be null and void.

13. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama. If a dispute arises out of or relates to this Agreement or its breach, the parties shall endeavor to settle the dispute first through direct discussions and negotiations. If the dispute cannot be settled through direct discussions or negotiations, the parties shall endeavor to settle the dispute by non-binding mediation. The location of the mediation shall be Calera, Alabama. Either party may terminate the mediation at any time after the session, but the decision to terminate must be delivered in person to the other party and the mediator. Engaging in mediation is a condition precedent to any other form of binding dispute resolution. If the parties cannot agree on a mutual resolution, then any disputes not resolved by mediation shall be decided in the Circuit Court of Shelby County, Alabama and governed by the laws of the State of Alabama between the CITY OF CALERA and RIVERTREE.

IN WITNESS WHEREOF, the undersigned parties, through their duly authorized officers, have executed this Agreement on the year and day first above written.

CITY OF CALERA

By: ___________________________

Title:__________________________

RIVERTREE SYSTEMS, INC.

____

James M. Thomas

PRESIDENT

Mayor Graham introduced the following Resolution:

RESOLUTION NO. 2023-03

BE IT RESOLVED by the City Council (the "Council") of the **CITY OF CALERA, ALABAMA** (the "City"), as follows:

Section 1. Findings. The Council has ascertained and does hereby find and declare as follows:

WHEREAS, DS Properties LLC, an Alabama limited liability company (the "Company") owns fee simple title to certain real property in the City located at the intersection of Limestone Parkway and Highway 31, all as further set forth and shown on Exhibit A of the Hotel Development Agreement herein authorized (the "Site"); and

WHEREAS, the Company has approached the City with plans to develop a 78+ overnight room hotel to be operated as a Rise & Shine prototype of Comfort Suites hotel on the Site (the "Hotel"); and

WHEREAS, due to its location and the increased growth and development, the City has been in need of additional overnight accommodations, which such demand has increased due to Eagle Sports Complex having become a popular site for travel baseball, softball, soccer and other "travel team" sports, along with other sporting and recreational events; and

WHEREAS, the City is in need of additional overnight accommodations, and believes the Site is situated in an ideal location for the development of a new hotel; and

WHEREAS, the Company has reported to the City that, due to rising construction and labor costs and rising interest rates, along with the current market for overnight accommodations in the area of the Site, it is not be feasible to construct and develop the Hotel without financial assistance from the City; and

WHEREAS, the City has determined it necessary, wise and in the public interest to incentivize development of the Hotel by agreeing to share a portion of the City's receipts of its lodging tax collected from the operation of the Hotel, as more particularly described in the Hotel Development Agreement, up to the sum of $814,851, which payments would be made over a limited period of time and on certain conditions more particularly set forth and described in the Hotel Development Agreement; and

WHEREAS, the City and the Company desire to enter the Hotel Development Agreement to memorialize certain agreements respecting development and operation of the Hotel and the incentive payments from the City, all as more particularly described and set forth in the Hotel Development Agreement; and

WHEREAS, the public benefits to the City to be derived from the covenants and agreements of the City included within the Hotel Development Agreement include, among other things (i) causing the development of new overnight accommodations within the City, (ii) promoting commerce and other economic development within the City, (iii) expanding the tax base of the City, (iv) increasing jobs and economic development in the City, and (v) enhancing the overall quality of life for the citizens of the City; and

WHEREAS, the covenants and agreements of the City set forth in the Hotel Development Agreement are being made under and in furtherance of any power and authority authorized by Amendment 772 to the Constitution of Alabama of 1901, as amended, and the City has determined that the expenditure of public funds and provision of things of value for the purposes set forth in the Hotel Development Agreement will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities.

Section 2. Authorization of Hotel Development Agreement. The Council does hereby authorize and approve the Hotel Development Agreement in substantially the form attached as Appendix I hereto and with such changes thereto as the Mayor shall determine to make (the "Hotel Development Agreement"). The Mayor and the City Clerk are hereby authorized and directed to execute and deliver, for and on behalf of the City, the Hotel Development Agreement. The Mayor and the City Clerk are hereby further authorized and directed to execute, seal, attest, and deliver such other agreements, instruments, notices, documents, certificates and amendments, and to take such other actions by and on behalf of the City, as may be necessary or desirable to consummate and complete the transactions and actions contemplated by the Hotel Development Agreement.

Exhibit I
Form of Hotel Development Agreement

Council Member Turner moved that Resolution No. R-2023-03 be adopted. Council Member Cost seconded said motion and upon vote, the results were as follows:

AYES: Busby, Cost, Graham, Montgomery, Morgan, Turner, Watts

NAYS: None

Mayor Graham declared Resolution No. R-2023-03 adopted.

Adopted this 17th day of January 2023.

____
Jon G. Graham, Mayor

ATTEST:

____
Connie B. Payton, City Clerk

HOTEL DEVELOPMENT AGREEMENT

This **HOTEL DEVELOPMENT AGREEMENT** (this "Agreement") is made and entered into this _____ day of January, 2023 (the "Effective Date"), between the **CITY OF CALERA, ALABAMA**, an Alabama municipal corporation (the "City"), and **DS PROPERTIES LLC**, an Alabama limited liability company (the "Company"). Each of the City and the Company are sometimes herein referred to individually as a "Party", and, collectively, as the "Parties."

R E C I T A L S

WHEREAS, the City relies on public tax revenues, including without limitation lodging taxes, to provide for police, health, safety, and other essential public services for, and to maintain and improve the overall quality of life of, its citizens; and

WHEREAS, the Company owns fee simple title to certain real property in the City located at the intersection of Limestone Parkway and Highway 31, all as further set forth and shown on Exhibit A hereto (the "Development Site"); and

WHEREAS, the Company has approached the City with plans to develop a 78+ overnight room hotel to be operated as a Rise & Shine prototype of Comfort Suites hotel (the "Flag") on the Development Site (the "Hotel"); and

WHEREAS, due to its location and the increased growth and development, the City has been in need of additional overnight accommodations, which such demand has increased due to Eagle Sports Complex having become a popular site for travel baseball, softball, soccer and other "travel team" sports, along with other sporting and recreational events; and

WHEREAS, the Development Site is situated in an ideal location of the City for commercial development and expansion; and

WHEREAS, cities throughout the United States have adopted codes and undertaken other procedures that go beyond conventional zoning controls in order to advance land development regulatory mechanisms that place primary emphasis on the physical form of the built environment with the goal of producing a special type of place within the urban environment, which codes are based on the scale, character, intensity and form of development rather than solely on differences in land use; and

WHEREAS, absent adequate enabling laws in the State of Alabama, the City desires to achieve similar goals with respect to major land development within its jurisdiction through agreements with developers that promote construction of commercial structures, such as the Hotel, in accordance with higher standards of construction and development than can be achieved through zoning and other regulatory actions by the City; and

WHEREAS, the construction and development of the Hotel consistent with a development plan approved by the City, as hereinafter defined, will result in a substantial economic benefit to the City while helping prevent the proliferation of unplanned developments that can be detrimental to the sustained economic health and well-being of the City and detract from the aesthetic appeal and overall vibrancy of a growing commercial area; and

WHEREAS, the Developer has informed the City that increasing cost of construction materials, labor shortages, and other increases in costs, it cannot construct and develop the Hotel in a manner desired and described herein without financial assistance from the City, and the City has agreed to make certain payments to the Developer (hereinafter defined as the "City Payments") equal to a portion of the City's receipts of local lodging taxes collected by the City from the operations of the Hotel, up to $814,851, all on such terms and as more particularly described and set forth herein; and

WHEREAS, the Parties desire to enter this agreement to memorialize their agreements respecting the Company's development of the Hotel on the Development Site and the City Payments to be made by the City, all as more particularly set forth and described herein; and

WHEREAS, the agreement of the City to make the City Payments described in the immediately preceding recital is being made under and in furtherance of any power or authority authorized by Amendment 772 to the Constitution of Alabama, and the City has determined that the expenditure of public funds for the purposes herein specified will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities;

NOW, THEREFORE, for and in consideration of the foregoing premises, the covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby covenant, agree, and bind themselves as follows:

ARTICLE I
CONSTRUCTION AND OPERATION OF THE HOTEL

Section 1.1 **Development Plan**. (a) The Company shall have a period of up to 180 days following the Effective Date to cause to be prepared plans, specifications and drawings respecting the Hotel (the "Proposed Development Plan") for approval by the City as set forth herein. The Proposed Development Plan shall contain:

(i) plans and specifications and facade renderings (along with renderings of side and back portions) for the Hotel;

(ii) details for the common area improvements, including, without limitation, parking, landscaping, sitting walls, exterior lighting, common areas and fencing; and

(iii) a detailed rendering of the overall Hotel, including the front, back and entrance portions of the Hotel.

(b) The Mayor (acting by and on behalf of the City) shall review the Proposed Development Plan in a reasonably timely manner and shall have a period of not more than thirty (30) days from actual receipt of the Proposed Development Plan to approve the same in writing. If the Mayor (acting by and on behalf of the City) rejects the Proposed Development Plan, the Company shall have a reasonable period of time to revise the Proposed Development Plan to be responsive to any comments, concerns or issues provided by the Mayor and to resubmit the revised Proposed Development Plan to the City for review, approval or further comments within thirty (30) days of the City's receipt thereof. Unless the

Company elects not to proceed, the aforesaid process shall continue until such time as the City shall have approved the Proposed Development Plan for the Hotel (such approved Proposed Development Plan, the "Development Plan").

(c) The approved Development Plan shall not be changed or modified in any material respect without the prior written consent of the City (with the Mayor acting by and on behalf of the City for such purpose).

(d) If, for whatever reason, the final Development Plan is not reached and approved by the City as aforesaid by the Development Plan Deadline then this Agreement shall terminate and be of no further force or effect, and each Party shall have no obligations or duties to the other Party. As used herein, the term "Development Plan Deadline" shall mean 300 days following the Effective Date, or such later date as the Parties hereto shall agree in writing (with the Mayor herein authorized to agree and approve on behalf of the City), but in no event more than 365 days following the Effective Date.

(e) Anything in this Section 1.1 to the contrary notwithstanding, whether express or implied, the approval of the Development Plan or the requirement that the Hotel be constructed substantially in accordance therewith shall in no way constitute or be deemed to constitute an approval of any construction activity upon the Development Site or concerning the Hotel as being in conformity with any applicable building codes or other rules or requirements of the City and other usual inspection approvals by the City or any other governmental authority normal to any new construction in the City, which such approval process shall proceed in the normal course.

Section 1.2 **Hotel Construction and Development**. (a) The Company agrees to construct or cause the construction of the Hotel substantially in accordance the Development Plan approved by the City pursuant to Section 1.1 above.

(b) The Company agrees to use its commercially reasonable good faith efforts to (i) obtain a building permit for the Hotel and complete the pouring of all of the foundation and footings for the Hotel on the Development Site (the occurrence of the foregoing herein defined as "Commencement of Construction" or "Commenced Construction") within twenty-four (24) months of the Effective Date (the "Commencement of Construction Deadline"), and (ii) obtain a certificate of occupancy and open the Hotel to the public for business (the occurrence of the foregoing herein defined as "Completed" or "Completion") within thirty-six (36) months of the Effective Date (the "Completion Deadline").

(c) If, due to the occurrence of a Force Majeure Event, the Company is not able to Complete the Hotel by the Completion Deadline, then for each day of the Force Majeure Event said deadline shall be extended by one day to address such condition before the Company shall be considered in default of such obligation; provided (i) at the time of the Force Majeure Event the Company is claiming or anticipating, the Company shall have first provided written notice to the City containing: (1) a description of the Force Majeure Event, (2) an explanation of how the Company anticipates such event will affect its ability to timely perform such obligations, (3) the actions the Company plans to undertake in order to address the conditions caused by the Force Majeure Event, and (4) an estimate of how long the Company anticipates the Force Majeure Event will delay its ability to have Completed the Hotel; and (ii) in no event shall the Completion Deadline be more than forty-eight (48) months from the Effective Date. As used in this Section 1.2(c), the term "Force Majeure Event" shall mean and include a material matter beyond the reasonable control of the Company (excluding unfavorable economic conditions and excluding the inability of the Company to raise funds or gain access to credit or financing for the Hotel, or any portion thereof), including acts of God, including without limitation earthquakes, fire, floods, tornadoes, hurricanes, and extreme weather conditions (but not including normal seasonal inclement weather), acts of terrorism, epidemics (including continuations), pandemics (including continuations), quarantine restrictions, supply-chain delays, and freight embargos.

(c) All construction activities on the Development Site shall be conducted in compliance with all applicable laws, ordinances, rules, and regulations of any governmental authority, including, without limitation, all applicable licenses, permits, building codes, restrictive covenants, zoning and subdivision ordinances and flood, disaster, and environmental protection laws. The Company shall cause any architect, general contractor, subcontractor, or other business performing any work in connection with the construction of the Company to obtain all necessary permits, licenses, and approvals to construct the same. It is understood and acknowledged that the City will not waive any fees, access fees, or related expenses for any permits, licenses or approvals that must be obtained from the City or any other governmental authority in connection with the construction or operation of the Hotel.

(d) The Company, and any affiliate thereof, shall maintain its good standing within the City and shall at all times during the Term hereof be in compliance with all applicable laws, ordinances, rules and regulations of the City and, further, shall be current in payment of any and all taxes, fees, and other charges imposed by the City and all local government entities.

Section 1.3 **Permitted Flag**. From the date of its initial opening through the tenth (10^{th}) anniversary thereof, the Hotel shall be operated by the Flag or by such other operator as shall be approved in writing by the City (collectively with the Flag, the "Permitted Flag").

ARTICLE II
CITY PAYMENTS

Section 2.1 **Payment Obligations of the City; City Derived Taxes.**

(a) The City hereby agrees to make certain payments to the Company (such payments, collectively, the "City Payments") solely out of City Derived Taxes collected by the City as described in Section 2.2 hereof, over a period from the City Payments Commencement Date (hereinafter defined) through the close of the Payment Period (hereinafter defined), aggregating not more than $814,851.00 (the "Maximum City Payment Amount").

(b) City Payments owed to the Company shall be due and submitted by the City no later than the fifteenth (15^{th}) day of the second calendar month following each Fiscal Quarter (as defined below) during the term of this Agreement.

(c) The Company understands, acknowledges, and agrees that City Derived Taxes shall be the sole source of the City Payments to be made under this Agreement, and that no other funds of the City shall be used for payment of any obligation of the City under this Agreement.

(d) Anything in the foregoing or otherwise in this Agreement to the contrary notwithstanding, whether express or implied, the City shall not be obligated to make any City Payments to the Company during the City Payment Period if (i) the Company has not Completed Construction of the Hotel by the Completion Deadline, (ii) the Hotel is not being operated by the Permitted Flag, or (iii) the Company is in default or there is existing a Company Event of Default hereunder that is continuing beyond any cure period expressly applicable to the same.

Section 2.2 **Certain Defined Terms**. The following terms shall have the following meaning as used in this Article II:

(a) "City Derived Taxes" shall mean three-sevenths (3/7) of the net proceeds of the City Lodging Tax realized upon and charged to overnight occupants of the Hotel.

(b) "City Lodging Tax" shall mean the lodging tax collected by the City and levied pursuant to Ordinance No. 2022-16, as said ordinance may from time to time be amended, modified or replaced, but only up to the maximum lodging tax rate of 7.00%, and excluding any increases of the rate of the said lodging tax beyond 7.00%; provided, City Lodging Tax shall not include any other collections by the City in the form of set room fees or other overnight fees, penalties, fees, interest, or similar items referable to the said lodging tax or charges for lodgings in the City.

(c) "City Payment Period" shall be a period of time commencing upon the Hotel Opening Date and ending on the earliest to occur of (i) the 10^{th} anniversary of the Hotel Opening Date, (ii) the 10^{th} anniversary of the Construction Completion Deadline, (iii) such date as the City shall have paid the Company $814,851.00 under this Agreement, or (iv) such date as this Agreement shall have been terminated in accordance with the terms hereof or otherwise by the Parties hereto.

(d) "City Payments Commencement Date" shall mean the first day of the Fiscal Quarter immediately following the Hotel Opening Date.

(e) "Fiscal Quarter" shall mean any period of three consecutive months beginning on October 1, January 1, April 1, or July 1, as the case may be.

(f) "Hotel Opening Date" shall mean such date as the Hotel has been Completed and is first open to the public for business.

ARTICLE III
GENERAL REPRESENTATIONS AND WARRANTIES

Section 3.1 **Representations and Warranties of the Company.** The Company represents and warrants that:

(a) The Company has the legal power and authority to enter into this Agreement and to make the respective commitments made in this Agreement.

(b) This Agreement is valid and binding on the Company and enforceable against the Company in accordance with its terms.

(c) The Company is not prohibited from consummating the transactions contemplated in this Agreement by any law, regulation, agreement, instrument, restriction, order or judgement.

(d) The Company owns fee simple title to the Development Site.

Section 3.2 **<u>Representations and Warranties of the City</u>**. The City represents and warrants that:

(a) The City has the legal power and authority to enter into this Agreement and to make the respective commitments made in this Agreement.

(b) This Agreement is valid and binding on the City and is enforceable against the City in accordance with its terms.

(c) The City is not prohibited from consummating the transactions contemplated in this Agreement by any law, regulation, agreement, instrument, restriction, order or judgement.

ARTICLE IV
EVENTS OF DEFAULT AND REMEDIES

SECTION 4.1 **<u>EVENTS OF DEFAULT BY THE CITY.</u>**

(a) Any one or more of the following shall constitute an event of default under this Agreement by the City (herein called a "<u>City Event of Default</u>") (whatever the reason for such event and whether it shall be voluntary or involuntary or be affected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

i. the City shall fail to make any City Payments when obligated to do so;

ii. the dissolution or liquidation of the City, or the filing by the City of a voluntary petition in bankruptcy, or the City's seeking of or consenting to or acquiescing in the appointment of a receiver of all or substantially all of its property, or the adjudication of the City as a bankrupt, or any assignment by the City for the benefit of its creditors, or the entry by the City into an agreement of composition with its creditors, or if a petition or answer is filed by the City proposing the adjudication of the City as a bankrupt or its reorganization, arrangement or debt readjustment under any present or future federal bankruptcy code or any similar federal or state law in any court, or if any such petition or answer is filed by any other person and such petition or answer shall not be stayed or dismissed within 60 days; or

iii. Failure by the City to perform or observe any of its agreements or covenants contained in this Agreement and not otherwise addressed in this Section 4.1(a), which failure shall have continued for a period of thirty (30) calendar days after written notice thereof from the Company, unless (A) the Company shall agree in writing to an extension of such period prior to its expiration, or (B) during such thirty (30) day period or any extension thereof, the City has commenced and is diligently pursuing appropriate corrective action, or (C) the City is by reason of *force majeure* at the time prevented from performing or observing the agreement or covenant with respect to which the City is delinquent, but in no event for more than an aggregate of 365 days.

(b) If a City Event of Default exists, the Company may proceed to protect its rights hereunder by suit in equity, action at law or other appropriate proceedings, for specific performance of any covenant or agreement of the City herein contained; provided, however, in no event shall the Company be entitled (and the Company hereby waives any claim or right thereto) to any punitive, incidental, consequential, or other damages, whether arising at law, in equity or otherwise against the City.

Section 4.2 **Events of Default by the Company**.

(a) Any one or more of the following shall constitute an event of default under this Agreement by the Company (herein called a "Company Event of Default"):

i. the dissolution or liquidation of the Company, or the filing by the Company of a voluntary petition in bankruptcy, or the Company seeking of or consenting to or acquiescing in the appointment of a receiver of all or substantially all of its property, or the adjudication of the Company as a bankrupt, or any assignment by the Company for the benefit of its creditors, or the entry by the Company into an agreement of composition with its creditors, or if a petition or answer is filed by the Company proposing the adjudication of the Company as a bankrupt or its reorganization, arrangement or debt readjustment under any present or future federal bankruptcy code or any similar federal or state law in any court, or if any such petition or answer is filed by any other person and such petition or answer shall not be stayed or dismissed within 60 days; or

ii. any change in ownership or control of the Company prior to Completion of the Hotel without the prior written consent of the City, or the Hotel is not built substantially in compliance with the Development Plan; or

iii. if (i) operations are temporarily ceased due to substantial damage to the Hotel caused by fire, storm, or other natural causes (herein called "Extraordinary Events"), and (ii) the Company certifies to the City that it intends to cause the Hotel to be repaired and to commence operations of the Hotel, operated by a Permitted Flag, within a reasonable period of time thereafter, such event shall not be deemed an Event of Default unless full operations of the Hotel are not actually commenced within eighteen (18) months of the date of the Extraordinary Event at issue; or

iv. the Company, and any affiliate thereof, shall at any time during the term of this Agreement (i) not be in compliance with all applicable laws, ordinances, rules and regulations of the City, or (ii) fail to be current in payment of any and all taxes, fees, and other charges imposed by the City or any other local government entity, which failure shall have continued for a period of sixty (60) calendar days after written notice thereof from the City, unless the City shall agree in writing to an extension of such period prior to its expiration; or

v. failure by the Company to perform or observe any of its agreements or covenants contained in this Agreement and not otherwise addressed in this Section 4.2(a), which failure shall have continued for a period of thirty (30) calendar days after written notice thereof from the Company, unless (A) the City shall agree in writing to an extension of such period prior to its expiration, or (B) during such thirty (30) day period or any extension thereof, the Company has commenced and is diligently pursuing appropriate corrective action, or (C) the Company is by reason of *force majeure* at the time prevented from performing or observing the agreement or covenant with respect to which the Company is delinquent, but in no event for more than an aggregate of 365 days.

(c) If a Company Event of Default exists, the City may terminate payment of City Payments under this Agreement and proceed to protect its rights hereunder by suit in equity, action at law or other appropriate proceedings, for specific performance of any covenant or agreement of the Company herein contained; provided, however, in no event shall the City be entitled (and the City hereby waives any claim or right thereto) to any punitive, incidental, consequential, or other damages, whether arising at law, in equity or otherwise against the Company.

Section 4.3 **Remedies Subject to Applicable Law**. All rights, remedies and powers provided in this Article IV may be exercised only to the extent the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article IV are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that the same will not render this Agreement invalid or unenforceable.

ARTICLE V
MISCELLANEOUS

Section 5.1 **Counterparts.** This Agreement may be executed simultaneously in three or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

Section 5.2 **<u>Governing Law</u>.** The governing law of this Agreement shall be the law of the State of Alabama.

Section 5.3 **<u>Severability</u>.** In case any one or more of the provisions contained in this Agreement should be deemed invalid, illegal or unenforceable in any respect and for any reason whatsoever, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 5.4 **<u>Notices</u>.** All communications and notices expressly provided herein shall be in writing and shall be sent, by certified first class mail, postage prepaid, or by a nationally recognized overnight courier for overnight delivery on the following business day, as follows:

Company: DS Properties, LLC
P.O. Box 6
Albertville, Alabama 35950
Attn: Don Spurlin

With a copy to
____
____
____
____

City: City of Calera, Alabama
City Hall
7901 US-31
Calera, Alabama 35040
Attention: Jon G. Graham, Mayor

With a copy to
Bradley Arant Boult Cummings LLP
One Federal Place
1819 5th Avenue North
Birmingham, Alabama 35213
Attn: Rod Kanter, Esq.

or to such other address as the receiving Party shall have most recently forwarded to the sending Party pursuant to the provisions of this Section 5.4.

Section 5.5 **<u>Amendment and Waivers</u>.** This Agreement may not be amended or modified except by a written instrument signed by each Party. The waiver by any Party of such Party's rights under this Agreement in any particular instance or instances, whether intentional or otherwise, shall not be considered as a continuing waiver which would prevent subsequent enforcement of such rights or of any other rights.

Section 5.6 **<u>Assignment</u>.** This Agreement (including, without limitation, the right of the Company to receive City Payments) is not assignable by either Party without the express written consent of the other Parties.

Section 5.7 **Section Title and Headings.** The section titles and headings are for convenience only and do not define, modify or limit any of the terms and provisions hereof.

Section 5.8 **Specific Performance**. The Parties agree that it is impossible to measure in money the damages which will accrue to the other Parties by reason of a failure of any of the other Parties to this Agreement to perform any of their respective obligations under this Agreement. Therefore, if any Party institutes any action or proceeding to enforce the provisions hereof the other Parties to this Agreement against whom such action or proceeding is brought hereby waives the claim or defense that the Party instituting such action has or will have an adequate remedy at law for money damages.

Section 5.9 **Liabilities of the City**. Any provision hereof to the contrary notwithstanding, the Parties agree and acknowledge that the obligations of the City as set forth herein are limited by the limitations imposed on public bodies, municipalities and public corporations by the Constitution of the State of Alabama and laws affecting the use and maintenance of public property.

Section 5.10 **Ambiguity**. The terms, conditions and provisions of this Agreement were agreed to in arm's length negotiations in which each Party was represented by independent counsel of its own choosing. Accordingly, in the event of any ambiguity in this Agreement, such ambiguity shall not be resolved against any Party deemed the principal draftsman of this Agreement or the provision of this Agreement at issue.

Section 5.11 **Entire Agreement.** This Agreement constitutes the entire agreement and understanding among the Parties and no other offers, agreements, understandings, warranties, or representations exist between the Parties.

Section 5.12 **Survival of Representations, Warranties and Covenants.** The representations, warranties and covenants made by each of the Parties hereto contained herein shall survive the performance of any obligations to which such representations, warranties and covenants relate.

Section 5.13 **No Third Party Beneficiary.** This Agreement is intended solely for the benefit of the Parties. Nothing in this Agreement shall be construed to create any duty, standard of care or liability to, nor confer any right of suit or action on, any Person other than the Parties hereof, including employees, independent contractors.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

DS PROPERTIES LLC

By:____

Its:____

CITY OF CALERA, ALABAMA

By: ____
Jon G. Graham, Mayor

EXHIBIT A
THE DEVELOPMENT SITE

Lot 8-A-2, according to a Resurvey of Lots 8-A and 13-A of a Resurvey of Lots 4, 8 and 13 of a Resurvey of Lot 2, Limestone Marketplace Subdivision, recorded in Map Book 56, Page 21 in the Office of the Judge of Probate of Shelby County, Alabama.