

CITY COUNCIL BUSINESS MEETING AGENDA
1705 MAIN STREET, DAPHNE, AL
FEBRUARY 7, 2011
BUSINESS MEETING
6:30 P.M.

1. CALL TO ORDER

**2. ROLL CALL/INVOCATION /
PLEDGE OF ALLEGIANCE**

- 3. APPROVE MINUTES:** Council meeting minutes / January 18, 2010
Amend January 3, 2011 Council meeting minutes

PROCLAMATION: Arbor Day / February 26, 2011

PRESENTATION: Present Arbor Day Posters to Last Year's Winners

4. REPORT STANDING COMMITTEES:

A. FINANCE COMMITTEE / Boulware

Special Finance meeting packet / February 7th

1.) Ordinances:

- a.) Appropriate Funds: Claiborne Circle Drainage Repairs / **Ordinance 2011-10**

2.) Resolutions:

- a.) Bid Award: (2) CY Refuse Collection Trucks / Ward International Trucks of Alabama / Lease Agreement / **Resolution 2011-09**
b.) Bid Award: Sehoy Drainage Repair / Claiborne Circle / Peavy Construction Company / **Resolution 2011-10**

B. BUILDINGS & PROPERTY - Lake

C. PUBLIC SAFETY – Palumbo

D. CODE ENFORCEMENT/ORDINANCE COMMITTEE - Palumbo

E. PUBLIC WORKS COMMITTEE / SOLID WASTE AUTHORITY - Yelding

5. REPORTS OF SPECIAL BOARDS & COMMISSIONS:

A. Board of Zoning Adjustments – Jones

B. Downtown Redevelopment Authority – Barnette

Review minutes / January 24th

C. Industrial Development Board – Yelding

D. Library Board – Lake

Review minutes / January 6th

E. Planning Commission – Barnette

Review minutes / December 20th

- a.) Set Public Hearing date for **March 7, 2011** to consider an Amendment to the Land Use Ordinance /
Revisions to the Zoning Map

F. Recreation Board – Reese

- a.) Review minutes / October 13, 2010
b.) Review minutes / January 12, 2011

G. Utility Board - Scott

Review minutes / January 5th

6. REPORTS OF OFFICERS:

A. Mayor's Report

- a.) Parade Permit / S.E.E.D.S. / Annual 5K & Fun Run / March 5, 2011
b.) Parade Permit / Loyal Order of the Fire Truck / Mardi Gras / March 6, 2011
c.) Parade Permit / Shadow Barons / Mardi Gras / March 5, 2011 / Rain Date - March 6, 2011
d.) Jubilee Square Reciprocal Agreement

- B. City Attorney’s Report
- C. Department Head Comments

7. PUBLIC PARTICIPATION:

8. RESOLUTIONS & ORDINANCES:

RESOLUTIONS:

- a.) Bid Award: (2) 20 CY Rear Loading Refuse Collection Truck / Lease Agreement/Resolution 2011-07
- b.) Support for House Bill 56 / 80% of Monies of the Clean Water Act come back to the Gulf States for Environmental Restoration/Resolution 2011-08
- c.) Revisions to City Street Map. /Resolution 2011-09
- d.) Bid Award: Sehay Drainage Repair / Claiborne Circle/Resolution 2011-10

ORDINANCES:

2ND READ

- a.) \$465,000 Supplemental Funds: Deepwater Horizon BP Oil Spill. /Ordinance 2011-03
- b.) Establishing Surety Bond Limits for Certain Municipal Officers & Employees. /Ordinance 2011-05

1ST READ

- c.) Establishing Rules, Regulations, Rates and a Lease Agreement for the Rental of the Daphne Civic Center / Repeal Ordinances 2004-20 & 2010-49. /Ordinance 2011-08
- d.) Establishing Rules, Regulations, Rates and a Lease Agreement for the Rental of the Bayfront Park Pavilion / Repeal Ordinances 2004-21 & 2010-50. /Ordinance 2011-09
- e.) Appropriation: Sehay Subdivision / Claiborne Circle Drainage Project / Additional Funding /Ordinance 2011-10
- f.) Mandatory Recycling for Municipal Buildings. /Ordinance 2011-11

9. COUNCIL COMMENTS

10. ADJOURN

**CITY OF DAPHNE
CITY COUNCIL MEETING**

ROLL CALL

CITY COUNCIL:

CALL VOTES

COUNCILMAN YELDING

PRESENT__ ABSENT__ __

COUNCILWOMAN BARNETTE

PRESENT__ ABSENT__

COUNCILMAN LAKE

PRESENT__ ABSENT__ __

COUNCILMAN BURNAM

PRESENT__ ABSENT__ __

COUNCILMAN SCOTT

PRESENT__ ABSENT__ __

COUNCILMAN BOULWARE

PRESENT__ ABSENT__ __

COUNCILMAN PALUMBO

PRESENT__ ABSENT__ __

MAYOR

MAYOR SMALL

PRESENT__ ABSENT__ __

CITY CLERK:

DAVID L. COHEN

PRESENT__ ABSENT__

CITY ATTORNEY:

CITY ATTORNEY JAY ROSS

PRESENT__ ABSENT

MINUTE NOTES:

**CITY COUNCIL MEETING
MINUTES**

NOTES:

COMMITTEE RECOMMENDATIONS

**JANUARY 18, 2011
CITY COUNCIL MEETING
1705 MAIN STREET
DAPHNE, AL
6:30 P.M.**

1. CALL TO ORDER

Council President Barnette called the meeting to order at 6:30 p.m.

2. ROLL CALL/INVOCATION/PLEDGE OF ALLEGIANCE

Invocation was given by Councilman Lake.

COUNCIL MEMBERS PRESENT: Cathy Barnette; John Lake; Kelly Reese; Ron Scott; Derek Boulware; August Palumbo.

ABSENT: Bailey Yelding.

Also present: Mayor Small; David Cohen, City Clerk; Rebecca Hayes, Assistant City Clerk; Erick Bussey, Attorney; James White, Fire Chief; Tonja Young, Library Director; David Carpenter, Police Chief; Richard Johnson, Publics Works Director; Adrienne Jones, Planning Director; Richard Merchant, Building Official; Margaret Thigpen, Civic Center Director; Vickie Hinman, Human Resource Director; Suzanne Henson, Senior Accountant; Charlie McDavid, Recreation Department; Captain Danny Bell, Police Department; Officer Rick Oliver, Police Department; Al Guarisco, Village Point Foundation; Mickey Boykin, Daphne Museum; Ken Balme, Downtown Redevelopment and Daphne Museum.

Absent: Jay Ross, City Attorney; David McKelroy, Recreation Director; Kim Briley, Finance Director;.

Council President Barnette noted some changes to the agenda that was posted on line: the Jubilee Square Reciprocal Agreement has been pulled from the agenda, because it still needs to be fined tuned; a modification to ordinance 2011-03 regarding the BP Oil Spill Supplemental Funds taking out the categories of use appropriated in the grants, because they are already alluded to in the grant; the Personnel ordinances were not included in the packet, because they were not ready at publishing time, and the packet is supposed to be out by noon; some minor changes to the agenda a typo for the Civic Center Event Assistant it says \$10.50 and was supposed to say \$10.05; a minor change to ordinance 2011-07 it says Civic Center and it is supposed to say Police Department.

3. APPROVE MINUTES

MOTION BY Councilman Boulware to approve the January 3, 2011 Council meeting minutes. *Seconded by Councilman Scott.*

AYE Reese, Scott, Boulware, Palumbo, Barnette

ABSTAIN Lake

NAY NONE OPPOSED

MOTION CARRIED

MOTION BY Councilman Boulware to approve the January 13th Work Session minutes. *Seconded by Councilman Reese.*

AYE ALL IN FAVOR

NAY NONE OPPOSED

MOTION CARRIED

**JANUARY 18, 2011
CITY COUNCIL MEETING
1705 MAIN STREET
DAPHNE, AL
6:30 P.M.**

PRESENTATION: Present Fire Arm to Michael Williams / Chief Carpenter

Mayor Small introduced Chief Carpenter who with honor presented Michael Williams with his service weapon upon retirement after 25 years of service. He also presented him with an ID card that says Mike Williams retired police officer Daphne Police Department. Chief Carpenter presented Mike with a certificate where he was voted by his peers as Officer of the Quarter (October – December 2010).

Mr. Williams said that it feels good to retire although he had fun and enjoyed his career. He said he will be by the Police Department to talk with his fellow employees.

PROCLAMATION: Proclaiming Appreciation for Mickey Boykin / Daphne Museum

Mayor Small read and presented Mrs. Boykin the proclamation in appreciation for her service as chairwoman of the Old Methodist Museum.

Mrs. Boykin thanked the city for their support of the museum. She introduced Mr. Ken Balme who will be the new chairman for the museum.

4. REPORT OF STANDING COMMITTEES:

A. FINANCE COMMITTEE – Boulware

The minutes for the January 10th meeting are in the packet. There are several items to be considered under Resolutions and Ordinances. One of the items under ordinances has to do with the Sports Complex, and Mr. McKelroy asked that council consider suspending the rules to consider this ordinance tonight. There is a time crunch present.

Treasurers Report / December 31, 2010

MOTION BY Councilman Boulware to accept the Treasurers report as of December 2010 with a balance of \$21,279,886.60. *Seconded by Councilman Scott.*

AYE	ALL IN FAVOR	NAY	NONE	OPPOSED	MOTION CARRIED
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Sales and Use Taxes: November 30, 2010

Sales and Use Tax Collected for November 2010 - \$ 819,646
Sales and Use Tax Budgeted for November 2010 - \$ 752,814
Over Budget (for November) - \$ 66,832

YTD Budget Collections Variance – Over Budget - \$ 111,876

Lodging Tax Collections, November 30, 2010

The Lodging Tax Collections report shows \$48,302.23 collected for November 2010.

The next meeting will be February 14th at 4:00 p.m. in the Executive Conference Room

MOTIONS to fill vacant position s forwarded from Council Work Session Discussion:

a.) Police Department

- i.) School Crossing Guard / \$8.48/hour (10 hours/week during school schedule)
Patrol Officer (School Resource Officer retired and internal lateral transfer was made from Patrol (leaving a Patrol vacancy) / \$16.54/hour - \$17.99/hour eligible range / \$34,407 - \$37,428/annual salary / Ordinance 2011-07

MOTION BY Councilman Lake to fill the Police Department positions for a School Crossing Guard / \$8.48/hour (10 hours/week during school schedule) and a Patrol / \$16.54/hour - \$17.99/hour eligible range / \$34,407 - \$37,428/annual salary. *Seconded by Councilman Scott.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

b.) Civic Center

- i.) Civic Center Event Assistant / \$10.05/hour / \$20,906/annual salary / Ordinance 2011-06

MOTION BY Councilman Palumbo to fill the Civic Center position of Event Assistant / \$10.05/hour / \$20,906 annual salary. *Seconded by Councilman Scott.*

AYE Lake, Reese, Scott, Palumbo, Barnette NAY Boulware

MOTION CARRIED

B. BUILDINGS AND PROPERTY COMMITTEE – Lake

Councilman Palumbo stated that the January 3rd minutes were in the packet. The committee had previously discussed changes to the Civic Center ordinance regarding liquor consumption. The ordinances have also been reviewed by the Ordinance Committee and should be on the next agenda.

C. PUBLIC SAFETY COMMITTEE – Palumbo

The minutes for the January 12th meeting are in the packet. Councilman Palumbo asked Chief White to give an announcement about a grant the Fire Department received. Chief White announced that they received a grant for \$324,000 to upgrade their communication equipment so they can connect with the entire county. Councilman Palumbo stated that the Police Department is waiting to place an order for car replacement, and wants to know when council will consider the capital budget.

D. CODE ENFORCEMENT/ORDINANCE COMMITTEE – Palumbo

Councilman Palumbo stated that Ordinance 2011-05 is a housekeeping measure.

E. PUBLIC WORKS COMMITTEE/SOLID WASTE AUTHORITY – Yelding

The committee met before the council meeting, and the minutes will be in the next packet.

5. REPORTS OF SPECIAL BOARDS & COMMISSIONS:

A. Board of Zoning Adjustments – Mrs. Jones

- a. Re-appoint Mr. Jim Moss to the BZA / Term ends February 2014

MOTION BY Councilman Lake to re-appoint Mr. Jim Moss to the BZA / Term ends February 2014. *Seconded by Councilman Palumbo.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

B. Downtown Redevelopment Authority – Barnette

No report. The next meeting will be January 24th at 5:15 p.m. There will be a presentation from someone interested in redevelopment.

C. Industrial Development Board – Yelding

No report. The next meeting will be January 24th at 6:00 p.m.

D. Library Board – Lake

The minutes for the November 4th meeting are in the packet. Councilman Lake read some statistics regarding the Library saying that the Library has had 650 people utilize the meeting room, but the interesting thing to him was they had 2,458 people using the computers in October 2010 as compared with 1,252 people in October 2009.

E. Planning Commission – Barnette

Site Review will be January 19th where Mr. Johnson will make the presentation for the road projects, and the regular Planning Commission meeting will be January 27th at 5:00 p.m.

F. Recreation Board – Reese

The board met last Wednesday on January 12th. The board is not going to meet every month. They will have called meetings as needed. The board was presented with photos of the damage to the bleachers and fences at Trione by the wind storm on December 11th. There have been some insurance coverage issues, but they need to move forward to repair the damage, because of upcoming tournaments. The board also discussed the need to move forward with bringing the playgrounds up to standards.

G. Utility Board – Scott

The next meeting will be the last Wednesday of the month at 5:00 p.m.

6. REPORTS OF THE OFFICERS:

Mayor's Report

a.) Parade Permit / Mystic Order of Persephone / Mardi Gras / March 4, 2011 / Rain Date – March 6, 2011

MOTION BY Councilman Boulware to approve the parade permit for the Mystic Order of Persephone / Mardi Gras / March 4, 2011 / Rain Date – March 6, 2011. *Seconded by Councilman Lake.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

Mayor Small reported that there would be a public meeting Wednesday with the County Engineer on the Service Road above I-10 to answer questions which will start at 6:00 p.m. He also said that the Daphne High School Band participated in the inauguration parade in Montgomery. Last Tuesday the Baldwin County Honor Band held a concert at the Middle School and the High School. During the basketball game at half-time the high school got an award from the Guard for their accomplishments with the football team going 15-0 and winning the State 6-A Championship.

B. City Attorney Report

Mr. Erick Bussey reported that Ms. Gray and the personnel of LA-Daphne have been working very hard to hammer down language for signage on the Jubilee issue that they think will be agreeable with LA-Daphne and the city so they can get this finished.

C. Department Head Comments

David Carpenter – Police Chief – reported that today they had an officer to resign, and requested that he also be allowed to fill this position hiring two officers instead of one from the list that they already have, because the Academy starts in April. He also stated that all police cars ordered this past year were from a local dealership. Even though he said he would match the State Bid List he charged \$500 more per car which was under the three percent, and when you put out five cars at one time that is \$2,500 more. They did go to the local dealership before this budget year to see if he would match the State Bid List. He reported that Officer Marie Scott is in the hospital.

Margaret Thigpen – Civic Center Director – reported on Jason Agee saying that they have the infection under control.

James White – Fire Chief – reported that Kenny Hanak was invited to attend the Fire Academy in Maryland.

7. PUBLIC PARTICIPATION

Mr. Joe Davis – 30757 Pine Court – thanked the council for their two previous votes on the Service Road.

Mr. Ian Walters – 3107 Pine Court – spoke regarding the I-10 Service Road.

8. RESOLUTIONS, ORDINANCES, ORDERS AND OTHER BUSINESS

RESOLUTIONS:

- a.) \$2 Million Additional Investment. /Resolution 2011-02
- b.) Prepaid Travel / David Cohen. /Resolution 2011-03
- c.) Bid Award: 20 Cubic Yard Rear Loading Refuse Collection Truck /Resolution 2011-04
- d.) Emergency Response Equipment Purchase Authorization: Mississippi Canyon 252 Incident (Deepwater Horizon-BP Oil Spill) Grant /Resolution 2011-05
- e.) Adopting Hiring Freeze Exception Policy /Resolution 2011-06

MOTION BY Councilman Palumbo to waive the reading of Resolution 2011-02, 2011-03, 2011-04, 2011-05 and 2011-06. *Seconded by Councilman Lake.*

AYE ALL IN FAVOR NAY NONE OPPOSED **MOTION CARRIED**

MOTION BY Councilman Palumbo to adopt Resolution 2011-02. *Seconded by Councilman Scott.*

AYE ALL IN FAVOR NAY NONE OPPOSED **MOTION CARRIED**

MOTION BY Councilman Palumbo to adopt Resolution 2011-03. *Seconded by Councilman Boulware.*

AYE ALL IN FAVOR NAY NONE OPPOSED **MOTION CARRIED**

MOTION BY Councilman Palumbo to adopt Resolution 2011-04. *Seconded by Councilman Boulware.*

AYE ALL IN FAVOR NAY NONE OPPOSED **MOTION CARRIED**

MOTION BY Councilman Palumbo to adopt Resolution 2011-05. *Seconded by Councilman Boulware.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilman Palumbo to adopt Resolution 2011-06. *Seconded by Councilman Boulware.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

ORDINANCES:

2ND READ

f.) Rezone: Plan B Investments Property /Ordinance 2011-01

MOTION BY Councilman Palumbo to waive the reading of Ordinance 2011-01. *Seconded by Councilman Boulware.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilman Palumbo to adopt Ordinance 2011-01. *Seconded by Councilman Lake.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilman Palumbo to suspend the rules to consider Ordinance 2011-06 and 2011-07. *Seconded by Councilman Lake.*

ROLL CALL VOTE

Lake	Aye	Boulware	Aye
Reese	Aye	Palumbo	Aye
Scott	Aye	Barnette	Aye

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilman Palumbo to waive the reading of Ordinance 2011-06. *Seconded by Councilman Scott.*

AYE ALL IN FAVOR NAY NONE OPPOSED **MOTION CARRIED**

MOTION BY Councilman Palumbo to adopt Ordinance 2011-06. *Seconded by Councilman Scott.*

AYE Lake, Reese, Scott, Palumbo, Barnette NAY Boulware

MOTION CARRIED

MOTION BY Councilman Palumbo to waive the reading of Ordinance 2011-07. *Seconded by Councilman Scott.*

AYE ALL IN FAVOR NAY NONE OPPOSED **MOTION CARRIED**

MOTION BY Councilman Scott to adopt Ordinance 2011-07. *Seconded by Councilman Scott.*

MOTION BY Councilman Palumbo to amend Ordinance 2010-07 to include the hiring of two (2) Patrol Officers. *Seconded by Councilman Scott.*

VOTE ON AMENDMENT

AYE ALL IN FAVOR NAY NONE OPPOSED **MOTION CARRIED**

VOTE ON ORIGINAL MOTION AS AMENDED

AYE ALL IN FAVOR NAY NONE OPPOSED **MOTION CARRIED**

MOTION BY Councilman Palumbo to suspend the rules to consider Ordinance 2011-04. *Seconded by Councilman Scott.*

ROLL CALL VOTE

Lake	Aye	Boulware	Aye
Reese	Aye	Palumbo	Aye
Scott	Aye	Barnette	Aye

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilman Palumbo to waive the reading of Ordinance 2011-04. *Seconded by Councilman Scott.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilman Palumbo to adopt Ordinance 2011-04. *Seconded by Councilman Lake.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

ORDINANCES 2011-03 and 2011-05 WERE MADE A FIRST READ.

8. COUNCIL COMMENTS

Mayor Small stated that there are several employees who are very sick Marie is very sick, Jason Agee from the Civic Center is touch and go and is very sick. He asked everyone to keep them in their thoughts and prayers. He said that Judge Doyle fell and broke his hip two weeks ago. They replaced his hip and in on the rehab floor of Mobile Infirmary. He seems to be doing fairly well.

Councilman Lake reported that there was a good turnout for the Martin Luther King March. The US Attorney gave a lot of compliments on Daphne and City Hall. Quite a few came from Mobile for the march, and they had good comments about the event in Daphne.

Councilman Scott stated that he went to the inauguration in Montgomery, and Baldwin County was made proud by a constitutional officer John McMillan being sworn in as the new Agriculture & Industry Commissioner. Baldwin County was represented well including Daphne High School Band. He encouraged everyone to come out to hear the presentation on the Service Road. He said that a lot of

people have their minds made up because they have interests. He said that his interest is the citizens of Daphne, and the district that he represents. He has been a huge supporter of almost all things involving TimberCreek his entire six (6) plus years on the council, and he asked the folks from TimberCreek to be respectful and at least look at other parts of the city, and make sure they are being fair to all.

Councilman Boulware stated that his concern in going forward for this council is that they loose sight of what they are trying to do, and some priorities that are fundamental to the city. Something they have not talked about is that the council recently approved letting out bids on \$3.8 million worth of road contracts. He mentioned earlier that there is a projection by Mrs. Briley that shows the city being absolutely zeroed out on the reserved funds by 2015, but that does not take into consideration \$3.8 million that is soon to come out of that reserve fund. He said maybe he needs to amend his original argument, they are not talking about five (5) years anymore, and if they don't take the advice of their financial advisor, and they continue to go their own way, who is responsible, they are, and there will be no one else to point a finger to. They knew in 2010, and for them not to heed the warnings is simply irresponsible. He does not mean to come across so harsh, but it is really all he can do is plead the case. He respects all departments of the city. All are vital, all are important, but they simply don't have luxury of time and money to not accept the cold hard reality, and the facts are they just don't have the revenue to support all that they have enjoyed for so many years in the city. He asked that they please consider what he is saying. This is as real as it can get. He hates to be such a dark cloud, but there has to be a ying and yang there somewhere, so he guesses he it the yang to Mr. Scotts ying.

Councilman Palumbo gave kudos to Ms. Rebecca Womack who is a student at Spanish Fort High School, but is a resident of Daphne, for winning the singing contest where contestants appeared on WKRG TV, and there were 182,000 votes cast on line, and the public chose her to sing the National Anthem for the Senior Bowl. He also gave kudos to Officer Mike Williams for 25 years of service and go home all in one piece he knows how to duck and cover. He said that he represented the city very well as the SRO Officer in the schools. Councilman Palumbo congratulated him on his career.

Councilwoman Barnette stated that their prayers go out to the employees and their families that are dealing with sickness and illness, and hopes they come through with a speedy recovery. She said that she would agree with Mr. Boulware that the hiring freeze needs to be taken very seriously. She thinks they took the right action tonight, she thinks they looked at it objectively, and made the right decisions. She said if they are going to change to operating procedures for, say the Civic Center, where they mandated her to find ways to receive revenue, then they need to give her the tools to do that for her department. If they need to evaluate the service that the city is providing, then they need to do that as well from this council. She hopes they will look, and she has talked with Mrs. Hinman about this, with the department heads, and go through each department and take those projections for 2015 and determine if there is a better way through time and attrition that they can continue to provide the level of service that residents afford, but overtime restructure the departments and cross train the employees so that they can get the 70% personnel cost down to at least the 60% that is considered by the guidebook as a manageable percentage. She thinks that in the next few months as they address the capital budget they also need to look at employee restructuring, and maybe a way that they can get there. She appreciates Mr. Boulware making sure that they keep this on the forefront, because this is something that they are going to have to address, and the projections of 2015 are not positive unless

**JANUARY 18, 2011
CITY COUNCIL MEETING
1705 MAIN STREET
DAPHNE, AL
6:30 P.M.**

there is significant change, and it is their responsibility to make those changes. She reported that she and Tracey Miller, who is the Recycling Coordinator, are going next Thursday to a recycling workshop where they have been encouraged to apply for an ADEM grant for the city's recycling program. The awards last year averaged over \$100,000 for each municipality. So they will attend that workshop and work on a grant application which will come before the council for approval to submit. She hopes that they can get public relations and those large totters for the City of Daphne so that they can start seeing at least if not positive cash flow then revenue neutral.

9. ADJOURN

MOTION BY Councilman Lake to adjourn. *Seconded by Councilman Scott.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

There being no further business to discuss the meeting adjourned at 7:57 p.m.

Respectfully submitted by,

David L. Cohen,
City Clerk, MMC

Certification by Presiding Officer:

Cathy S. Barnette,
Council President

Amend January 3, 2011 Council Minutes to Include this letter

Due to a death in my family, I am unable to attend tonight's meeting. However, I wanted to express my support for the Baldwin County Martin Luther King, Jr. Committee and request that the Daphne City Council wave the Civic Center Usage fee for this organization. This organization is a non-partisan committee that works to educate our community's citizens and leaders of the atrocities of the past.

This committee offers scholarships to children and students in our community. The Martin Luther King, Jr. Committee recognizes leaders and individuals for accomplishments and humanitarian efforts. The Committee also encourages the involvement of our children in hopes of building a stronger, better future Daphne. The Committee is driven by the moral integrity of Martin Luther King, Jr. With his example as their guide, their objective is to strengthen the awareness and understanding of racism through compassion.

Over the years I have heard many stories of individual's personal experiences of segregation and how, through fear, honorable people were treated as second class citizens. If we, as a society, fail to recognize the wrongs of the past we will be susceptible to repeat those injustices.

It was 25 years ago that the city of Daphne was asked to give a permit to allow a Martin Luther King, Jr. March. This request was met with criticism and statements that the March was not needed. I remember talking to Willie Williams, President of the Martin Luther King, Jr. Committee, that we should change the attitude of people. It was the next year that the Young Republicans of Baldwin County, along with the Baldwin County Republican Party, sponsored the March. I have participated in every one of the Marches and feel that it is an honor for the city of Daphne to be a part of this day to remember not only Reverend Martin Luther King, Jr. but also those that have given their lives to correct the injustices of segregation.

In conclusion, I would like to thank my constituents' for their support in my request. I believe it our responsibility, as community leaders, to set an example to our children how important it is to be a positive and compassionate contributor to society. If we, as leaders, fail to do this, we are missing an opportunity to educate and heal our community as well as setting ourselves up to repeat the mistakes of the past. I am

Very truly yours

John L. Lake

Daphne City Council Dis. 3

Office of the Mayor
City of Daphne

PROCLAMATION

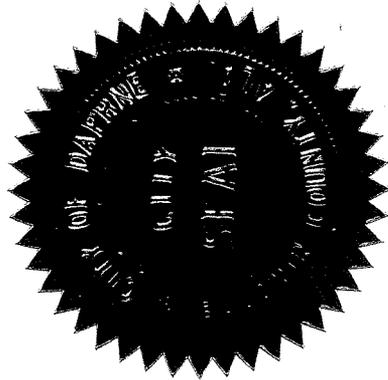
ARBOR DAY
February 26, 2011

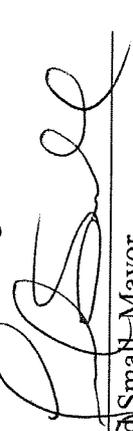
WHEREAS, the City of Daphne has been recognized
by *The National Arbor Day Foundation* as a *Tree City USA*, and

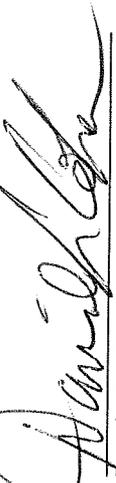
WHEREAS, trees reduce erosion, cut heating and cooling costs, clean the air,
produce oxygen and provide habitat for wildlife, and

WHEREAS, trees in our City increase property values and beautify our community.

NOW THEREFORE, THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DAPHNE do hereby proclaim
February 26, 2011 as **ARBOR DAY** in the City of Daphne, and urge all citizens to plant trees, and to support efforts to
protect our trees and woodlands for this and future generations.




Fred Small, Mayor


David L. Cohen, MMC

ATTEST:

**CITY COUNCIL MEETING
STANDING COMMITTEE RECOMMENDATIONS:**

FINANCE COMMITTEE REPORT

BUILDINGS & PROPERTY COMMITTEE REPORT

PLANNING/ZONING/CODE ENFORCEMENT COMMITTEE REPORT

PUBLIC SAFETY/ORDINANCE COMMITTEE REPORT

PUBLIC WORKS/BEAUTIFICATION/MUSEUM COMMITTEE REPORT

**SPECIAL FINANCE COMMITTEE MEETING
DAPHNE CITY HALL EXECUTIVE ROOM
FEBRUARY 7, 2011
6:00 P.M.**

I. ROLL CALL

II. PUBLIC PARTICIPATION

III. CURRENT BUSINESS

A. Bids: *(Resolution)*

1. 2011-H-TWO (2) 20 CUBIC YARD REAR LOADING REFUSE COLLECTION TRUCK –
Lease Financing - (Resolution for Lease Financing)
2. 2011-I-SEHOY DRAINAGE REPAIR-CLAIBORNE CIRCLE - *(Resolution)*

B. Appropriation Requests:

1. Sehoj Drainage Repair-Claiborne Circle Additional Appropriation - \$4,038 *(Ordinance)*

V. ADJOURN

AUTHORIZING RESOLUTION

COUNCIL MEMBER _____ moved the adoption of the following Resolution and Order:

A RESOLUTION OF THE CITY COUNCIL, THE GOVERNING BODY ("THE COUNCIL") OF CITY OF DAPHNE , ALABAMA (THE "LESSEE"), FINDING IT NECESSARY TO ACQUIRE EQUIPMENT FOR GOVERNMENTAL OR PROPRIETARY PURPOSES AUTHORIZED BY LAW: FINDING THAT IT WOULD BE IN THE PUBLIC INTEREST TO ACQUIRE SUCH EQUIPMENT UNDER THE TERMS OF A LEASE PURCHASE AGREEMENT: FINDING THAT HANCOCK BANK (THE "LESSOR") HAS OFFERED TO ACQUIRE SUCH EQUIPMENT, OR TO ACQUIRE FROM AND REIMBURSE THE LESSEE FOR THE COST OF SUCH EQUIPMENT IN THE EVENT THE EQUIPMENT HAS ALREADY BEEN PURCHASED BY THE LESSEE, AND TO LEASE SUCH EQUIPMENT TO LESSEE: FINDING THAT SUCH PROPOSAL IS IN THE INTEREST OF THE LESSEE AND AUTHORIZING AND DIRECTING THE AUTHORIZED OFFICERS (AS HEREINAFTER DEFINED) TO EXECUTE A LEASE PURCHASE AGREEMENT AND SUPPORTING SCHEDULES AND ATTACHMENTS INCLUDING, BUT NOT LIMITED TO, ASSIGNMENTS OF TITLE TO THE EQUIPMENT TO HANCOCK BANK TO THE END THAT THE EQUIPMENT SHALL BE ACQUIRED BY SUCH BANK AND LEASED TO THE LESSEE ON THE TERMS AND CONDITIONS EXPRESSED IN SUCH LEASE.

WHEREAS, the Council has determined that it is necessary to acquire certain items of Equipment (the "Equipment") for use by the Lessee for purposes authorized by law and

WHEREAS, the Council has by these presents determined that it would be in the public interest to acquire such Equipment through a Lease Purchase Agreement as provided under Section 41-16A-1 *et seq.* of the Code of Alabama, 1975, and

WHEREAS, the Council anticipates that it will not issue more than \$10,000,000.00 of qualified tax-exempt obligations during calendar year 2011 and desires to designate the Lease Purchase Agreement as a qualified tax-exempt obligation of the Lessee for purposes of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended, ("the Code").

WHEREAS, to the best knowledge and belief of the Board, this lease qualifies as a qualified project bond within the meaning of the Tax Reform Act of 1986; and

WHEREAS, Hancock Bank has proposed to acquire the Equipment at the offered price and to lease the Equipment to the Lessee at a rate of 2.39% per annum.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD AS FOLLOWS:

SECTION 1: The Mayor and City Clerk (hereinafter the "Authorized Officers") are hereby authorized and directed to execute a Lease Purchase Agreement (also referred to as a "Governmental Lease Purchase Agreement"), either reference being the "Agreement", and all attachments thereto. Such Agreement shall be in substantially the form attached hereto with such appropriate variations, omissions and insertions as are permitted or required by this Resolution and as are consented to by the Lessee's representatives (the "Authorized Officers") executing the Agreement, such consent being evidenced by their signatures.

SECTION 2: The Equipment to be leased pursuant to the Agreement shall be more fully described in a schedule to the Agreement titled "Exhibit D – Description of the Equipment". Upon delivery and acceptance by the Lessee of the Equipment, the Authorized Officers are authorized and directed to execute a Certificate of Acceptance of such Equipment and, as provided in Section 4.01 of such Lease, the lease term shall commence on the date of acceptance.

SECTION 3: The Authorized Officers are further authorized and directed to execute on behalf of the Lessee a Financing Statement and all other documents as provided for under Section 7.02 of such Lease to establish and maintain the security interest of Hancock Bank in such Equipment.

SECTION 4: The Council hereby designates the Lease Purchase Agreement as a qualified tax-exempt obligation for purposes of Section 265(b)(3) of the Code.

SECTION 5: The Lessee and the Council understand Section 8.03 of the Agreement ("Provisions Regarding Insurance") and agree to provide property damage and liability insurance in accordance with the terms of the Agreement.

COUNCIL MEMBER _____ seconded the motion and after a full discussion, the same was put to vote with the following results:

Bailey Yelding, Jr.	Voted: _____
Cathy Barnette	Voted: _____
John L. Lake	Voted: _____
Kelly D. Reese	Voted: _____
Ron Scott	Voted: _____
Derek Boulware	Voted: _____
August Palumbo	Voted: _____

The motion, having received an affirmative vote, was carried and the resolution adopted this the _____ day of _____, 2011.

By: _____

Cathy Barnette
Council President

By: _____

Fred Small
Mayor

{Seal}

Attest: _____

David L. Cohen
City Clerk

CERTIFICATE OF RECORDING OFFICER

1. I am the duly appointed, qualified and acting City Clerk of City of Daphne, Alabama and keeper of the records thereof, including the minutes of its proceedings;

2. A meeting was duly convened on _____, 2011 in conformity with all applicable requirements; a proper quorum was present throughout said meeting and the instrument hereinafter mentioned was duly proposed, considered and adopted in conformity with applicable requirements; and all other requirements and proceedings incident to the proper adoption of said instrument have been duly fulfilled, carried out and otherwise observed

3. I am duly authorized to execute this Certificate; and

4. The copy of the instrument annexed hereto, entitled:

A RESOLUTION OF THE CITY COUNCIL, THE GOVERNING BODY (“THE COUNCIL”) OF CITY OF DAPHNE, ALABAMA (THE “LESSEE”), FINDING IT NECESSARY TO ACQUIRE EQUIPMENT FOR GOVERNMENTAL OR PROPRIETARY PURPOSES AUTHORIZED BY LAW: FINDING THAT IT WOULD BE IN THE PUBLIC INTEREST TO ACQUIRE SUCH EQUIPMENT UNDER THE TERMS OF A LEASE PURCHASE AGREEMENT: FINDING THAT HANCOCK BANK (THE “LESSOR”) HAS OFFERED TO ACQUIRE SUCH EQUIPMENT, OR TO ACQUIRE FROM AND REIMBURSE THE LESSEE FOR THE COST OF SUCH EQUIPMENT IN THE EVENT THE EQUIPMENT HAS ALREADY BEEN PURCHASED BY THE LESSEE, AND TO LEASE SUCH EQUIPMENT TO LESSEE: FINDING THAT SUCH PROPOSAL IS IN THE INTEREST OF LESSEE.....(continued)....

Is a true, correct and compared copy of the original instrument referred to in said minutes and as finally enacted at said meeting, is in full force and effect and, to the extent required by law, has been duly signed or approved by the proper officer or officers and is on file and of record.

DATED as of this the _____ day of _____, 2011.

CITY OF DAPHNE, ALABAMA

(SEAL)

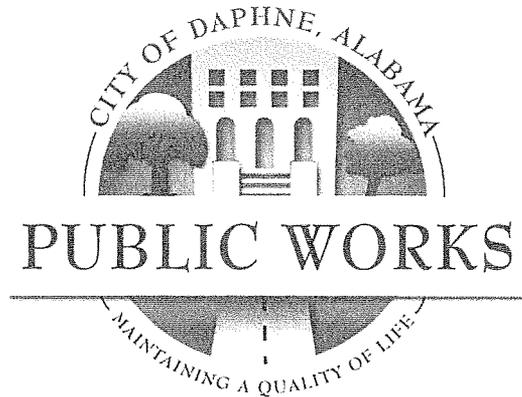
David L. Cohen
City Clerk of City of Daphne

Fred Small
Mayor

David Cohen
City Clerk

Kimberly Briley
Finance Director/Treasurer

Richard D. Johnson, P.E.
Director of Public Works



Bailey Yelding, Jr.
District 1

Cathy Barnette
District 2

John L. Lake
District 3

Kelly D. Reese
District 4

Ronald Scott
District 5

Derek Boulware
District 6

August Palumbo
District 7

Memorandum

To: The Honorable Mayor Fred Small
From: Richard D. Johnson, P.E.; Public Works Director
CC: Councilman Derek Boulware; Chairman, Finance Committee; Councilwoman Barnette, President; Kim Briley, Finance Director; File
Date: February 1, 2011
Re: Emergency Drainage Repairs – 2537 Claiborne Circle – Sehoy Subdivision

Mr. Mayor:

Please accept this request to place before the Finance Committee at their special called meeting on February 6, 2011 the above referenced matter.

This is a request of the Finance Committee to make a recommendation to the full Council to accept the attached bid and make necessary appropriation of \$59,736.00 for Construction, \$3,200.00 Engineering Design, Construction Management and Surveillance and \$1,200 for Material Testing for a total appropriation of \$64,136.00. *

Furthermore, due to the current litigation involving claims of past, current, and future damage to Real Property at 27567 Claiborne Circle it is asked that the motion be advanced to the full Council the same night for immediate action. If suspension of the rules and/or waiving of the readings are required to award this bid posthaste, I humbly request that be done. The granting of this request would allow contracts to be signed and executed as early as February 8, 2011.

Thank you for your due consideration.

RDJ

Attachments: HMR Bid Recommendation Letter
Bids Received



HUTCHINSON, MOORE & RAUCH, LLC

Post Office Box 1127
Daphne, Alabama 36526

Telephone: (251) 626-2626
Fax: (251) 626-6934

January 31, 2011

Mayor Fred Small
The City of Daphne
Post Office 400
Daphne, Alabama 36526

RE: Bid Document No.: 2011-I-Sehoy Drainage Repair Claiborne Circle

Dear Mayor Small:

Enclosed is the Tabulation of Bids received January 27, 2011 for the subject project.

We recommend that you award the Contract to Peavy Construction Company at their submitted lowest bid of \$59,736.00. We anticipate the cost for construction surveillance and construction contract management to be \$3,200 and the materials testing cost to be \$1,200.

If you have any questions or require further information, please contact me at 251-626-2626.

Sincerely,

HUTCHINSON, MOORE & RAUCH, LLC

James H. Robertson, II, P.E.
Project Manager

\b1g
Enclosure

c: Richard Johnson
D2500\3505\11.035

CITY OF DAPHNE
BID DOCUMENT NO.: 2011-I-SEHOY DRAINAGE REPAIR - CLAIBORNE CIRCLE
JANUARY 27, 2011



Hutchinson, Moore & Rauch, LLC
 Engineers ♦ Surveyors ♦ Land Planners

ITEM#	DESCRIPTION	UNIT	QTY	BIDDER #1 PEAVY CONSTRUCTION CO.		BIDDER #2 SUMMIT INDUSTRIES, LLC		BIDDER #3 AMMONS & BLACKMON	
				UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT
201-A	CLEARING AND GRUBBING	LS	1	\$ 4.00	\$ 2,500.00	\$ 10.00	\$ 3,975.00	\$ 17.00	\$ 2,500.00
206-D	REMOVE 42" HDPE STORM SEWER PIPE	LF	40	\$ 4.00	\$ 160.00	\$ 10.00	\$ 400.00	\$ 17.00	\$ 680.00
206-D	REMOVE 48" HDPE STORM SEWER PIPE	LF	160	\$ 4.00	\$ 640.00	\$ 10.00	\$ 1,600.00	\$ 17.00	\$ 2,720.00
210-D	SELECT BACKFILL	CYIP	300	\$ 8.00	\$ 2,400.00	\$ 10.00	\$ 3,000.00	\$ 15.00	\$ 4,500.00
214-A	STRUCTURE EXCAVATION	CY	400	\$ 3.00	\$ 1,200.00	\$ 5.15	\$ 2,060.00	\$ 1.00	\$ 400.00
214-B	FOUNDATION BACKFILL (LOCAL)	CYIP	300	\$ 8.00	\$ 2,400.00	\$ 10.00	\$ 3,000.00	\$ 8.00	\$ 2,400.00
214-B	FOUNDATION BACKFILL (COMMERCIAL) (#57 STONE BEDDING)	CYIP	21	\$ 46.00	\$ 966.00	\$ 78.00	\$ 1,638.00	\$ 85.00	\$ 1,785.00
530-A	42" RCP (OWNER SUPPLIED)	LF	40	\$ 46.00	\$ 1,840.00	\$ 67.75	\$ 2,710.00	\$ 75.00	\$ 3,000.00
530-A	48" RCP	LF	160	\$ 130.00	\$ 20,800.00	\$ 165.00	\$ 26,400.00	\$ 144.75	\$ 23,160.00
600-A	MOBILIZATION	LS	1	\$ 5,000.00	\$ 5,000.00	\$ 1,400.00	\$ 1,400.00	\$ 6,500.00	\$ 6,500.00
610-A	RIPRAP CLASS 2	TONS	80	\$ 60.00	\$ 4,800.00	\$ 70.00	\$ 5,600.00	\$ 66.00	\$ 5,280.00
610-D	FILTER CLOTH	SY	75	\$ 2.00	\$ 150.00	\$ 11.00	\$ 825.00	\$ 4.00	\$ 300.00
621-A	MODIFY EXISTING JUNCTION BOXES	EA	3	\$ 2,200.00	\$ 6,600.00	\$ 1,313.00	\$ 3,939.00	\$ 1,500.00	\$ 4,500.00
621-A	JUNCTION BOX (OWNER SUPPLIED)	EA	1	\$ 1,825.00	\$ 1,825.00	\$ 752.00	\$ 752.00	\$ 1,000.00	\$ 1,000.00
621-A	NEW JUNCTION BOX MODIFICATIONS	LS	1.0	\$ 2,200.00	\$ 2,200.00	\$ 1,313.00	\$ 1,313.00	\$ 1,000.00	\$ 1,000.00
650-A	TOPSOIL (3" THICK)	CY	40	\$ 15.00	\$ 600.00	\$ 22.00	\$ 880.00	\$ 10.00	\$ 400.00
652-A	SEEDING (MIX 2A)	ACRE	0.2	\$ 1,500.00	\$ 300.00	\$ 2,500.00	\$ 500.00	\$ 2,000.00	\$ 400.00
654-A	SOLID SOD (BERMUDA)	SY	350	\$ 5.00	\$ 1,750.00	\$ 3.65	\$ 1,277.50	\$ 5.00	\$ 1,750.00
656-A	MULCHING	ACRE	0.2	\$ 1,500.00	\$ 300.00	\$ 2,500.00	\$ 500.00	\$ 2,000.00	\$ 400.00
665-J	SILT FENCE	LF	230	\$ 3.50	\$ 805.00	\$ 4.75	\$ 1,092.50	\$ 5.00	\$ 1,150.00
680-A	ENGINEERING CONTROLS	LS	1	\$ 1,000.00	\$ 1,000.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00
681-A	BONDS	LS	1	\$ 1,500.00	\$ 1,500.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00
TOTAL AMOUNT					\$ 59,736.00		\$ 64,362.00		\$ 65,325.00

**CITY OF DAPHNE
 BID DOCUMENT NO.: 2011-J-SEHOY DRAINAGE REPAIR - CLAIBORNE CIRCLE
 JANUARY 27, 2011**



Hutchinson, Moore & Rauch, LLC
 Engineers ♦ Surveyors ♦ Land Planners

ITEM#	DESCRIPTION	UNIT	QTY	BIDDER #4 SUNSET CONTRACTING			BIDDER #5 DOUBLE DIAMOND			BIDDER #6 GENERAL DEVELOPMENT			
				UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT		
201-A	CLEARING AND GRUBBING	LS	1	\$ 2,032.78	\$ 2,032.78								
206-D	REMOVE 42" HDPE STORM SEWER PIPE	LF	40	\$ 59.23	\$ 2,369.20	\$ 10.00	\$ 400.00	\$ 50.70	\$ 2,028.00				
206-D	REMOVE 48" HDPE STORM SEWER PIPE	LF	160	\$ 28.92	\$ 4,627.20	\$ 10.00	\$ 1,600.00	\$ 54.00	\$ 8,640.00				
210-D	SELECT BACKFILL	CYIP	300	\$ 15.46	\$ 4,638.00	\$ 7.00	\$ 2,100.00	\$ 15.00	\$ 4,500.00				
214-A	STRUCTURE EXCAVATION	CY	400	\$ 12.68	\$ 5,072.00	\$ 7.00	\$ 2,800.00	\$ 11.40	\$ 4,560.00				
214-B	FOUNDATION BACKFILL (LOCAL)	CYIP	300	\$ 16.20	\$ 4,860.00	\$ 7.00	\$ 2,100.00	\$ 15.00	\$ 4,500.00				
214-B	FOUNDATION BACKFILL (COMMERCIAL) (#57 STONE BEDDING)	CYIP	21	\$ 48.61	\$ 1,020.81	\$ 50.00	\$ 1,050.00	\$ 90.00	\$ 1,890.00				
530-A	42" RCP (OWNER SUPPLIED)	LF	40	\$ 25.89	\$ 1,035.60	\$ 85.00	\$ 3,400.00	\$ 56.00	\$ 2,240.00				
530-A	48" RCP	LF	160	\$ 111.14	\$ 17,782.40	\$ 150.00	\$ 24,000.00	\$ 134.60	\$ 21,536.00				
600-A	MOBILIZATION	LS	1	\$ 7,672.93	\$ 7,672.93								
610-A	RIPRAP, CLASS 2	TONS	80	\$ 50.79	\$ 4,063.20	\$ 50.00	\$ 4,000.00	\$ 78.90	\$ 6,312.00				
610-D	FILTER CLOTH	SY	75	\$ 5.59	\$ 419.25	\$ 5.00	\$ 375.00	\$ 11.30	\$ 847.50				
621-A	MODIFY EXISTING JUNCTION BOXES	EA	3	\$ 1,061.41	\$ 3,184.23	\$ 2,000.00	\$ 6,000.00	\$ 2,000.40	\$ 6,001.20				
621-A	JUNCTION BOX (OWNER SUPPLIED)	EA	1	\$ 619.82	\$ 619.82	\$ 3,000.00	\$ 3,000.00	\$ 2,260.00	\$ 2,250.00				
621-A	NEW JUNCTION BOX (OWNER SUPPLIED)	EA	1	\$ 1,798.74	\$ 1,798.74								
650-A	TOPSOIL (3" THICK)	CY	40	\$ 23.42	\$ 936.80	\$ 10.00	\$ 400.00	\$ 14.40	\$ 576.00				
652-A	SEEDING (MIX 2A)	ACRE	0.2	\$ 1,117.20	\$ 223.44	\$ 1,000.00	\$ 200.00	\$ 3,150.00	\$ 630.00				
654-A	SOLID SOD (BERMUDA)	SY	350	\$ 3.91	\$ 1,368.50	\$ 7.00	\$ 2,450.00	\$ 6.80	\$ 2,380.00				
656-A	MULCHING	ACRE	0.2	\$ 1,117.20	\$ 223.44	\$ 1,000.00	\$ 200.00	\$ 3,150.00	\$ 630.00				
665-J	SILT FENCE	LF	230	\$ 3.63	\$ 834.90	\$ 4.00	\$ 920.00	\$ 6.60	\$ 1,518.00				
680-A	ENGINEERING CONTROLS	LS	1	\$ 2,793.01	\$ 2,793.01								
681-A	BONDS	LS	1	\$ 1,200.00	\$ 1,200.00								
TOTAL AMOUNT				\$ 68,776.25	\$ 77,495.00	\$ 84,496.10							

We hereby certify this to be a true and correct tabulation on the above named project.

James H. Robertson, II
 James H. Robertson, II, P.E.
 Project Manager
 Hutchinson, Moore & Rauch, LLC

Bold italicized indicates an error in the extension of the unit price and or an error in the summary.

**RESOLUTION 2011-
2011-I-SEHOY DRAINAGE REPAIR-CLAIBORNE CIRCLE**

WHEREAS, the City of Daphne is required under section 39-1-1(E) of the Code of Alabama to secure competitive bids for public works contracts in excess of \$ 50,000; and

WHEREAS, the City of Daphne acknowledges that SEHOY DRAINAGE REPAIR-CLAIBORNE CIRCLE project will exceed \$50,000; and

WHEREAS, the City of Daphne did receive and review bids for the SEHOY DRAINAGE REPAIR-CLAIBORNE CIRCLE and has determined that the bid as presented is reasonable; and

WHEREAS, staff recommends the bid for SEHOY DRAINAGE REPAIR-CLAIBORNE CIRCLE be awarded to Peavy Construction Company, Inc.

NOW, THEREFORE BE IT RESOLVED, AND IT IS HEREBY RESOLVED, THAT THE MAYOR AND CITY COUNCIL OF THE CITY OF DAPHNE, hereby accept the bid from Peavy Construction Company, Inc. in the amount of \$59,736.00 as specified in BID SPECIFICATION NO. 2011-I-SEHOY DRAINAGE REPAIR-CLAIBORNE CIRCLE for a total project cost of \$64,136 including engineering and testing.

APPROVED AND ADOPTED by the Mayor and City Council of the City of Daphne, Alabama, this _____ day of _____, 2011.

Cathy S. Barnette, Council President

Fred Small, Mayor

ATTEST:

David L. Cohen, City Clerk CMC

ORDINANCE 2011-

**Sehoy Sub Division-Claiborne Circle Drainage Project:
Additional Funding**

WHEREAS, Ordinance 2010-71 approved and adopted the Fiscal Year 2011 Budget on December 20, 2010; and

WHEREAS, subsequent to the adoption of the Fiscal Year 2011 budget, the City Council has determined that certain appropriations are required and should be approved and made a part of the Fiscal Year 2011 budget; and

WHEREAS, Ordinance 2010-64 did heretofore appropriate \$ 60,098 for the completion of the Claiborne Circle Drainage Project; and

WHEREAS, bids were let and the total project cost, including engineering, is \$64,136.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Daphne, Alabama, that an additional appropriation in the amount of \$ 4,038 (\$64,136-\$60,098) from the General Fund is hereby approved for drainage improvements at Claiborne Circle.

APPROVED AND ADOPTED by the Mayor and City Council of the City of Daphne, Alabama, this _____ day of _____, 2011.

Cathy Barnette, Council President

Fred Small, Mayor

ATTEST:

David L. Cohen,
City Clerk MMC

**CITY COUNCIL MEETING
REPORTS OF SPECIAL COMMITTEES**

NOTES:

BOARD OF ZONING ADJUSTMENTS REPORT:

DOWNTOWN REDEVELOPMENT AUTHORITY REPORT:

INDUSTRIAL DEVELOPMENT BOARD:

LIBRARY BOARD:

PLANNING COMMISSION REPORT:

RECREATION BOARD REPORT:

UTILITY BOARD REPORT:

**DOWNTOWN REDEVELOPMENT AUTHORITY
DAPHNE, AL
1705 MAIN STREET
JANUARY 24, 2011
5:15 P.M.**

DRAFT

1. CALL TO ORDER/ROLLCALL

Casey Zito called the meeting to order at 5:20 p.m.

Members Present: Casey Zito; Ronald Nero; Ken Balme; Doug Bailey; Kelly Hughes.

ABSENT: Laurie Gorowsky; Mary Beth Mantiply

Also present: Dorothy Morrison, Beautification Committee, Cathy Barnette, Council Liaison; Rebecca Hayes, recording secretary.

2. Adopt Minutes / November 22, 2010

MOTION BY Kelly Hughes to approve the November 22, 2010 meeting minutes. Seconded by Ronald Nero.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

3. UPDATE / JUBILEE FESTIVAL / Darrelyn Bender & Ginger Parnell

Discussion was held on ways to promote the downtown businesses during the Jubilee Festival. Ms. Bender mentioned all the ways that the chamber supports and dispenses information on city events. It was suggested that they meet with the merchants within 60 days to get their input. Dorothy and Casey will research a site for the meeting.

4. PLAQUE / WORDING AND DESIGN

The members discussed the wording for the plaque recognizing the sculptress and contributors of the statue and fountain in front of city hall.

MOTION BY Kelly Hughes to approve the following wording for the plaque:

“In appreciation for the many hours donated by the Daphne Downtown Redevelopment Authority, and the many kind contributions of the citizens of Daphne for the statue of “Daphne” and the fountain designed and sculpted by local artist Fran Neuman erected in 2008.”

This motion to be sent to the Buildings and Property Committee and the City Council for approval along with the previous motion that was sent to the Buildings and Property Committee and forwarded to the City Council for approval where council requested the wording of the plaque before they approved the design request:

**DOWNTOWN REDEVELOPMENT AUTHORITY
DAPHNE, AL
1705 MAIN STREET
NOVEMBER 22, 2010
5:00 P.M.**

2

To seek permission from the city to build a monument and plaque to recognize Fran Neuman for her valued contributions as designer of the fountain and sculptress of the statue of “Daphne” in front of city hall, and the many contributors to the project. The Olde Daphne Fountain/Park, Inc. will provide funding (up to \$900) to construct an 18” (w) x 18” (d) x 4’ (h) pedestal and plaque. Location of the pedestal will be in a prominent place between the fountain and clock. Appropriate City of Daphne protocol will be followed to see the project to completion. The design must be approved by the Downtown Redevelopment Authority prior to construction and placement. The Authority recommends this project to the Buildings and Property Committee.

Seconded by Ronald Nero.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

4. UPDATE / WEB PAGE

Ken said he needs to know the content for the page, and whether to use an outside vendor or other. Casey said that she will talk to someone she knows who might be willing to help with the website. She will have them come to the next meeting.

5. UPDATE / MASTER PLAN / NEXT STEP

No report. They will try to have the grant writer at the next meeting.

6. NEW BUSINESS

The members discussed some of the suggestions from Ken to draw attention to Olde Towne Daphne. They agreed that they need to look outside the box for ways to get projects done. Dorothy wants to discuss at the next meeting replacing the tiny sign by the traffic light on US Highway 98 that says Olde Towne Daphne. Ms. Stacey Bennette was supposed to come to the meeting tonight to discuss rezoning of the property next to CoCo’s, but for some reason she did not make it. Casey asked that she be put on next month’s agenda.

7. NEXT MEETING

The next meeting will be February 28, 2011 at 5:15 p.m.

8. ADJOURN

The meeting adjourned at 6:25 p.m.

Respectfully submitted,

Downtown Redevelopment Authority

**Daphne Public Library Board
January 6, 2011
Meeting Minutes**

In Attendance:

Library Director Tonja Young; Board Chair Jan Blankenhorn; Library Board Members Windrila Longmire, Andre LaPalme, and Chantal Booth.

1) Call to Order:

After a quorum was established, Library Board Chairman Jan Blankenhorn called the meeting to order at 4:07 pm.

2) Reading and Approval of the Minutes:

The minutes of the November meeting were approved (no December meeting held); motion made by Wendy and seconded by Andre. Motion passed.

3) Chairman's Report/Comments:

Jan stated that everything seemed to be going well with the library and that the Christmas gift tree had been a success.

4) Library Director's Report:

Tonja went over the highlights of the December statistical report.

For December 2010, total patronage was down 8.76% to 14,305 compared with 15,679 for December, 2009. December 2010 circulation was down 4.70% at 21,290 compared to 22,341 in December 2009. Overall circulation year-to-date was 70,905 for December 2010, compared to 71,923 for this time in 2009. A total of 83 patrons were given library cards or renewed cards and volunteers gave 281 hours to the library in December. Meeting room attendance was 534 and computer users numbered 2370, almost double from last year's December number of 1,338.

Tonja discussed the computer software, online databases and computer classes, as well as the new shelving sponsored by the Friends. She announced the upcoming workshop for the ADAH grant and the annual workshop at APLS to be in compliance with State Aid procedures.

5) Public Participation

Jan announced that the Friends had their annual meeting coming up at 2:00 pm on January 14, and that everyone was welcome. She stated that the Friends had supported the library's public programming and book purchases in 2010, and that they had voted to continue their support in 2011. Jan said the Book Shop was doing well and discussed FODL memberships.

6) Other Business

None.

7) Adjourned

The meeting was adjourned by Jan at 4:33 pm.

Respectfully submitted by T. Young, January 28, 2011

THE CITY OF DAPHNE
PLANNING COMMISSION MINUTES
REGULAR MEETING OF DECEMBER 16, 2010
COUNCIL CHAMBERS, CITY HALL - 5:00 P.M.

CALL TO ORDER:

The number of members present constitutes a quorum and the regular meeting of the City of Daphne Planning Commission was called to order at 6:00 p.m.

CALL OF ROLL:

Members Present:

Fred Small, Mayor
Joe Lemoine, Secretary
Don Terry
Ed Kirby, Chairman
Chief James "Bo" White
Larry Chason, Vice Chairman
Cathy Barnette, Councilwoman

Members Absent:

Victoria Phelps
Dan Gibson

Staff Present:

Adrienne Jones, Director of Community Development
Jan Dickson, Planning Coordinator
Nancy Anderson, GIS Manager
Jay Ross, Attorney

Staff Absent:

Ashley Campbell, Environmental Programs Manager
Missty Gray, Attorney
Erick Bussey, Associate Attorney

Others Absent:

Rob McElroy, General Manager/Utilities Board of the City of Daphne
Danny Lyndall, Operations Manager/Utilities Board of the City of Daphne

The first order of business is the call to order.

Chairman: Please let the record reflect Mr. Gibson and Ms. Phelps are not present.

The next order of business is approval of the minutes.

APPROVAL OF MINUTES:

The minutes of the November 18, 2010 regular meeting were considered for approval.

THE CITY OF DAPHNE
PLANNING COMMISSION MINUTES
REGULAR MEETING OF DECEMBER 16, 2010
COUNCIL CHAMBERS, CITY HALL - 5:00 P.M.

Chairman: A copy of the minutes was furnished to us previously. Do any of the Commissioners have any questions or comments? If there are no additions, deletions, or corrections at this time, the Chair will entertain a motion.

A Motion was made by Ms. Barnette and Seconded by Mr. Terry to approve the minutes of the November 18, 2010 regular meeting. The Motion carried unanimously.

The next order of business under old business is an administrative presentation for Apalachee Residential Community.

OLD BUSINESS:

ADMINISTRATIVE PRESENTATION:

For the record, a site plan was approved by the Daphne Planning Commission on July 28, 2005 and a revised site plan was approved on August 28, 2006. A site disturbance permit was issued on March 21, 2007. A one-year extension of the site disturbance permit for Apalachee Residential Community was granted on January 24, 2008, January 22, 2009 and December 17, 2009.

An introductory presentation was given by Dr. Barry Booth, one of the owners. On behalf of Ms. Wallace, Two Step Partners, and Apalachee Development, I respectfully request an extension of the site disturbance permit issued for Apalachee Residential Community. We have continued working on the project in order to move forward when the economy improves. I will be happy to answer any questions you may have.

Chairman: Do any of the Commissioners have any questions or comments?

Mr. Terry: There was concern expressed by Ms. Phelps at the site preview. She asked if Ms. Jones would review the plans to make sure the approved site plan is in compliance with the regulations. Does the plan meet the requirements?

Ms. Jones: At a previous meeting, Mr. Doug Bailey, representing Hutchinson, Moore & Rauch, presented a comparison of the original and the revised site plan. Article XXVIII, fails to identify landscape and irrigation requirements. However, the site plan submitted and approved at that time did provide for a landscape plan. The only item of concern was identified by the Utilities Board of the City of Daphne and they requested the installation of a grease trap. Dr. Booth said they would be happy to comply with that.

Ms. Barnette: What about the buffer required or the distance between this building to the bluff line?

Ms. Jones: The distance required for the buffer is a matter of the interpretation of the ordinance. The current approved site plan design does not propose any construction in any areas near or beyond the bluff.

THE CITY OF DAPHNE
PLANNING COMMISSION MINUTES
REGULAR MEETING OF DECEMBER 16, 2010
COUNCIL CHAMBERS, CITY HALL - 5:00 P.M.

Dr. Booth: I would like to request on behalf of Apalachee Development and partners, the consideration of the approval of an extension for two years. I will come by next year if you wish, but I would like your consideration of a two-year extension.

Ms. Barnette: For the record, I would like to say I am not in favor of this project now, and previously I was not in favor of this type of project in Daphne.

Chairman: Do any of the Commissioners have any further questions or comments? We have a request to grant a two-year extension to Apalachee Residential Community. If there is no objection, the Chair will entertain a motion.

A Motion was made by Ms. Barnette *to deny the request for a two-year extension of the site disturbance permit issued to the Apalachee Residential Community.*

The Motion failed due to the lack of a second.

A Motion was made by Mayor Small and **Seconded** by Mr. Lemoine *to grant a two-year extension of the site disturbance permit issued to the Apalachee Residential Community. The Motion carried. Ms. Barnette dissented.*

Dr. Booth: Thank you. I promise to keep you apprised of every improvement.

The next order of business under new business is site plan review for Bay Community Church, Phase II for the new Worship Center.

NEW BUSINESS:

SITE PLAN REVIEW:

File S10-15:

Site: Bay Community Church, Phase II
New Worship Center

Zoning(s): B-2, General Business

Location: Southwest of the intersection of Alabama Highway 181 and Interstate 10, Historic Malbis Subdivision, Phase Three

Area: 15.3 Acres ±

Owner: Bay Community Church - Pastor, Jerry Taylor or Executive Pastor, Bart Hare

Architect: Forrest Daniell & Associates - Jeff Jordan

Engineer: Polysurveying & Engineering - Vincent LaCoste, II

THE CITY OF DAPHNE
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COUNCIL CHAMBERS, CITY HALL - 5:00 P.M.

An introductory presentation was given by Mr. Jeff Jordan, representing Forrest Daniell & Associates, requesting site plan review of the second phase of Bay Community Church. This is the second phase of the development of this site. It is the addition of a new one thousand two hundred square foot worship center to the existing sanctuary located southwest of the intersection of Alabama Highway 181 and Interstate 10 in Historic Malbis Subdivision. There were some minor issues mentioned at the work session which were addressed by email to staff. I will be happy to answer any questions you may have.

Chairman: Do any of the Commissioners have any questions or comments?

Mr. Terry: Have you received approval from the Alabama Department of Transportation?

Mr. Jordan: We have been given an informal approval, and we were told the final approval is forthcoming.

Chairman: Do any of the Commissioners have any further questions or comments? If there is no objection, the Chair will entertain a motion.

A Motion was made by Mayor Small and Seconded by Mr. Terry to approve the site plan for Bay Community Church, Phase II, the new Worship Center, subject to the approval of the access to Alabama Highway 181 by the Alabama Department of Transportation. The Motion carried unanimously.

The next order of business is preliminary/final plat review for TimberCreek Golf Course Subdivision, Resubdivision of Parcel B.

PRELIMINARY/FINAL PLAT REVIEW:

File SDPF10-12:

Subdivision: TimberCreek Golf Course, Resubdivision of Parcel B

Zoning(s): B-2, General Business

Location: Northwest of the intersection of Alabama Highway 181 and Interstate 10

Area: 137.44 Acres \pm , (2) lots

Owner: TimberCreek Investments, L.L.C. - Larry Waldrep, Manager and Bradley Investments, Inc. - Robert Bradley

Engineer: Rester & Coleman Engineers - Joel Coleman

An introductory presentation was given by Mr. Joel Coleman, representing Rester & Coleman Engineers, requesting preliminary/final plat review of a one hundred thirty-seven point four-four acre subdivision consisting of two lots located northwest of the intersection of Alabama Highway 181 and Interstate 10. The owners of the property are asking for a division of a parcel into two lots to establish the portion that was sold as a lot of record. I will be happy to answer any questions you may have.

THE CITY OF DAPHNE
PLANNING COMMISSION MINUTES
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COUNCIL CHAMBERS, CITY HALL - 5:00 P.M.

Chairman: Do any of the Commissioners have any questions or comments?

Ms. Barnette: This question is for Mr. Ross, the City Attorney. By approving the application for a two-lot subdivision and the denying the previous application for the five-lot subdivision for TimberCreek Investments is that an admission of error?

Mr. Ross: The previous application is presently still considered to be in pending litigation. That application asked for the division of five parcels whereas this application asks for a parcel to be divided into two lots for the sole purpose of making the lot which was conveyed to the new owner a lot of record. I have discussed this matter with Mr. Richard Davis, Davis & Fields, and Ms. Shirley Justice, Sirote & Permutt, the attorneys for TimberCreek Investments, L.L.C. My understanding is if this application is approved the lawsuit will go away.

Ms. Barnette: I do not want, by way of the approval of this application, for it to seem that we think an error was made in the denial of the previous application.

Mr. Ross: This application is to be considered on its on merit with that portion of the lot which was conveyed to the new owner to become a lot of record, as well as, the lot which is retained by TimberCreek Investments of which is proposed to become a conservation easement.

Chairman: Do any of the Commissioners have any further questions or comments? He opened the floor to public participation. With no adjacent property owners present, he closed public participation. If there is no objection, the Chair will entertain a motion.

Ms. Jones: For the record, a letter was provided to you from Mr. Ian Walters, an adjacent property owner, stating he is in opposition of the approval of the subdivision.

A Motion was made by Mr. Chason and Seconded by Mr. Terry to approve the preliminary/final plat for TimberCreek Golf Course Subdivision, Resubdivision of Parcel B. The Motion carried unanimously.

The next order of business is preliminary/final plat review for Malbis Business Park, Unit One, Resubdivision of Lot 2.

File SDPF10-13:

Subdivision: Malbis Business Park, Unit One, Resubdivision of Lot 2

Zoning(s): B-4, Major Commercial District, Baldwin County District 10

Location: On the east side of Alabama Highway 181, two hundred feet north of Eastern Shore Boulevard, City of Daphne extraterritorial planning jurisdiction

Area: 0.96 Acres \pm , (2) lots

Owner: Otis Smith

Engineer: Rester & Coleman Engineers - Joel Coleman

THE CITY OF DAPHNE
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COUNCIL CHAMBERS, CITY HALL - 5:00 P.M.

An introductory presentation was given by Mr. Joel Coleman, representing Rester & Coleman Engineers, requesting preliminary/final plat review of a zero point nine six acre subdivision consisting of two lots located on the east side of Alabama Highway 181 approximately two hundred feet north of Eastern Shore Boulevard. The owner is proposing to subdivide the parcel into two lots for the purpose of selling one of the lots to Express Oil Company. The owner had presented an application to Baldwin County for review of a variance to the required side setbacks and permission to allow the entrance of the bays to face Alabama Highway 181. The application was approved by Baldwin County District 2 on December 13, 2010. I will be happy to answer any questions you may have.

Chairman: Do any of the Commissioners have any questions or comments?

Ms. Jones: I have been working diligently with Mr. Vince Beebe, Baldwin County, for the subdivision to comply with their regulations, and for him to provide his comments to the Planning Commission. Although at this point there is a dilemma that I would like Mr. Coleman to explain.

Mr. Coleman: Mr. Beebe has begun his review of the subdivision, but it has not been completed at this time. One of his comments is Baldwin County requires a fifteen-foot utility easement along each side of the interior lot line. I have asked for a waiver of this requirement and to allow the owner to provide a utility easement along the north and south property line. In order for him to grant the waiver, he must have an authorization letter from each utility company stating that it is acceptable for the owner to relocate the easements. However, I did not know this until yesterday.

Mr. Chason: Did you provide a copy of the site plan as requested at the site preview meeting?

Mr. Coleman: I provided the site plan to staff.

Ms. Jones: We did not receive it.

Mr. Chason: I know that it is not required, but I think we need to consider it as part of the review of the subdivision of the property.

Ms. Barnette: What about sign details? I did not see any in the information that was provided to us.

Chairman: The site plan would be reviewed by Baldwin County, but the sign details would also have to comply with Daphne's sign ordinance since it is located in the extraterritorial planning jurisdiction.

Mr. Coleman: I forwarded the site plan by email to staff. I am not sure why they did not receive it. I would like to ask, if you see fit, for your approval of the preliminary/final plat contingent upon the owner complying with all of the comments provided by Baldwin County.

Chairman: Do any of the Commissioners have any questions or comments? He opened the floor to public participation. With no adjacent property owners present, he closed public participation.

THE CITY OF DAPHNE
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REGULAR MEETING OF DECEMBER 16, 2010
COUNCIL CHAMBERS, CITY HALL - 5:00 P.M.

Ms. Barnette: I am not comfortable with granting a contingency with so many items outstanding which need to be addressed. However, I would not be opposed to granting preliminary plat approval.

Mr. Chason: I agree. Also, I would like to see a copy of the site plan.

Chairman: Do any of the Commissioners have any further questions or comments? If there is no objection, the Chair will entertain a motion.

A Motion was made by Ms. Barnette and **Seconded** by Mr. Chason *to grant preliminary plat approval of Malbis Business Park, Unit One, Resubdivision of Lot 2, until such time all comments are addressed with Baldwin County. The Motion carried unanimously.*

The next order of business is an administrative presentation for a replat for Lots 25 and 26, Austin Place Commercial Park, Unit Three.

ADMINISTRATIVE PRESENTATION:

An introductory presentation was given by Mr. Matthew Roberts, representing Gulf State Engineering, requesting a replat review to remove the common line for Lots 25 and 26 of Austin Place Commercial Park, Unit Three located on Rand Avenue. I will be happy to answer any questions you may have.

Chairman: Do any of the Commissioners have any questions or comments? If there is no objection, the Chair will entertain a motion.

A Motion was made by Mayor Small and **Seconded** by Mr. Terry *to approve the replat for Lots 25 and 26, Austin Place Commercial Park, Unit Three to remove the common lot line. The Motion carried. Mr. Chason abstained.*

The next order of business is public participation.

PUBLIC PARTICIPATION:

Chairman: Is there anyone who would like to address the Planning Commission?

Mr. Ian Walters, a resident of TimberCreek Subdivision: I hope you have not made a mistake by approving the subdivision of TimberCreek Golf Course, Resubdivision of Parcel B and allowing the construction of a service road along Woodrow Lane. I hope that I do not have to stand before you again when a commercial development is being constructed on this parcel to remind you what a huge mistake you have made.

The next order of business is the attorney's report.

ATTORNEY'S REPORT:

Mr. Ross: No report.

The next order of business is commissioner's comments.

COMMISSIONER'S COMMENTS:

THE CITY OF DAPHNE
PLANNING COMMISSION MINUTES
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COUNCIL CHAMBERS, CITY HALL - 5:00 P.M.

Chairman: Do any of the Commissioners have any questions or comments?

Commission comments: Merry Christmas and Happy New Year.

Mr. Chason: I would like to see the Planning Commission to send a card to those who are ill, Ms. Phelps and Mr. Gibson.

The next order of business is the director's comments.

DIRECTOR'S COMMENTS:

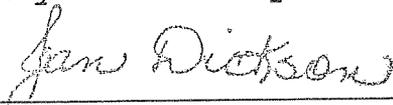
Ms. Jones: No report. Same to you. My Christmas gift is the Planning Commission meeting ending at 5:30 p.m.

ADJOURNMENT:

Chairman: Do any of the Commissioners have any questions or comments? If there is no objection, the Chair will entertain a motion to adjourn.

There being no further business, the meeting was adjourned at 5:30 p.m.

Respectfully submitted by:



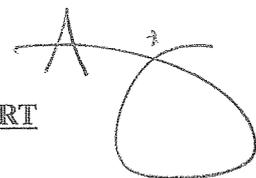
Jan Dickson, Planning Coordinator

APPROVED: January 27, 2011



Ed Kirby, Chairman

CITY OF DAPHNE
PLANNING COMMISSION AGENDA
REGULAR MEETING OF JANUARY 27, 2011 REPORT
COUNCIL CHAMBERS, CITY HALL - 5:00 P.M.



1. CALL TO ORDER DATE: JANUARY 28, 2011

2. CALL OF ROLL ADJ/JD

3. APPROVAL OF MINUTES:

Review of minutes for the regular meeting of December 16, 2010. (APPROVED AS SUBMITTED)

4. OLD BUSINESS:

A. ADMINISTRATIVE PRESENTATION:

Presentation to be given by Mr. Jay Dickson, representing Volkert & Associates, requesting an extension of time for the approval of the preliminary plat for Paradiso Subdivision. The preliminary plat was approved by the Planning Commission on January 22, 2009, and a one year extension was granted on was granted on December 17, 2009. (APPROVAL OF A ONE-YEAR EXTENSION SET TO EXPIRE ON JANUARY 26, 2012)

5. NEW BUSINESS:

A. SITE PLAN REVIEW:

File S11-01: (APPROVED, CONTINGENT UPON SUBMISSION OF A REVISION TO THE PLANS ENTITLED "THE OFFICE BUILDING". REVISION SHALL INCLUDE ONSITE DETENTION AND A SIAMESE VALUE CONNECTION PER THE REQUEST OF THE FIRE MARSHAL. THE FINAL DRAFT OF THE SITE PLAN MUST BE SUBMITTED TO THE DEPARTMENT OF COMMUNITY DEVELOPMENT WITHIN ONE WEEK, FEBRUARY 3, 2011)

Site: Autistic Therapy

Zoning (s): B-2, General Business

Location: Northeast of the intersection of County Road 64 and Rand Avenue, Lots 25 & 26, Austin Place Commercial Park, Phase Three

Area: 0.92 Acres ±

Owner: Darla Mohler

Agent: Central Associates - Gene Davis

Engineer: JPH Engineering - Jerry Hutcherson

CITY OF DAPHNE
PLANNING COMMISSION AGENDA
REGULAR MEETING OF JANUARY 27, 2011 REPORT
COUNCIL CHAMBERS, CITY HALL - 5:00 P.M.

B. PRELIMINARY/FINAL:

1. File SDPF11-01: (APPROVED, CONTINGENT UPON THE SUBMISSION OF A REVISED PLAT IN COMPLIANCE WITH BALDWIN COUNTY REQUIREMENTS AND THE INSTALLATION OF A FIRE HYDRANT)

Subdivision: The Resubdivision of Lot 1, Mark Trione's Belforest Subdivision, Unit 2

Zoning(s): *B-2, Neighborhood Business, Baldwin County District 15*

Location: On the north side of Milton Jones Road approximately one thousand three hundred feet west of Alabama Highway 181, City of Daphne extraterritorial planning jurisdiction

Area: 14.39 Acres \pm , (2) lots

Owner: Lee "Trip" Pittman

Engineer: Geo-Surveying - Matt or Jima Kountz

D. ADMINISTRATIVE PRESENTATION:

1. Presentation to be given by Mr. Tom Granger, representing Hutchinson, Moore & Rauch, regarding the construction of a weight room expansion and locker room/bathroom addition to Bayside Academy. (APPROVED)
2. Presentation to be given by Mr. Phillip McAfee, representing L.A. Daphne, L.L.C., and Mr. Ray Floyd, representing Advantage Sign Company, requesting Planning Commission approval of the installation of the ninety-foot Jubilee Retail Overlay District pylon sign, as outlined in Article XXXIX of the Jubilee Retail Overlay District. (APPROVED)
3. Presentation to be given by Mr. Richard Johnson, Public Works Director, of the proposed City of Daphne 2011 Street Improvements. (FAVORABLE RECOMMENDATION TO THE CITY COUNCIL)
4. Presentation to be given by Ms. Adrienne Jones, Community Development Director, or Mr. Jay Ross, City Attorney, regarding the dividing of property for public use-City of Daphne and Daphne Utilities. (POSTPONED UNTIL THE FEBRUARY 24, 2011 MEETING AGENDA)

CITY OF DAPHNE
PLANNING COMMISSION AGENDA
REGULAR MEETING OF JANUARY 27, 2011 REPORT
COUNCIL CHAMBERS, CITY HALL - 5:00 P.M.

5. Presentation to be given by Nancy Anderson, GIS Manager, of a revision to the City of Daphne Zoning and Street Map. (FAVORABLE RECOMMENDATION TO THE CITY COUNCIL)

6. PUBLIC PARTICIPATION

7. ATTORNEY'S REPORT

8. COMMISSIONER'S COMMENTS: MS. VICTORIA PHELPS REQUESTS AN ALABAMA DEPARTMENT OF TRANSPORTATION UPDATE REGARDING ALABAMA HIGHWAY 181 PROGRESS. SHE ASKED MS. ADRIENNE JONES TO CONTACT MR. VINCE CALMETTI OR MR. DON POWELL AND ASK THEM TO COME TO THE FEBRUARY 16, 2011 WORK SESSION

9. DIRECTOR'S COMMENTS

10. ADJOURNMENT

Created: December 21, 2010

Revised: January 24, 2011

Report: January 31, 2011

SET A PUBLIC HEARING DATE

MARCH 7, 2011

TO CONSIDER:

- 1.) Revisions to Zoning Map

To: Office of the City Clerk
From: Adrienne D. Jones, ~~Community Development Director~~
Subject: Revised City of Daphne Zoning Map
Date: February 1, 2011

MEMORANDUM

At the January 27, 2011 regular meeting of the City of Daphne Planning Commission seven members were present and the vote carried unanimously for a favorable recommendation of the acceptance.

Please prepare an ordinance and place on the appropriate agenda for action by the City Council.

Thank you,
ADJ/jd

cc: file

**CITY OF DAPHNE, ALABAMA
ORDINANCE NO. 2011-**

**Zoning District Map
Revision to Appendix H of the City of Daphne
Land Use and Development Ordinance**

WHEREAS, the Planning Commission of the City of Daphne, Alabama at their regular meeting held on January 27, 2011 , favorably recommended to the City Council of the City of Daphne certain amendments to the Zoning District Map approved and adopted by the Daphne Land Use and Development Ordinance No. 2002-22, referenced in Appendix H "Exhibit A" thereof and amended by Ordinance No. 2003-06, Ordinance No. 2005-11, Ordinance No. 2005-42, Ordinance No. 2006-24, Ordinance No. 2006-73, Ordinance No. 2007-15, Ordinance 2007-48 and Ordinance 2008-56, Ordinance 2009-19, Ordinance 2009-60, Ordinance 2010-66; and

WHEREAS, said amendments are necessary due to various rezoning and annexation requests which have been approved since the adoption of Ordinance 2002-22, Ordinance 2003-06, Ordinance 2005-11, Ordinance 2005-42, Ordinance 2006-24, Ordinance 2006-73, Ordinance 2007-15, Ordinance 2007-48, Ordinance 2008-56, Ordinance 2009-19 and Ordinance 2009-60, 2010-66; and

WHEREAS, due notice of said proposed zoning map amendments has been provided to the public as required by law through publication and open display at the City of Daphne Public Library and City Hall; and

WHEREAS, a public hearing regarding the proposed Zoning District Map amendments was held by the City Council on March 7, 2011; and

WHEREAS, the City Council of the City of Daphne after due consideration and upon recommendation of the Planning Commission believe it in the best interest of the health, safety and welfare of the citizens of the City of Daphne to amend said Zoning District Map as recommended; and

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF DAPHNE, ALABAMA, as follows:

SECTION I: ZONING DISTRICT MAP

The Zoning District Map referenced hereto as Exhibit "A" shall be the official zoning map of the City of Daphne, Alabama and shall be further designated in Appendix H of Exhibit "A" of the City of Daphne Land Use and Development Ordinance, as set forth in Ordinance No. 2002-22 and its amendments.

SECTION II: REPEALER

Ordinances No. 2002-22, Appendix H "Exhibit A", 2003-06, 2005-11, 2005-42, 2006-24, 2006-73, 2007-15, 2007-48, 2008-56, 2009-19, 2009-60 and 2010-66 are specifically repealed and any Ordinance(s), parts of Ordinance(s) or Resolution(s) conflicting with the provisions of this Ordinance are hereby repealed insofar as they conflict.

SECTION III: EFFECTIVE DATE

This Ordinance shall take effect and be in force from and after the date of its approval by the City of Daphne City Council and publication as required by law.

**ADOPTED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF DAPHNE,
ALABAMA ON THE ___ DAY OF _____, 2011.**

**CATHY S. BARNETTE,
COUNCIL PRESIDENT**

**FRED SMALL,
MAYOR**

ATTEST:

**DAVID L. COHEN,
CITY CLERK, MMC**

City of Daphne Recreation Board
2605 Hwy 98
Daphne, AL. 36526
October 13, 2010

Members Present: Chairman Eric Smith, Matt Cunningham, Kit Smith, Doug Dugat, Jan Mitemmeyer

Members Absent: Rick Cleveland and John Peterson

Advisory Staff Present: Councilman Kelly Reese and David McKelroy, Parks & Recreation Director

Call to Order

Eric Smith called the meeting to order at 6:30pm.

Review and Approval of Minutes

Motion was made by Kit Smith and seconded by Doug Dugat to approve the August 11, 2010 minutes. Motion passed.

Public Participation

None

Program Reports

Athletics – Charlie McDavid presented information regarding youth soccer and football.
Senior Adults – Mary Jensen presented information on senior participation and programs.
Community Activities – Information was provided on upcoming events: Brown Bag by the Bay is at Mayday, Sunset Concert at Mayday on October 24 and Christmas Parade and Tree Lighting on December 3.

Old Business

1. Trione Sports Complex Update
 - a. Lighting Project – Bids for the lighting were opened on October 13, 2010. Three bids were received, with Bill Smith Electric having the lowest bid at \$402,755. The Board recommended that the low bid from Bill Smith Electric be accepted providing the bid meets with the approval of HMR and BayFour Design. It was further recommended that a change order be developed for the addition of the Control Link retrofit for the existing Softball and Soccer fields. This will allow all fields at Trione Sports Complex to be controlled via computer or telephone.

- b. Restroom and Concession stand bids should be opened in early November for the Boards approval and recommendation with Council approval at the November 15 council meeting.

2. Mayday Park Update

Mayday Park boat ramp is open to the public. Kit Smith voiced concerns with regard to the quality of the workmanship of the ramp and its pier and questioned the acceptance of the project. Kit also was concerned about water runoff from the road undermining the end of the road at the ramp. Director David McKelroy stated he would contact Public Works Director with these concerns and ask his opinion and/or remedies.

3. Park Maintenance Supervisor

The Board was informed that Dwayne Coley had accepted a position with Public Works and that Chris Bradford was hired as his replacement.

4. Recreation Programmer (Community Events)

This position has yet to be filled. The director is waiting for the budget to be approved to determine if any programs/events will be affected. It is also the directors desire to include some assistance to the athletic and fitness center in this position job description to help alleviate the hours of the athletic coordinator and the director. Job description will be provided to the Board.

5. Playground Inspection

The director, a certified playground safety inspector, provided information and photos to the Board that had previously been presented to the City Council on behalf of the City Employees Safety Committee. Areas of concern with the Use Zones in city playgrounds were discussed. The director was asked to provide options that best resolve these concerns, including the removal of some playground equipment.

Comments from Director

None

Comments from Advisors

None

Adjourn

The meeting was adjourned at 7:45pm.

City of Daphne Recreation Board
2605 Hwy 98
Daphne, AL. 36526
January 12, 2011

Members Present: Chairman Eric Smith, Rick Cleveland, Matt Cunningham and Doug Dugat

Members Absent: Jan Mitemeyer, John Peterson and Kit Smith

Advisory Staff: Councilman Kelly Reese, Glenn Vickery and David McKelroy, Parks & Recreation Director

Call to Order

Meeting was called to order at 6:35pm.

Review and approval of Minutes

Motion was made by Doug Dugat and seconded by Rick Cleveland to approve the October 13, 2010 minutes. Motion passed.

Public Participation

None

Program Reports

Athletics – Charlie McDavid reported on upcoming spring sports registration.

Information was provided regarding Trione Sports Complex rentals until June.

Senior Adults – Mary Jensen provided information on senior programs and informed the Board that AARP will provide free tax service for senior adults at the Senior Center.

Community Activities – The director provide the Board with information about the Sunday Sunset Series taking place at the city’s two bay front parks, Bay Front and May Day.

Old / New Business

1. Trione Sports Complex Update
 - a. Lighting and Restroom/Concession projects have begun. The lighting project is scheduled to be completed by the beginning of February. The restrooms/concession is scheduled to be completed mid April.
 - b. Information was provided on the wind damage at Trione to the softball fields. Repairs to the fencing and netting are in process. Repairs and/or replacement of bleachers and roofing will be done as soon as information about insurance is received.

2. Recreation Programmer (Community/ Special Events and Athletics)
Applications have been received for the position. A recommendation was made by Rick Cleveland seconded by Doug Dogat and approved by the board that the hiring for this position be approved by the Council.

3. Parks & Playgrounds
 - a & b. Plans for the restroom at Park City Park and the Gazebo at Centennial were presented to the board. Both projects having been approved by the council, no action was needed.
 - c. Playground use area safety was discussed. It was recommended that each park be inspected and all unused, unnecessary or unsafe equipment be removed. Upon completion of the inspection, a cost estimate for the safety use areas be presented to the Finance Committee and Council for appropriations.

4. Senior Adult Transportation
The board was informed of a price increase in transportation cost for Senior citizens attending the SAIL lunches at the center. It was recommended and approved by the board that transportation be provided to Daphne citizens attending the SAIL lunches at the previous cost.

Comments from Director

None

Comments from Advisors

Doug Dogat recommended that future Recreation Board meetings be called on an as needed basis as warranted by the Director. Meetings will remain on the second Wednesday of the month and posted a week in advance. Recommendation passed.

Adjourn

The meeting was adjourned at 7:50pm.



Daphne Utilities

APPROVED MINUTES

Utilities Board Meeting

City of Daphne Council Chambers ♦ January 5, 2011 ♦ 5:00 p.m.
(December 2010)

I. CALL TO ORDER

The regular December, 2010, Board meeting for the Utilities Board of the City of Daphne was held on January 5, 2011 and called to order by Chairman Robert Segalla, at 5:02 p.m.

II. ROLL CALL

Members Present: Robert Segalla, Chairman
Ron Scott – arrived at 5:06
Lon Johnston, Secretary/Treasurer
Fred Small, Mayor

Others Absent: Fenton E. Jenkins, Vice Chairman

Others Present: Jerry Speegle – Board Attorney
Rob McElroy – General Manager
Danny Lyndall – Operations Manager
Teresa Logiotatos – Finance Manager
Deloris Brown – Human Resources Manager
Drew Klumpp – Administrative Services Manager
Lori Scharles – Executive Assistant
Melinda Immel – Volkert & Associates
Tim Patton – Volkert & Associates
Ray Moore - HMR
Doug Bailey – HMR

Others Absent:

III. PLEDGE OF ALLEGIANCE

The Chairman led the Board and meeting attendees in the Pledge of Allegiance.

IV. APPROVAL OF MINUTES

a. Utilities Board Minutes from December 1, 2010:

The Chairman inquired if there were any corrections noted for the submitted Minutes from the December 1, 2010, Utilities Board meeting.

MOTION BY Lon Johnston to approve the submitted Minutes for December 1, 2010; Seconded by Mayor Fred Small.

AYE: JOHNSTON, SEGALLA, SCOTT, SMALL ABSENT: JENKINS ABSTAIN: MOTION CARRIED

(The approval of the December 9, 2010 Minutes was postponed upon Ron Scotts' arrival.)

V. Old Business

a. **Central Services Building (Property Investigation) – Update**

Melinda Immel advised that plans for construction of the Central Services building have been advertised and there has been a lot of interest from Contractors. Bids are scheduled to be received in January and will be presented to the Board for consideration at the January Board meeting.

b. **Spanish Fort Sewer Franchise issues**

No updated information was reported.

c. **19 Acres - Daphne Utilities property**

Rob McElroy stated that he was awaiting an update on the property swap; Mayor Small advised that the Buildings and Property Committee have reviewed the proposal however it has not be presented to the City Council. Mr. Speegle added that a meets and bounds description is being developed.

d. **Items in Abeyance:**

1. **Gas Franchise Agreement** – No current information was reported.
2. **Sewer Only Cutoff Policy** – No updated information was reported.

IV. APPROVAL OF MINUTES

b. **Utilities Board Minutes from December 9, 2010:**

The Chairman inquired if there were any corrections noted for the submitted Minutes from the December 9, 2010, Utilities Board special meeting.

MOTION BY Mayor Fred Small to approve the submitted Minutes for December 9, 2010 Utilities Board special meeting; Seconded by Ron Scott.

AYE: SCOTT, SEGALLA, SMALL ABSENT: JENKINS ABSTAIN: JOHNSTON MOTION CARRIED

VI. New Business – No New Business was reported.

VII. BOARD ATTORNEY'S REPORT

Mr. Speegle had nothing further to add to his report.

VIII. FINANCIAL REPORT

Teresa Logiotatos reported that the financials are typical for November 2010 and answered questions relating to the Check History Report as well as natural gas revenue comparisons.

IX. GENERAL MANAGER'S REPORT

a. **GM Report**

Rob McElroy had nothing further to add to his report

b. **Operations Report**

Danny Lyndall had nothing further to add the Operations Report.

Melinda Immel of Volkert & Associates explained to the Board regarding the necessary action needed for the Temporary Dewatering for Biosolids Facilities Upgrades and answered questions regarding same.

MOTION BY Ron Scott to award the Temporary Dewatering for Biosolids Facilities Upgrades to Synagro-WWT, Inc. in the amount of \$212,600.00; Seconded by Ron Scott.

AYE: JOHNSTON, SCOTT, SEGALLA, SMALL ABSENT: JENKINS ABSTAIN: MOTION CARRIED

Doug Bailey from HMR had nothing further to add to his report, however he responded to Mayor Small's request to update the Board on the Highway 64 Sewer project.

- X. **BOARD ACTION** – None
- XI. **Public Participation** –
Larry Jackson addressed the Board and thanked them for everything that they do.
- XII. **Board Comments** – Mayor Small thanked Daphne Utilities for their participation in the Daphne High School Football team parade.
- XIII. **Adjournment**

MOTION BY Lon Johnston to adjourn the meeting. Seconded by Ron Scott.

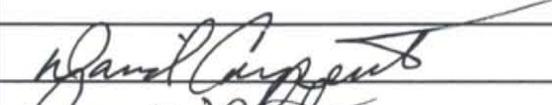
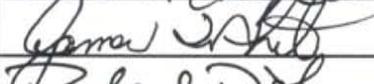
AYE: JOHNSTON, SCOTT, SEGALLA, SMALL ABSENT: JENKINS ABSTAIN: MOTION CARRIED

The meeting adjourned at 5:24 pm.

**CITY COUNCIL MEETING
MAYOR'S REPORT**

NOTES:

CITY OF DAPHNE PARADE PERMIT

ORGANIZATION:	<i>S.E.E.D.S.</i>
CONTACT PERSON:	<i>Denise D'Oliveira</i>
ADDRESS:	<i>P.O. Box 460 Daphne, AL 36526</i>
PHONE NUMBER (HOME):	<i>626-9966</i>
PHONE NUMBER (BUSINESS):	
CELL NUMBER:	<i>605-8777</i>
TYPE OF PARADE:	<i>5K & Fun Run</i>
DATE OF PARADE:	<i>March 5, 2011</i>
ROUTE TO BE TRAVELED:	<i>See Attached Map</i>
APPROXIMATE # OF PEOPLE & CARS:	<i>400 - 5K & 1,400 Fun Run</i>
START TIME:	<i>8:00 A.M.</i>
STOP TIME:	<i>9:30 A.M.</i>
ASSEMBLY AREA/STREET:	<i>City Hall / Post Run Party After Run</i>
ASSEMBLY TIME:	<i>6:45 A.M. / 5K & 8:45 A.M. Fun Run</i>
SPECIAL INSTRUCTIONS:	<i>Streets blocked off for run and for the party. Street blocked at entrance to City Hall</i>
DATE APPLIED:	<i>January 18, 2011</i>
APPROVAL	
POLICE: Chief David Carpenter:	
FIRE: Chief James White	
PUBLIC WORKS: Richard Johnson	
CITY COUNCIL APPROVAL: 2-7-11	
SPECIAL INSTRUCTIONS:	
DATE ROUTED:	<i>January 18, 2011</i>
NOTIFICATION:	

27000

26000

25000

24000

DAPHNE
36526

MONTROSE
36559

SEEDS:
6th Annual
Classic Rock

5K
(3.1 mi)

BAY

MOBILE

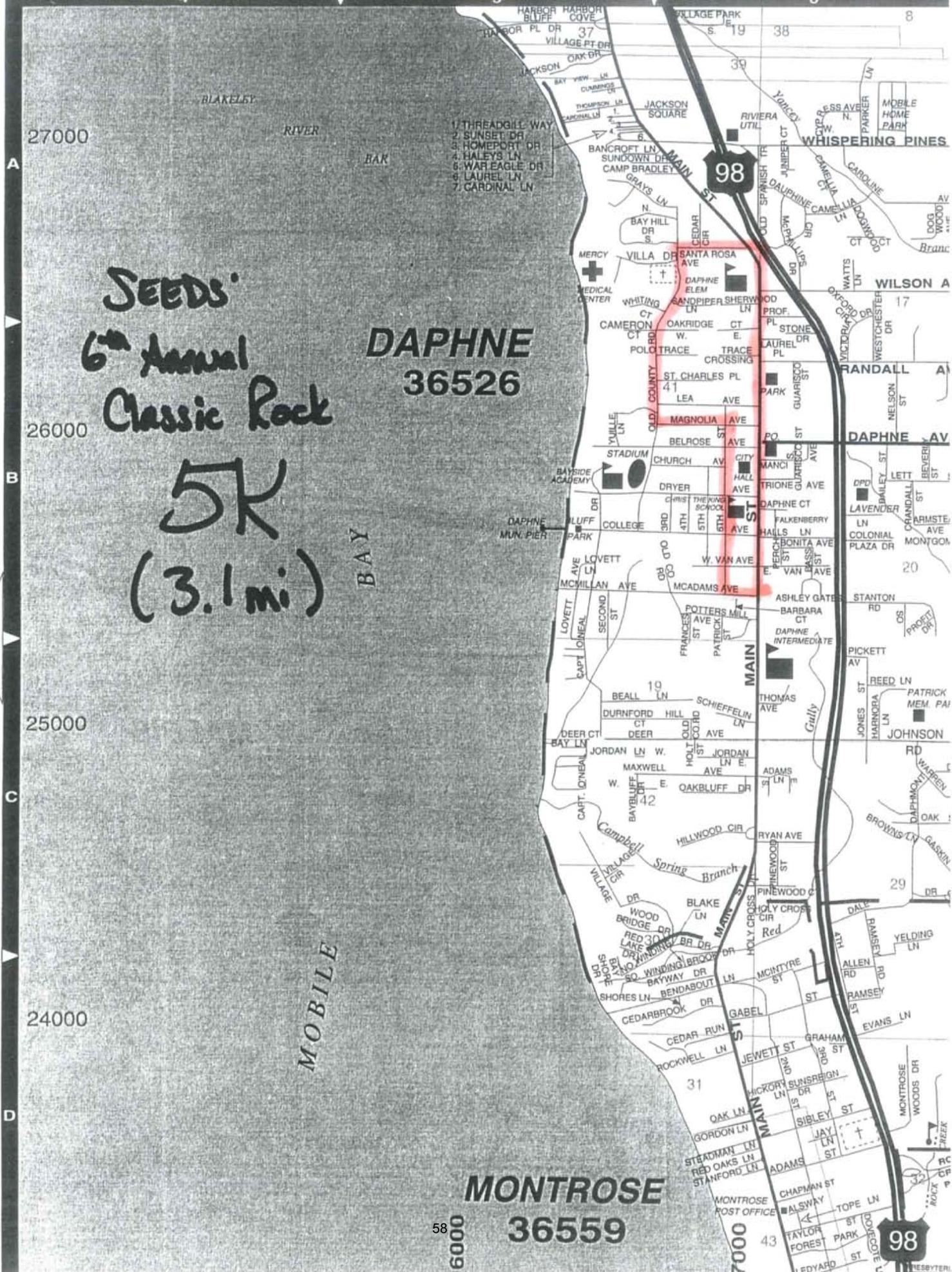
NO MAP

A
B
C
D

58

6000

7000



4 5 6 8

19 38 39

8

98

98

- 1. THREADGILL WAY
- 2. SUNSET DR
- 3. HOMEPORT DR
- 4. HALEYS LN
- 5. WAR EAGLE DR
- 6. LAUREL LN
- 7. CARDINAL LN

31

43

32

4

5

6

8

27000

26000

25000

24000

6000

7000

DAPHNE
36526

MONTROSE
36559

*Classic
Rock
Fun Run
(1mi.)*

BAY

MOBILE

BLAKELEY

RIVER

BAR

1. THREADGILL WAY
2. SUNSET DR
3. HOMEPORT DR
4. HALEYS LN
5. WAR EAGLE DR
6. LAUREL LN
7. CARDINAL LN

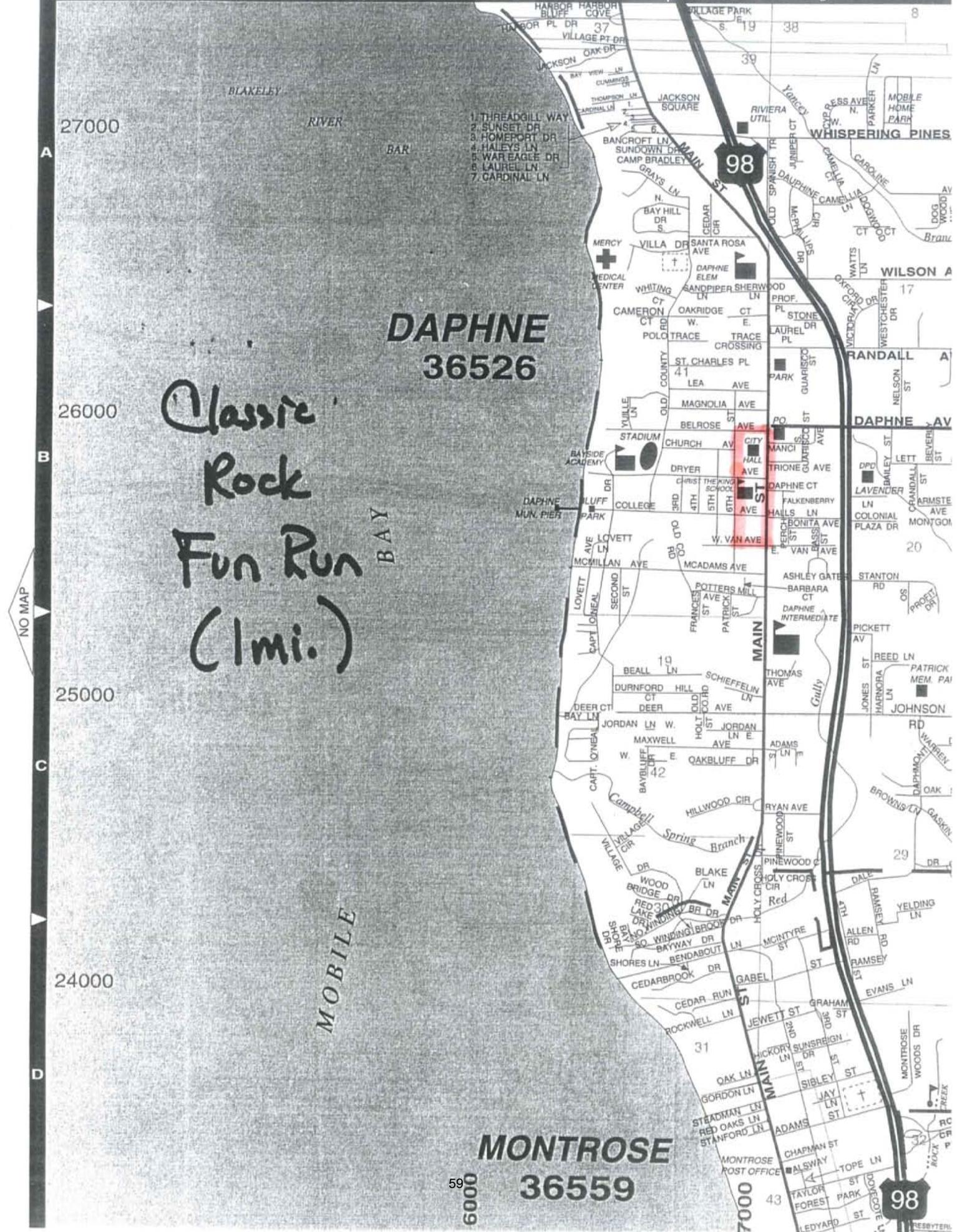
NO MAP

A

B

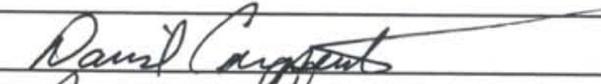
C

D



98

CITY OF DAPHNE PARADE PERMIT

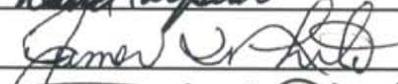
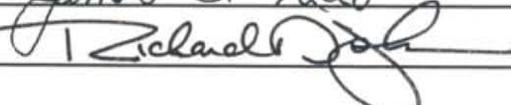
ORGANIZATION:	<i>Loyal Order of the Fire Truck</i>
CONTACT PERSON:	<i>Melvin McCarley</i>
ADDRESS:	<i>Public Works</i>
PHONE NUMBER (HOME): PHONE NUMBER (BUSINESS): CELL NUMBER:	<i>621-3182</i>
TYPE OF PARADE:	<i>Mardi Gras</i>
DATE OF PARADE:	<i>March 6, 2011</i>
ROUTE TO BE TRAVELED:	<i>See Attached Route</i>
APPROXIMATE # OF PEOPLE & CARS:	<i>50 Vehicles / 200 People</i>
START TIME:	<i>1:59 P.M.</i>
STOP TIME:	<i>4:00 P.M.</i>
ASSEMBLY AREA/STREET:	<i>May Day Park</i>
ASSEMBLY TIME:	<i>12:00 Noon</i>
SPECIAL INSTRUCTIONS:	
DATE APPLIED:	<i>January 18, 2011</i>
APPROVAL	
POLICE: Chief David Carpenter:	
FIRE: Chief James White	
PUBLIC WORKS: Richard Johnson	
CITY COUNCIL APPROVAL: 2-7-11	
SPECIAL INSTRUCTIONS:	
DATE Routed:	<i>January 18, 2011</i>
NOTIFICATION:	

LOYAL ORDER OF THE FIRE TRUCK

PARADE ROUTE

**Begin at Mayday Park then,
Proceed South on Captain O'Neal Drive to Maxwell Avenue then,
Proceed North on Main Street to Santa Rosa Avenue then,
Proceed West on Santa Rosa Avenue to Old County Road then,
Proceed South on Old County Road towards College Avenue for disbanding.**

**CITY OF DAPHNE
PARADE PERMIT**

ORGANIZATION:	<i>Shadow Barons</i>
CONTACT PERSON:	<i>Damon Henderson</i>
ADDRESS:	<i>P.O. Box 2770 Daphne, AL 36526</i>
PHONE NUMBER (HOME): PHONE NUMBER (BUSINESS):	<i>533-4263 928-5319</i>
TYPE OF PARADE:	<i>Mardi Gras</i>
DATE OF PARADE:	<i>March 5, 2011 / Rain Date March 6, 2011</i>
ROUTE TO BE TRAVELED:	<i>From Daphne Civic Center down Main St. - turn @College Ave. - down to 6th St. - turn right on Belrose Ave & back to Main and back to Civic Center</i>
APPROXIMATE # OF PEOPLE & CARS:	<i>17 Units (cars, trucks or by itself / 575 People (includes marching bands, riders, security & other)</i>
START TIME:	<i>6:45 P.M.</i>
STOP TIME:	<i>8:00 P.M.</i>
ASSEMBLY AREA/STREET:	<i>Civic Center</i>
ASSEMBLY TIME:	<i>4:30 P.M.</i>
APPROVAL	
POLICE: Chief David Carpenter:	
FIRE: Chief James White:	
PUBLIC WORKS: Richard Johnson:	
CITY COUNCIL: <i>2-07-11</i>	
SPECIAL INSTRUCTIONS:	
DATE ROUTED:	
NOTIFICATION:	

Received Proof of Insurance: January 14, 2011
Received Parade Permit Fee: January 10, 2011

When recorded return to:

Raymond J. Kane, Esq.
Kane Russell Coleman & Logan PC
1601 Elm Street, Suite 3700
Dallas, Texas 75201

(Space Above for Recorder's Use Only)

**AMENDED AND RESTATED
RECIPROCAL EASEMENT AND OPERATION AGREEMENT**

THIS AMENDED AND RESTATED RECIPROCAL EASEMENT AND OPERATION AGREEMENT (this "**Agreement**") is made as of _____, 2011, by and among **L-A DAPHNE, LLC**, a Delaware limited liability company ("**Landholder**"); **HOME DEPOT U.S.A., INC.**, a Delaware corporation ("**HD**"); **RARE HOSPITALITY INTERNATIONAL, INC.**, a Georgia corporation ("**RHI**"); **O'CHARLEY'S INC.**, a Tennessee corporation ("**O'Charley's**"); **THE BANK OF PENSACOLA**, a _____ ("**BOP**"); **MOBILE EDUCATORS CREDIT UNION**, a _____ ("**MECU**"); **CHARLES K. BRELAND, JR.**, and **JUBILEE MALL, LLC**, an Alabama limited liability company (collectively, "**Jubilee**"); and **THE CITY OF DAPHNE, ALABAMA**, a municipality organized and existing under the laws of the State of Alabama ("**CITY**").

RECITALS

A. Landholder is the owner of certain real property located in the City of Daphne, Baldwin County, Alabama, which real property is contiguous with the HD Parcel, the RHI Parcel, the O'Charley's Parcel, the BOP Parcel, the MECU Parcel, the Jubilee Parcel, and Public Land (all as defined below), and is more particularly described on **Schedule "A"** attached hereto and incorporated herein by reference (the "**Landholder Parcel**").

B. HD is the owner of certain real property located in the City of Daphne, Baldwin County, Alabama, which real property is contiguous with the Landholder Parcel, the RHI Parcel, the O'Charley's Parcel, the BOP Parcel, the MECU Parcel, the Jubilee Parcel, and Public Land, and is more particularly described on **Schedule "B"** attached hereto and incorporated herein by reference (the "**HD Parcel**").

C. RHI is the owner of certain real property located in the City of Daphne, Baldwin County, Alabama, which real property is contiguous with the Landholder Parcel, the HD Parcel, the O'Charley's Parcel, the BOP Parcel, the MECU Parcel, the Jubilee Parcel, and Public Land, and is more particularly described on **Schedule "C"** attached hereto and incorporated herein by reference (the "**RHI Parcel**").

D. O'Charley's is the owner of certain real property located in the City of Daphne, Baldwin County, Alabama, which real property is contiguous with the Landholder Parcel, the HD Parcel, the RHI Parcel, the BOP Parcel, the MECU Parcel, the Jubilee Parcel, and Public

Land, and is more particularly described on Schedule "D" attached hereto and incorporated herein by reference (the "O'Charley's Parcel").

E. BOP is the owner of certain real property located in the City of Daphne, Baldwin County, Alabama, which real property is contiguous with the Landholder Parcel, the HD Parcel, the RHI Parcel, the O'Charley's Parcel, the MECU Parcel, the Jubilee Parcel, and Public Land, and is more particularly described on Schedule "E" attached hereto and incorporated herein by reference (the "BOP Parcel").

F. MECU is the owner of certain real property located in the City of Daphne, Baldwin County, Alabama, which real property is contiguous with the Landholder Parcel, the HD Parcel, the RHI Parcel, the O'Charley's Parcel, the BOP Parcel, the Jubilee Parcel, and Public Land, and is more particularly described on Schedule "F" attached hereto and incorporated herein by reference (the "MECU Parcel").

G. Jubilee is the owner of certain real property located in the City of Daphne, Baldwin County, Alabama, which real property is contiguous with the Landholder Parcel, the HD Parcel, the RHI Parcel, the O'Charley's Parcel, the BOP Parcel, the MECU Parcel, and Public Land, and is more particularly described on Schedule "G" attached hereto and incorporated herein by reference (the "Breland Parcel").

H. CITY is the fee owner of that certain real property located in the City of Daphne, Baldwin County, Alabama, described on Schedule "H-1" attached hereto and incorporated herein by reference, being further identified by cross-hatching on the site plan attached hereto as Schedule "H-2" and incorporated herein by reference (the "Public Land").

I. The Landholder Parcel, the HD Parcel, the RHI Parcel, the O'Charley's Parcel, the BOP Parcel, the MECU Parcel, the Breland Parcel, and Public Land are herein collectively referred to as the "**Parcels**" or the "**Center**", and each individually as a "**Parcel**". The plats depicting the Parcels are attached hereto as Exhibit A and incorporated herein by reference. Landholder, HD, RHI, O'Charley's, BOP, MECU, Breland, and CITY are sometimes referred to herein individually as a "**Party**" or an "**Owner**", or collectively as the "**Parties**" or the "**Owners**".

J. The Center is currently subject to that certain Reciprocal Easement and Operation Agreement between Jubilee Mall, L.L.C., an Alabama limited liability company, and HD dated June 11, 1999, and recorded on October 7, 1999, in the Office of the Judge of Probate of Baldwin County, Alabama, as Instrument No. 514793 (the "**Original REOA**"). The Parties intend that the Original REOA no longer control the development or operation of the Center. By execution and recordation of this Agreement, the Original REOA is hereby made null and void and of no further force or effect.

K. The Parties recognize that for the most favorable development and redevelopment of the Center, it is necessary that they agree and cooperate with respect to the operation and maintenance of their Parcels and the common areas and facilities existing and to be erected thereon (the "**Common Areas**") as indicated on the site plan of the Center attached hereto as Exhibit "I" (the "**Site Plan**"). The Parties therefore intend herein to grant to each other certain

reciprocal easements for pedestrian and vehicular ingress and egress over the common curb cuts, roadways, driveways, aisles, walkways and sidewalks for access and for delivery and to grant certain rights to install and maintain utility lines and site facilities within the Common Areas. The Parties also intend herein to provide for certain obligations and restrictions with respect to the operation and maintenance of their respective Parcels and the Common Areas and facilities constructed and to be constructed thereon. Such easements, obligations, and restrictions shall run to the benefit of, and bind the respective Parcels, and the owners from time to time of the Center or any portion thereof.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each Party hereto, the Parties agree as follows:

ARTICLE I - GRANT OF EASEMENTS

Section 1.01 Access Easements. Each Owner hereby grants and conveys, each to the other, for the benefit of each Parcel, a nonexclusive perpetual easement and right to the use of the Common Areas and the common curb cuts, roadways, driveways, aisles, walkways, and sidewalks located on each Parcel and indicated on the Site Plan and located on the Parcel of the granting Owner, for purposes of ingress, egress, passage and delivery, by vehicles and pedestrians.

Landholder, HD, and CITY each hereby grants and conveys, each to the other, for the benefit of each Parcel, a nonexclusive easement and right to use the parking areas from time to time maintained and located on the Parcel of the granting Owner, for purposes of vehicular parking. Notwithstanding the foregoing easements, no Owner shall be permitted to make any material change to the parking layout or pattern of traffic flow or do anything on its Parcel to reduce the provided parking spaces required pursuant to Article III(c) hereof.

The easements granted hereby and granted in Section 1.02 shall be for the benefit of, but not restricted solely to, the Owners of the Parcels in the Center, and each such Owner may grant the benefit of such easement to the tenants and other occupants of its respective Parcel for the duration of such occupancy, and to the customers, employees, agents, and business invitees thereof, but same is not intended nor shall it be construed as creating any rights in or for the benefit of the general public nor shall it affect any real property outside of the Center. Such easement areas are reserved for said use for the term of this Agreement.

Notwithstanding the foregoing, the Parties acknowledge that the Public Land, a portion of which comprises the Common Areas, is subject to certain covenants and restrictions (the "**Covenants**") contained in Statutory Warranty Deed with Declaration of Covenants and Reservation of Easements, recorded on April 1, 2002, in the Office of the Judge of Probate of Baldwin County, Alabama, as Instrument No. 651254. In the event of any conflict between this Agreement and the Covenants with regard to the Public Land only, the terms of the Covenants shall control.

Section 1.02 Utility Easements. Each Owner hereby grants and conveys, each to the other, for the benefit of each Parcel, an easement in, to, over, under and across the Common Areas of such Owner's Parcel for the purpose of installation, operation, maintenance, repair,

replacements, removal, and relocation of underground storm sewer lines, sanitary sewer pipes, septic systems, water and gas mains, electric power lines, telephone lines, and other underground utility lines (the "**Utility Lines**") to serve the facilities located on each Parcel. The installation of any Utility Lines shall be subject, as to location, to the approval of the granting Owner, which approval shall not be unreasonably withheld or delayed.

Each Owner or any designee served by such Utility Lines may operate, maintain, and repair (and, if it does not interfere with the use of the granting Owner's Parcel, relocate) such Utility Lines, provided such repair and maintenance is performed expeditiously and only after five (5) business days' written notice to the granting Owner utilizing or serviced by said Utility Lines or the parking area to be affected by any construction work. The Party performing the repair shall, at its cost and expense, repair any damage to any improvements. Each Owner shall indemnify and hold the granting Owner and any occupant of the granting Owner's Parcel harmless from any claims, damage, or loss that may result from the activities in making such repairs or relocating its facilities.

Section 1.03 Sign Easements. Each Owner, as grantor, hereby grants to each other Owner, as grantee, for the benefit of each Parcel belonging to the other Owners, a nonexclusive easement under, through and across the Common Area of the grantor's Parcel(s) for the installation, operation, maintenance, repair and replacement of the free-standing signs and the panels displayed thereon described in Article IV of this Agreement and all Utility Lines appurtenant thereto. No signage (temporary or otherwise, including, but not limited to, an electronic marquee) with respect to persons who are not Owners or occupants shall be permitted on any pylon signs located in or upon the Center.

Section 1.04 Restrictions. The easements granted by this Article I shall be subject to the restrictions set forth in Article III.

ARTICLE II - MAINTENANCE AND OPERATION

Section 2.01 Maintenance and Repair.

(a) Each Owner shall maintain, repair, and replace all improved portions of the Common Areas located on its respective Parcel so as to keep such areas at all times in a safe, slightly, good and functional condition to standards of comparable community shopping centers in the market area.

(b) Each Owner shall be responsible for keeping the Common Areas on its own Parcel clean and free from refuse and rubbish. Any landscaped areas on the respective Common Areas shall be mowed and otherwise tended to by the Owner thereof.

(c) Each Owner shall repave, restripe, and replace markings on the surface of the parking areas and driveways in its Parcel from time to time as and when necessary so as to provide for the orderly parking of automobiles and shall place and maintain adequate exit and entrance and other traffic control signs to direct traffic in and out of said parking areas. Any striping and other markings shall be consistent with the Site Plan, and the lighting, paving, and striping materials shall be consistent with that used in the Center.

(d) Each Owner shall service, maintain, repair, and replace, and pay the cost of any fees or charges in connection with the Utility Lines located on its Parcel to the extent that such Utility Lines service the improvements on that Parcel or service the Center as a whole if such services are not provided. To the extent that any Utility Line exclusively servicing any Parcel crosses another Owner's Parcel, such Utility Line shall be so maintained by the party served by the Utility Line, subject to the provisions of Section 1.02. Maintenance of any portion of any Utility Lines serving more than one Parcel shall be performed by the Owner of the Parcel crossed by the Utility Line, but the cost thereof shall be shared on an equitable basis based upon the relative consumption or usage of the utility furnished from such Utility Line.

(e) Each Owner shall pay, prior to any penalty attaching thereto, all real estate taxes, assessments, and personal property taxes, if any, imposed upon the land and improvements and equipment located on its respective Parcel.

(f) Each Owner shall cause the Common Areas and all buildings and improvements located on its Parcel to comply with all applicable requirements of law and governmental regulation applicable thereto; provided, however, that an Owner may contest any such law or regulation so long as such contest would not create any material danger of a loss of title to, or impairment in any way of the use of, all or any portion of the Common Areas for their intended purposes.

Section 2.02 Delegation of Management. The Owners may enter into an agreement, with the consent of the Owners of all Parcels affected thereby, appointing one of the Owners or a third party to perform all or portions of the maintenance and repair of the Common Areas and related facilities of the Center. In such event, each Owner shall be responsible to pay its respective Share (as hereinafter defined) of the costs incurred by the designated party in performing such services, which costs shall include the ordinary operating and maintenance expenditures incurred as well as capital expenditures to the extent so authorized; provided, however, that any expenditure by the designated party for a repair or replacement costing Five Thousand Dollars (\$5,000) or more in which another Owner must share shall require the prior approval of each such Owner. As used herein, the term "**Share**" shall mean a fraction, the numerator of which shall be the number of square feet of floor area (exclusive of mezzanines used for storage and related office and non-sales uses) in all structures located on such Owner's Parcel as measured from the exterior base of any exterior wall and to the center line of any party wall (the "**Building Floor Area**"), and the denominator of which shall be equal to the aggregate of the Building Floor Area (as so measured) in all buildings in the Center.

ARTICLE III - RESTRICTIONS

The Center shall be subject to the following restrictions, which shall be binding on each Owner and each of its tenants, occupants, employees, agents, or invitees.

(a) No obstruction to the free flow of traffic and use of the parking and delivery facilities shall be permitted, except to the extent, if any, indicated on the Site Plan or herein expressly provided for.

(b) No building or other structure of any kind shall be permitted in any portions of the Center except in the "**Permitted Building Areas**" designated on the Site Plan, nor shall any

building or structure in the Permitted Building Areas exceed the maximum square footage indicated as "**Maximum SF**" if any is noted thereon. No building or structure of any kind in the Center shall exceed (i) sixty-five (65) feet in height or (ii) five (5) stories.

(c) No building or other structure shall be permitted within the Center if such building or other structure would reduce the parking spaces within the Center to fewer than 4.5 per 1,000 square feet of gross leasable area to be built as shown (excluding mezzanine level space used only for storage and related offices and non-sales uses) located therein, or below the number of parking spaces required under applicable governmental rules, regulations, and ordinances.

(d) Any construction shall be conducted in a manner that will limit to the maximum extent practicable any interference with the operation of the balance of the Center.

(e) No portion of the Center shall be used for a business or use that creates strong, unusual, or offensive odors, fumes, dust, or vapors; is a public or private nuisance; emits noise or sounds that are objectionable due to intermittence, beat, frequency, shrillness, or loudness; or creates unusual fire, explosive, or other hazards.

(f) No portion of the Center may be leased, used, or occupied as a health spa or exercise facility; bowling alley; billiard parlor; funeral parlor; flea market; industrial manufacturing; automobile dealership; discotheque; skating rink; bar (other than incidental to a business operated primarily as a restaurant, a "bar" being defined for purposes of this Agreement as an establishment offering the sale of alcoholic beverages for consumption on the premises where such sales are not incidental to the sale of food for on-premises consumption in a bona fide restaurant), or social encounter restaurant. No restaurant shall be permitted to operate on any portion of the Center outside of the HD Parcel that is within 300 feet of the main entrance of the HD building located on the HD Parcel. The operation of a bar as part of a restaurant shall be deemed "incidental" if the gross sales derived from the sale of alcoholic beverages are less than forty percent (40%) of the total gross sales derived from the business operated on the Parcel.

(g) No portion of the Center may be leased, used, or occupied as an adult bookstore or establishment selling, exhibiting, or distributing pornographic or obscene materials; massage parlor; so-called "head shop"; unsupervised amusement arcade or game room; body and fender shop; car wash; off-track betting parlor; or restaurant or fast food operation incorporating coin-operating amusements or showing movies to its customers thereof other than as an incidental or immaterial part of its business.

(h) No portion of the Center outside of the HD Parcel may be used for (i) general offices in excess of 7,500 square feet; (ii) a restaurant in excess of 10,000 square feet except in the O'Charley's Parcel; or (iii) a home improvement center or the sale of lumber, hardware items, plumbing supplies, electrical supplies, paint, wallpaper, carpeting, floor coverings, cabinets, siding, ceiling fans, gardening supplies, nursery products, home appliances (including without limitation, stoves, dishwashers, washing machines, dryers, microwaves, and refrigerators), furniture, pool supplies, or other related items customarily carried by a home improvement center except for the incidental sale of such items. The sale of such items shall be deemed "incidental" if such items occupy no more than the lesser of (i) five percent (5%) of the total Building Floor Area of such business, or (ii) one thousand (1,000) square feet of sales and/or

display area relating to such items individually or in the aggregate. Notwithstanding the foregoing, (1) the sale or use of less than 2,000 square feet for the sale of paint, wallpaper, or ceiling fans in the aggregate shall not be deemed to constitute a violation hereof, and (2) the use and operation in the building labeled "Anchor A" on the Site Plan of an Academy Sports and Outdoors Store ("**Academy**") or a Dick's Sporting Goods Store ("**Dick's**"), or any successor sporting goods store, shall not be deemed to constitute a violation hereof so long as such store has a merchandise mix comparable to a typical Academy or Dick's in a majority of said stores operating in the southeastern United States as of the date hereof.

(i) There shall be no promotion, entertainment, amusement, or other activities in the Common Areas that would interfere with the use of the Common Areas and related facilities for their intended purposes. Notwithstanding the foregoing, (i) HD may utilize the portions of the Common Areas on the HD Parcel designated on the Site Plan as "**Outside Sales Area**" for purposes of Christmas tree sales and other seasonal sales and may use the underside of the lumber canopy of HD building and all sidewalks on the HD Parcel for the display and sale of merchandise, and (ii) other tenants of the Center outside the HD Parcel may utilize the sidewalk areas directly in front of their premises and those portions of the Common Areas outside the HD Parcel designated on the Site Plan as "Outside Sales Area" for the display and sale of merchandise so long as such display and sales are conducted in an orderly fashion and do not disrupt the safe and orderly pedestrian traffic.

ARTICLE IV - SIGNS

Section 4.01 Permitted Signs. The following signs only shall be permitted in the Center: (a) directional signs for guidance upon the parking and driveway areas; (b) exterior building identification signs of any occupant of the Permitted Building Areas of the Center, so long as such signs are similar to the standard identification signs from time to time being used by any such occupant in its other stores or restaurants, or are substantially identical in quality, format and design to other signs in the Center; (c) a temporary sign or signs on a Parcel identifying the lender(s) providing construction and/or permanent financing for any improvement to be located on the Parcel and/or identifying an occupant of a Parcel as "coming soon"; (d) a sign or signs identifying an automated teller machine(s) or similar financial equipment operated on any of the Permitted Building Areas, so long such signs are similar to other such signs in first-class shopping centers in the State; (e) exterior building signage approved by the City of Daphne for a Parcel, and (f) pylon, monument and current Home Depot signs at the approximate locations depicted on the Site Plan hereto and as provided in Section 4.02, Section 4.03, and Section 4.04 below. Each building identification sign located in the Center and that identifies a single Center occupant shall be maintained in good condition and repair by the Center occupant identified on such building identification sign. Prior to the installation of any new sign permitted hereunder, the plans and specifications for such sign must be submitted to the City's Planning Commission for review and approval.

Section 4.02 Pylon Sign. Subject to governmental requirements and to Section 1.03 above, the Landholder Parcel may have a pylon sign in the location shown on the Site Plan attached hereto (the "**Tenant Highway Sign**"). The Tenant Highway Sign shall conform to the sign drawings and criteria attached hereto as Schedule "J" and incorporated herein by reference. The Owner of the HD Parcel shall have the right to display its sign panel in the second position on the Tenant Highway Sign. If the Owner of the HD Parcel elects to display its sign panel on

the Tenant Highway Sign, (i) the initial design of the Tenant Highway Sign shall be subject to the approval of the Owner of the HD Parcel, (ii) any change to the initial design of the Tenant Highway Sign shall be subject to the prior written approval of such Owner, and (iii) once constructed, the Tenant Highway Sign may not be taken down, altered, or modified without the prior written approval of (y) such Owner, which approval shall not be unreasonably withheld, delayed or conditioned, and (z) the City of Daphne, if required under any existing City Ordinances (as defined herein). Except as provided below, each Owner shall maintain in good condition and repair, at its sole cost, the sign structure on its Parcel. The cost of constructing, installing, maintaining, insuring, repairing and replacing the Tenant Highway Sign structure (including electrical hookup to a common meter) shall be shared equally among the Owners/tenants displaying a sign panel on the Tenant Highway Sign. Each Owner or tenant displaying a sign panel on the Tenant Highway Sign shall maintain, at its sole cost and expense, its own sign fascia and can. Nothing in this Agreement shall be construed as to allow more than one (1) "pylon" sign, as defined by the City of Daphne Land Use Ordinance, Sign Ordinance or any other applicable Ordinance (collectively, "**City Ordinances**"), for the Jubilee Mall Center, including all properties defined and depicted in any and all attachments to this Agreement.

Section 4.03 Monument Development Sign. Provided the signage otherwise permitted by governmental regulations to the Owner of the HD Parcel and on the Tenant Highway Sign is not adversely affected thereby, the Landholder Parcel may have one free-standing, permanent monument development sign structure at the location designated on the Site Plan attached hereto (the "**Monument Development Sign**"), which shall be constructed by Landholder at its sole cost, including sign fascia and cans. The Monument Development Sign shall conform to the sign drawings and criteria attached hereto as Schedule "J-1" and incorporated herein by reference. The cost of maintaining, insuring, repairing and replacing the Monument Development Sign structure (including electrical hookup to a common meter) shall be paid by the Owner of the Landholder Parcel. After the initial construction of the Monument Development Sign, each Owner or tenant displaying a designation on the Monument Development Sign shall maintain its own sign fascia and can. The Owner of the HD Parcel shall not have the right to display its sign panel on the Monument Development Sign.

Section 4.04 Home Depot Sign. The City hereby acknowledges its consent and approval of the existing Home Depot sign in the location indicated on the Site Plan attached hereto and as depicted on Schedule "J-2" attached hereto and incorporated herein by reference (the "**Home Depot Sign**"). In the event Home Depot desires to upgrade, change, alter or reconstruct the Home Depot Sign at any time from and after the date of this Agreement, such alterations must be in compliance with all City Ordinances in existence at the time of such proposed change or alteration and shall require the prior approval of the City of Daphne Planning Commission if required by such City Ordinances.

ARTICLE V - LIABILITY AND INDEMNIFICATION

Section 5.01 Liability; Indemnifications. Each Owner shall indemnify and hold every other Owner, tenant, and occupant of the Center harmless (except for loss or damage resulting from the tortious acts of such other parties) from and against any damages, liability actions, claims, and expenses (including attorneys' fees in a reasonable amount) in connection with the loss of life, personal injury and/or damage to property arising from or out of any occurrence in or

upon such Owner's Parcel, or occasioned wholly or in part by any act or omission of said Owner, its tenants, agents, contractors, employees, or licensees.

Section 5.02 Liability Insurance. Each Owner shall maintain or cause to be maintained comprehensive general commercial liability insurance insuring against claims on account of loss of life, bodily injury or property damage that may arise from, or be occasioned by, the condition, use or occupancy of the Common Areas in the Center by the Owner and the tenants, agents, contractors, employees, licensees, customers and invitees, of such Owner or the occupants of its Parcels except as herein provided. Said insurance shall be carried by a reputable insurance company or companies qualified to do business in the State in which the Center is located and have limits of not less than \$3,000,000 per occurrence. Each Owner shall maintain or cause to be maintained contractual liability insurance specifically endorsed to cover said Owner's agreement to indemnify as set out in Section 5.01. Notwithstanding the foregoing, any Owner or party responsible to maintain such insurance may "self insure", or provide for a deductible from said coverage related to the Parcel, to the extent of one percent (1%) of the net worth of said Owner or party in its last annual or fiscal year as certified by an independent certified public accountant and computed in accordance with generally accepted accounting principles consistently applied. Such insurance may be carried under a "blanket" policy or policies covering other properties of the party and its subsidiaries, controlling or affiliated corporations. Each Owner shall, upon written request from another Owner, furnish to the party making such request certificates of insurance evidencing the existence of the insurance required to be carried pursuant to this Section or evidence of a self-insurance capacity as hereinabove provided, as the case may be. All such insurance shall include provisions denying to the insurer subrogation rights against the other parties to the extent such rights have been waived by the insured prior to the occurrence of subrogation waiver damage or loss. Each Owner hereby waives any rights of recovery against any other Owner, its directors, officers, employees, agents, tenants and occupants for any damage or consequential loss covered by said policies, against which such Owner is protected by insurance, to the extent of the proceeds payable under such policies, whether or not such damage or loss shall have been caused by any acts or omissions of the another Owner or its directors, officers, employees, agents, tenants or occupants.

ARTICLE VI - CASUALTY AND EMINENT DOMAIN

Section 6.01 Casualty.

(a) If any of the buildings located on any Parcel are damaged or destroyed by fire or other cause, the Owner of such building shall promptly cause either: (i) the repair, restoration, or rebuilding of the building so damaged or destroyed, or (ii) the razing of any damaged building, the filling of any excavation, and performance of any other work necessary to put such portion of the Center in a clean, sightly and safe condition.

(b) In the event any Common Area improvements are damaged or destroyed, the Owner of the Parcel to which such damage has occurred shall promptly cause the repair, restoration or rebuilding of the Common Area improvements so damaged or destroyed to the extent necessary to restore such area to a clean, sightly and safe condition to avoid interference with the remaining Common Areas of the Center and to adhere to any required parking ratios required by law and as set forth herein.

Section 6.02 Casualty Insurance. In order to assure performance of their respective obligations under Section 6.01, the Owners of the respective Parcels shall cause to be carried fire and extended coverage insurance on all buildings and improvements on their respective Parcels in the amount of the replacement cost of such improvements, and in amounts at least sufficient to avoid the effect of any co-insurance provisions of such policies, except if the Owner of said Parcel, or the party responsible for any required restorations, is permitted to "self insure" pursuant to Section 6.01. Any such insurance shall otherwise conform to the provisions with respect to insurance contained in Section 5.02.

Section 6.03 Eminent Domain. In the event the whole or any part of the Center shall be taken by right of eminent domain or any similar authority of law (a "**Taking**"), the entire award for the value of the land and improvements so taken shall belong to the Owner of the property so taken or to such Owner's mortgagees or tenants, as their interest may appear, and no other Owner shall have a right to claim any portion of such award by virtue of any interest created by this Agreement. In the event of a partial Taking, the Owner of the portion of the Center so taken shall restore the improvements located on the Common Areas of the Owner's Parcel as nearly as possible to the condition existing prior to the Taking without contribution from any other Owner, and any portion of any condemnation award necessary therefor shall be held in trust and applied for such purpose.

ARTICLE VII - REMEDIES

Section 7.01 Self Help; Lien Rights Disputes. If any Owner shall default in the performance of an obligation of such Owner (such Owner being herein called a "**Defaulting Owner**"), which default affects the Owner of another Parcel or any occupant thereof (an "**Affected Party**"), such Affected Party, in addition to all other remedies it may have at law or in equity, after ten (10) days' prior written notice to the Defaulting Owner and any first Mortgagee or SL Lessor as herein defined (or, in the event of an emergency, after such notice as is practical under the circumstances), shall have the right to perform such obligation on behalf of the Defaulting Owner, subject to the dispute provisions of Section 7.06. In such event, the Defaulting Owner shall promptly reimburse the Affected Party the cost thereof, together with interest thereon from the date of outlay at a rate equal to the lesser of (i) two percent (2%) in excess of the prime lending rate charged by Citibank, N.A., for commercial loans of its most preferred commercial customers, or (ii) the highest rate permitted by applicable law (the "**Interest Rate**"). As used herein, "**SL Lessor**" shall mean any party who has purchased a Property and leased it back to the preceding Owner, or its subsidiary or affiliate, on a net lease basis with the lessee assuming all obligations thereunder in what is commonly referred to as a "sale leaseback" transaction, and "**Mortgagee**" shall mean the holder of any first priority mortgage or deed of trust now or hereafter affecting the subject Parcel.

Section 7.02 Injunctive and Other Remedies. In the event of a breach by any Owner of any obligation of this Agreement, the other Owners shall be entitled to obtain an injunction specifically enforcing the performance of such obligation; the Owners hereby acknowledge the inadequacy of legal remedies and the irreparable harm that would be caused by any such breach, and/or to relief by other available legal and equitable remedies from the consequences of such breach. Any action taken or document executed in violation of this Agreement shall be void and may be set aside upon the petition of the other Owners of the Center. Any costs and expenses of any such proceeding, including attorneys' fees in a reasonable amount, shall be paid by the

Defaulting Owner and, if recorded without effective dispute as provided in Section 7.06, shall constitute a lien against the land, and improvements thereon, or the interests therein, until paid.

Section 7.03 Non-Waiver. No delay or omission of any Owner in the exercise of any right accruing upon any default of any other Owner shall impair such right or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of such default. A waiver by any Owner of a breach of, or a default in, any of the terms and conditions of this Agreement by any other Owner shall not be construed to be a waiver of any subsequent breach of or default in the same or any other provision of this Agreement. Except as otherwise specifically provided in this Agreement, (i) no remedy provided in this Agreement shall be exclusive but each shall be cumulative with all other remedies provided in this Agreement, and (ii) all remedies at law or in equity shall be available.

Section 7.04 Non-Terminable Agreement. No breach of the provisions of this Agreement shall entitle any Owner or Party to cancel, rescind or otherwise terminate this Agreement, but such limitation shall not affect, in any manner, any other rights or remedies that any Party may have hereunder by reason of any breach of the provisions of this Agreement. No breach of the provisions of this Agreement shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value covering any part of the Center, and any improvements thereon.

Section 7.05 Force Majeure. In the event any Owner or any other party shall be delayed or hindered in or prevented from the performance of any act required to be performed by such party by reason of acts of God, strikes, lockouts, unavailability of materials, failure of power, prohibitive governmental laws or regulations, riots, insurrections, the act or failure to act of the other party, adverse weather conditions preventing the performance of work as certified to by an architect, war or other reason beyond such party's control, then the time for performance of such act shall be extended for a period equivalent to the period of such delay. Lack of adequate funds or financial inability to perform shall not be deemed to be a cause beyond the control of such party.

Section 7.06 Dispute Resolution. Any dispute between the parties may be litigated under the provisions of any simplified procedure for court determination of disputes applicable under the laws of the State in which the Center is located, if appropriate and available, or, with the mutual agreement of the parties, may be submitted to arbitration, in either of which events, all parties will join in a request for expediting the disposition of any proceeding brought to resolve the dispute. The prevailing party in the dispute shall be reimbursed for any court charges related to the resolution of the dispute and its reasonable attorney's fees.

ARTICLE VIII - TERM

This Agreement and the easements, rights, obligations, and liabilities created hereby shall be perpetual to the extent permitted by law.

ARTICLE IX - EFFECT OF INSTRUMENT

Section 9.01 Mortgage Subordination. Any mortgage or deed of trust affecting any portion of the Center shall at all times be subject and subordinate to the terms of this Agreement, except to the extent expressly otherwise provided herein, and any party foreclosing any such

mortgage or deed of trust, or acquiring title by deed in lieu of foreclosure or trustee's sale, shall acquire title subject to all of the terms and provisions of this Agreement, subject to Section 7.01 hereof. Each party hereto represents and warrants to the other parties that there is no presently existing mortgage or deed of trust lien on its Parcel, other than mortgage or deed of trust liens that are expressly subordinate to the lien of this Agreement.

Section 9.02 Binding Effect. Every agreement, covenant, promise, undertaking, condition, easement, right, privilege, option and restriction made, granted or assumed, as the case may be, by any party to this Agreement is made by such party not only personally for the benefit of the other parties hereto but also as Owner of a portion of the Center and shall constitute equitable servitude on the portion of the Center owned by such party appurtenant to and for the benefit of the other portions of the Center. Any transferee of any part of the Center shall automatically be deemed, by acceptance of the title to any portion of the Center, to have assumed all obligations of this Agreement relating thereto to the extent of its interest in its Parcel and to have agreed with the then Owner or Owners of all other portions of the Center to execute any and all instruments and to do any and all things reasonably required to carry out the intention of this Agreement, and the transferor shall, upon the completion of such transfer, be relieved of all further liability under this Agreement except liability with respect to matters that may have arisen during its period of ownership of the portion of the Center so conveyed that remain unsatisfied.

Section 9.03 Non-Dedication. Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the Center to the general public or for any public use or purpose whatsoever, it being the intention of the parties hereto and their successors and assigns and that nothing in this Agreement, expressed or implied, shall confer upon any person, other than the parties hereto and their successors and assigns, any rights or remedies under or by reason of this Agreement.

ARTICLE X - NOTICES

Any notice, report, demand, request, consent, approval, designation or other communication required, permitted or desired to be given under this Agreement shall be in writing and shall be given or served or communicated by personal delivery, by United States registered or certified mail, return receipt requested; or by prepaid FedEx or other nationally recognized overnight delivery service, at the addresses noted below or such different address as the respective parties may from time to time designate by like notice. Any notice, report, demand, request, consent, approval, designation or other communication so sent shall be deemed to have been given, made or communicated, as the case may be, on the date the same was personally delivered or delivered by the United States mail as registered or certified matter with postage thereon fully prepaid, or delivered by FedEx or other nationally recognized overnight delivery service.

If to Landholder: L-A Daphne, LLC
c/o Blackwater Management Group, LLC
270 Doug Baker Boulevard
Suite 700, Box 109
Birmingham, Alabama 35242
Attn: Ronald L. Carlson
Tel: 205.972.9649

with a copy to: Blackwater Management Group, LLC
270 Doug Baker Boulevard
Suite 700, Box 109
Birmingham, Alabama 35242
Attn: Legal Department
Tel: 205.969.1000

and: L-A Daphne, LLC
c/o Lubert-Adler Partners, L.P.
The Cira Centre
2929 Arch Street
Philadelphia, Pennsylvania 19104
Attn: Leonard Klehr

If to HD: Home Depot U.S.A., Inc.
2455 Paces Ferry Road, NW
Atlanta, Georgia 30339
Attn: Property Management
Ref: Store No. 0863
Tel: 770.433.8211

If to RHI: Rare Hospitality International, Inc.
PO Box 98359
Atlanta, Georgia 30359
Attn: _____
Tel: _____

with a copy to: _____

Attn: _____
Tel: _____

If to O'Charley's: O'Charley's Inc.
306 Gay Street, Suite 210
Nashville, Tennessee 37210
Attn: _____
Tel: _____

with a copy to: _____

Attn: _____
Tel: _____

If to CITY: _____

Attn: _____
Tel: _____

If to BOP: The Bank of Pensacola
PO Box 12966
Pensacola, Florida 32591
Attn: Brenda King
Tel: _____

If to MECU: Mobile Educators Credit Union
3150 Airport Boulevard
Mobile, Alabama 36606
Attn: _____
Tel: _____

If to Jubilee: _____

Attn: _____
Tel: _____

ARTICLE XI - ENVIRONMENTAL COMPLIANCE

Section 11.01 Compliance and Indemnification.

(a) Each Owner of a Parcel agrees to (i) comply with all governmental laws, rules or regulations related to the use, storage, treatment, transportation, removal or disposal of Hazardous Materials (as said term is hereinafter defined); (ii) give notice to the other Owners immediately upon such Owner's acquiring knowledge of the Hazardous Materials Contamination (as said term is hereinafter defined) with a full description thereof; and (iii) promptly, at such Owner's sole cost and expense, to comply with the requirements of any governmental laws, rules or regulations requiring the removal, treatment or disposal of such Hazardous Materials or Hazardous Materials Contamination and provide the other Owners with satisfactory evidence of such compliance.

(b) Each Owner shall defend, indemnify and hold harmless the other Owners and their respective tenants from and against any and all liabilities (including strict liability), suits, actions, claims, demands, penalties, damages (including, without limitation, interest, penalties,

finances and monetary sanctions), losses, costs or expenses (including, without limitation, consultants' fees, investigation and laboratory fees, reasonable attorneys' fees and remedial costs) (the foregoing are hereinafter collectively referred to as "**Liabilities**") that may now or in the future be incurred or suffered by another Owner by reason of, resulting from, in connection with, or arising in any manner whatsoever out of the breach of any covenant of an Owner contained in or referred to in this Section 11.01 of this Agreement or that may be asserted as a direct or indirect result of the presence on or under, or escape, seepage, leakage, spillage, discharge, emission or release from an Owner's Parcel of any Hazardous Materials or any Hazardous Materials Contamination, or arise out of or result from the environmental condition of an Owner's Parcel, whether or not occasioned wholly or in part by any condition, accident or event caused by an act or omission of the Owner.

Section 11.02 Hazardous Materials. The term "Hazardous Materials" shall mean (a) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), as amended from time to time, and regulations promulgated thereunder; (b) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), as amended from time to time, and regulations promulgated thereunder; (c) asbestos; (d) polychlorinated biphenyls; (e) any substance, the presence of which on the Parcel is prohibited by any governmental law, rule or regulation; (f) any petroleum-based products stored or used other than in compliance with governmental laws, rules or regulations; (g) underground storage tanks; and (h) any other substance that, by any governmental law, rule or regulation, requires special handling in its collection, storage, treatment or disposal.

Section 11.03 Hazardous Materials Contamination. The term "Hazardous Materials Contamination" shall mean the contamination (whether presently existing or hereafter occurring) of a Parcel's facilities, soil, ground water, air or other elements on or of the Parcel by Hazardous Materials, or the contamination of the buildings, facilities, soil, ground water, air or other elements on or of any other real property as a result of Hazardous Materials at any time (whether before or after the date of this Agreement) emanating from the Parcel.

ARTICLE XII - MISCELLANEOUS

Section 12.01 Severability. If any provision of this Agreement, or portion thereof, or the application thereof to any person or circumstances, shall, to any extent be held invalid, inoperative or unenforceable, the remainder of this Agreement, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby; it shall not be deemed that any such invalid provision affects the consideration for this Agreement; and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 12.02 Governing Law. This Agreement shall be construed in accordance with the laws of the State in which the Center is located.

Section 12.03 Headings. The section headings in this Agreement are for convenience only, shall in no way define or limit the scope or content of this Agreement, and shall not be considered in any construction or interpretation of this Agreement or any part hereof.

Section 12.04 No Partnership. Nothing in this Agreement shall be construed to make the parties hereto partners or joint venturers or render any of the parties liable for the debts or obligations of any other party.

Section 12.05 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

Section 12.06 Amendment. This Agreement may be amended, modified, or terminated at any time by a declaration in writing, executed and acknowledged by all the parties to the Agreement or their successors or assigns; this Agreement shall not be otherwise amended, modified or terminated during the term hereof.

Section 12.07 Counterparts. This Agreement may be signed in several counterparts, each of which shall be deemed an original, and all of such counterparts shall constitute one and the same instrument. The signature of a party to any counterpart may be removed and attached to any other counterpart. Any counterpart to which is attached a signature of all parties shall constitute an original of this Agreement.

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

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK
SEPARATE SIGNATURE PAGES FOLLOW]

SEPARATE SIGNATURE PAGE OF LANDHOLDER

L-A DAPHNE, LLC,
a Delaware limited liability company

By: _____
Its: _____

STATE OF ALABAMA)

COUNTY OF SHELBY)

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that _____, as authorized representative of L-A Daphne, LLC, a Delaware limited liability company, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being fully informed of the contents of the foregoing instrument, he executed the same voluntarily on the day the same bears date. Given under my hand and official seal, this _____ day of _____, 2011.

Notary Public, State of _____
County of _____
My Commission expires: _____

(NOTARIAL SEAL)

SEPARATE SIGNATURE PAGE OF HD

HOME DEPOT U.S.A., INC.,
a Delaware corporation

By: _____
Its: _____

STATE OF _____)
COUNTY OF _____)

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that _____, as _____ of HOME DEPOT U.S.A., INC., a Delaware corporation, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being fully informed of the contents of the foregoing instrument, he/she executed the same voluntarily on the day the same bears date. Given under my hand and official seal, this _____ day of _____, 2011.

Notary Public, State of _____
County of _____
My Commission expires: _____

(NOTARIAL SEAL)

SEPARATE SIGNATURE PAGE OF RHI

RARE HOSPITALITY INTERNATIONAL, INC.,
a Georgia corporation

By: _____
Its: _____

STATE OF _____)

COUNTY OF _____)

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that _____, as _____ of RARE HOSPITALITY INTERNATIONAL, INC., a Georgia corporation, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being fully informed of the contents of the foregoing instrument, he/she executed the same voluntarily on the day the same bears date. Given under my hand and official seal, this _____ day of _____, 2011.

Notary Public, State of _____
County of _____
My Commission expires: _____

(NOTARIAL SEAL)

SEPARATE SIGNATURE PAGE OF O'CHARLEY'S

O'CHARLEY'S INC.,
a Tennessee corporation

By: _____
Its: _____

STATE OF _____)
COUNTY OF _____)

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that _____, as _____ of O'CHARLEY'S INC., a Tennessee corporation, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being fully informed of the contents of the foregoing instrument, he/she executed the same voluntarily on the day the same bears date. Given under my hand and official seal, this _____ day of _____, 2011.

Notary Public, State of _____
County of _____
My Commission expires: _____

(NOTARIAL SEAL)

SEPARATE SIGNATURE PAGE OF BOP

THE BANK OF PENSACOLA,

a _____

By: _____

Its: _____

STATE OF _____)

COUNTY OF _____)

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that _____, as _____ of THE BANK OF PENSACOLA, a _____, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being fully informed of the contents of the foregoing instrument, he/she executed the same voluntarily on the day the same bears date. Given under my hand and official seal, this _____ day of _____, 2011.

Notary Public, State of _____

County of _____

My Commission expires: _____

(NOTARIAL SEAL)

SEPARATE SIGNATURE PAGE OF MECU

MOBILE EDUCATORS CREDIT UNION,

a _____

By: _____

Its: _____

STATE OF _____)

COUNTY OF _____)

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that _____, as _____ of MOBILE EDUCATORS CREDIT UNION, a _____, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being fully informed of the contents of the foregoing instrument, he/she executed the same voluntarily on the day the same bears date. Given under my hand and official seal, this _____ day of _____, 2011.

Notary Public, State of _____

County of _____

My Commission expires: _____

(NOTARIAL SEAL)

SEPARATE SIGNATURE PAGE OF JUBILEE
(Jubilee Mall)

JUBILEE MALL, LCC,
an Alabama limited liability company

By: _____
Its: _____

STATE OF _____)

COUNTY OF _____)

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that _____, as _____ of JUBILEE MALL, LLC, an Alabama limited liability company, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being fully informed of the contents of the foregoing instrument, he/she executed the same voluntarily on the day the same bears date. Given under my hand and official seal, this _____ day of _____, 2011.

Notary Public, State of _____
County of _____
My Commission expires: _____

(NOTARIAL SEAL)

**SEPARATE SIGNATURE PAGE OF JUBILEE
(Breland)**

Charles K. Breland, Jr.

STATE OF _____)

COUNTY OF _____)

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that CHARLES K. BRELAND, JR., whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being fully informed of the contents of the foregoing instrument, he executed the same voluntarily on the day the same bears date. Given under my hand and official seal, this _____ day of _____, 2011.

Notary Public, State of _____
County of _____
My Commission expires: _____

(NOTARIAL SEAL)

SEPARATE SIGNATURE PAGE OF CITY

THE CITY OF DAPHNE, ALABAMA,
a municipality organized and existing under the
laws of the State of Alabama

By: _____
Its: _____

STATE OF ALABAMA)

COUNTY OF BALDWIN)

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that _____, as _____ of THE CITY OF DAPHNE, ALABAMA, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being fully informed of the contents of the foregoing instrument, he/she, as such officer, executed the same voluntarily and with full authority for and as the act of said municipality. Given under my hand and official seal, this _____ day of _____, 2011.

Notary Public, State of _____
County of _____
My Commission expires: _____

(NOTARIAL SEAL)

CONSENT AND JOINDER OF LENDER

GREAT AMERICAN LIFE INSURANCE CORPORATION ("Lender"), which has an interest in and to the Landholder Parcel (as that term is described in the foregoing Amended and Restated Reciprocal Easement and Operation Agreement) by virtue of that certain Deed of Trust from L-A Daphne, LLC ("Borrower") to Lender, recorded in Office of the Judge of Probate of Baldwin County, Alabama, as Instrument No. _____, hereby consents to and joins in the execution and delivery of this Amended and Restated Reciprocal Easement and Operation Agreement, to be recorded in the Office of the Judge of Probate of Baldwin County, Alabama, such that in the event of a foreclosure under the aforesaid Landholder Parcel, a deed in lieu of such foreclosure or any other such conveyance, the Amended and Restated Reciprocal Easement and Operation Agreement shall continue to be and remain in full force and effect as to the Landholder Parcel, subject in all instances to the terms and conditions as contained therein.

Address:

c/o American Real Estate Capital
Two Alhambra Plaza, Suite 1280
Coral Gables, Florida 33134

GREAT AMERICAN LIFE INSURANCE CORPORATION,
a _____

By: _____
Its: _____

STATE OF _____)

COUNTY OF _____)

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that _____, as _____ of GREAT AMERICAN LIFE INSURANCE CORPORATION, a _____, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being fully informed of the contents of the foregoing instrument, he/she executed the same voluntarily on the day the same bears date. Given under my hand and official seal, this _____ day of _____, 2011.

Notary Public, State of _____
County of _____
My Commission expires: _____

(NOTARIAL SEAL)

SCHEDULE "A"

Legal Description of Landholder Parcel

Lots 3A and 3C, According to the Plat of Jubilee Square Subdivision, Resubdivision of Lot 3A. and recorded in the Office of the Judge of Probate of Baldwin County, Alabama, in Slide # 2079.

Lot 7 According to the Plat of Jubilee Square Subdivision and recorded in the Office of the Judge of Probate of Baldwin County, Alabama, in Slide # 2023 A.

Lots 6A, 3B, 3D, and 3E, According to the Plat of Jubilee Square Subdivision, Resubdivision of Lots 6, 3B, 3D & 3E and recorded in the Office of the Judge of Probate of Baldwin County, Alabama, in Slide # 2351 A.

SCHEDULE "B"

Legal Description of HD Parcel

Lot 1, according to the Plat of Jubilee Mall Subdivision, recorded in Slide # 1905-B in the Office of the Judge of Probate of Baldwin County, Alabama

SCHEDULE "C"

Legal Description of RHI Parcel

Lot 4, according to the Plat of Jubilee Square Subdivision, recorded in Slides #2023-A and 2023-B in the Office of the Judge of Probate of Baldwin County, Alabama

SCHEDULE "D"

Legal Description of O'Charley's Parcel

Lot 5, according to the Plat of Jubilee Square Subdivision, recorded in Slides #2023-A and 2023-B in the Office of the Judge of Probate of Baldwin County, Alabama

SCHEDULE "E"

Legal Description of BOP Parcel

Lot 2, according to the Plat of Jubilee Square Subdivision, recorded in Slides #2023-A and 2023-B in the Office of the Judge of Probate of Baldwin County, Alabama

SCHEDULE "F"

Legal Description of MECU Parcel

Lot 1, according to the Plat of Jubilee Square Subdivision, recorded in Slides #2023-A and 2023-B in the Office of the Judge of Probate of Baldwin County, Alabama

SCHEDULE "G"

Legal Description of Jubilee Parcel

Lot 2, according to the Plat of Jubilee Mall Subdivision, recorded in Slide # 1905-B in the Office of the Judge of Probate of Baldwin County, Alabama

SCHEDULE "H-1"

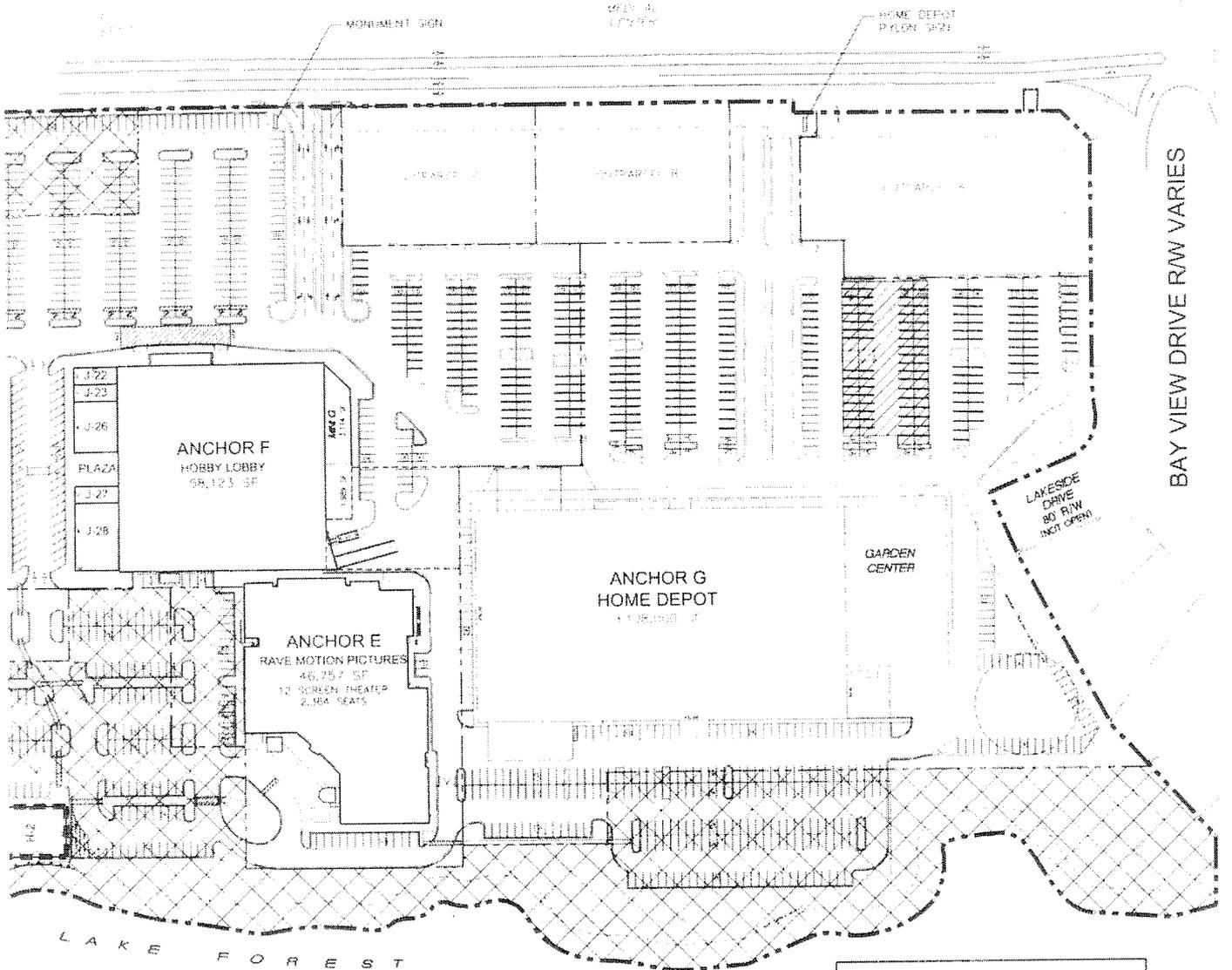
Legal Description of Public Land

Lot 6 and 3D1, according to the Plat of Jubilee Square Subdivision, Resubdivision of Lots 6, 3B, 3D and 3E, recorded in Slide #2351A in the Office of the Judge of Probate of Baldwin County, Alabama

SCHEDULE "H-2"

Depiction of Public Land

[See following three (3) pages]



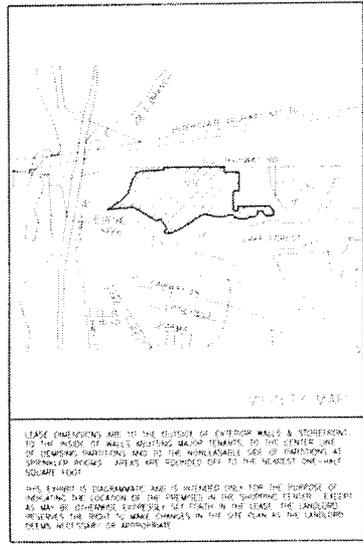
LAKE FOREST

BAY VIEW DRIVE RW VARIES



CITY LANDS

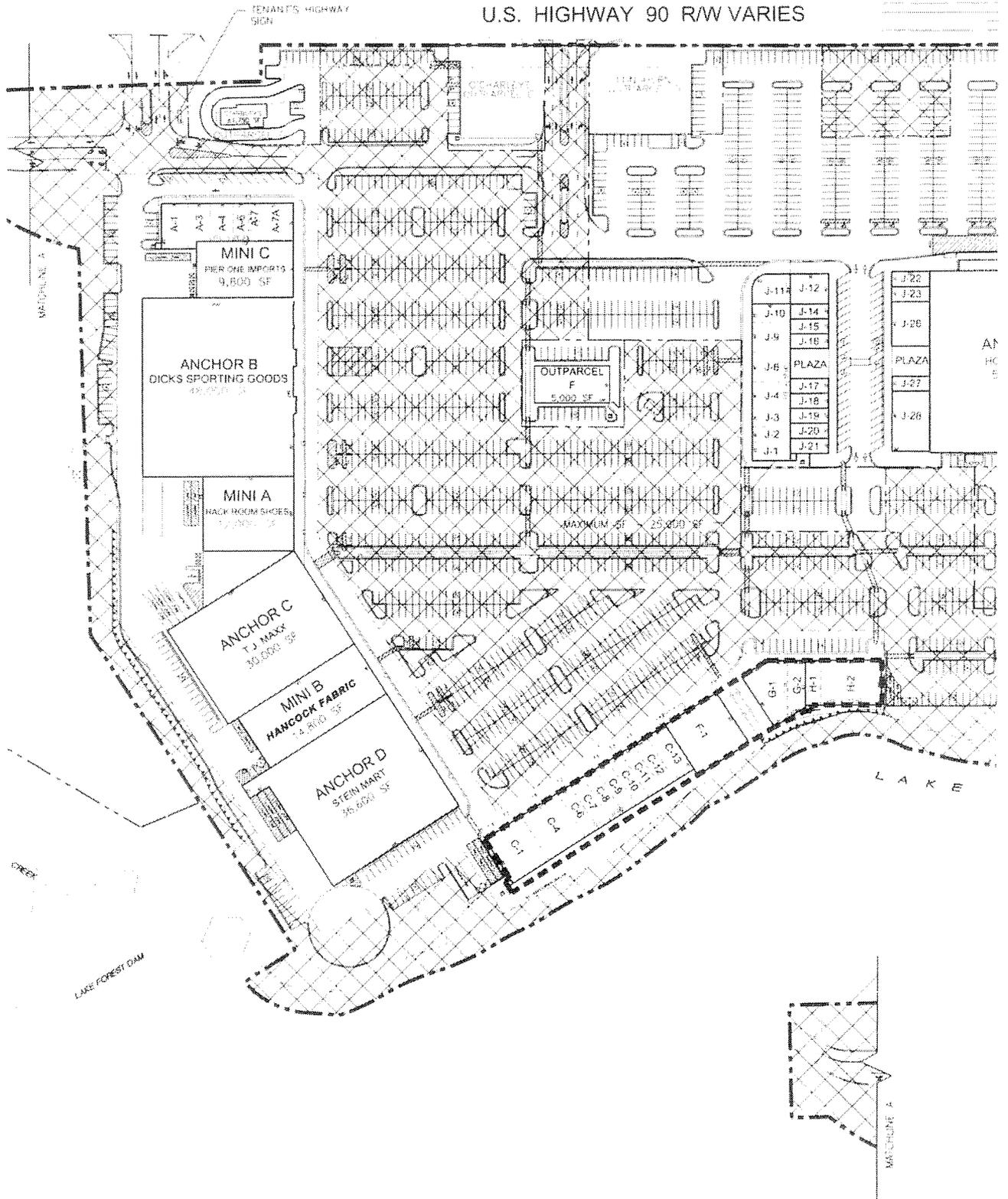
JUBILEE SQUARE
DAPHNE, ALABAMA
SCHEDULE H-2



LEASE EMBODIMENTS ARE TO THE OUTSIDE OF EXTERIOR WALLS & STRUCTURES TO THE INSIDE OF WALLS INCLUDING MAJOR TERMINALS TO THE CENTER ONE OF READING PARTITIONS AND TO THE HORIZONTAL USE OF PARTITIONS AS SHOWN IN REAR VIEW AREAS ARE BOUNDED BY TO THE NEAREST ONE-HALF SQUARE FOOT

THIS EXHIBIT IS DIAGRAMMATIC AND IS INTENDED ONLY FOR THE PURPOSE OF INDICATING THE LOCATION OF THE SUBJECT IN THE SURROUNDING AREA. EXCEPT AS MAY BE OTHERWISE EXPRESSLY SET FORTH IN THIS LEASE, THE LANDLORD RESERVES THE RIGHT TO MAKE CHANGES IN THE SITE PLAN AS THE LANDLORD DEEMS NECESSARY OR APPROPRIATE.

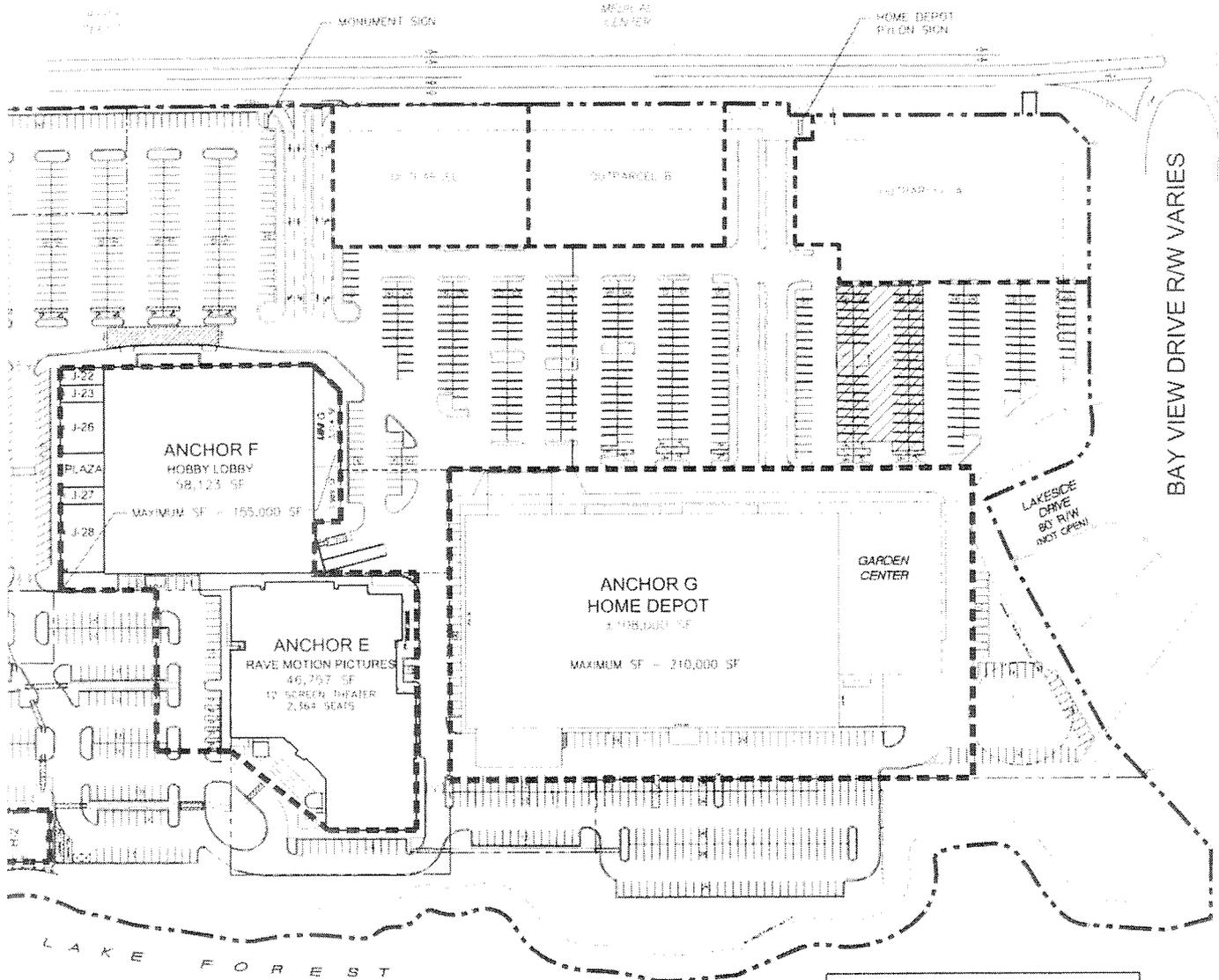
U.S. HIGHWAY 90 R/W VARIES



SCHEDULE "I"

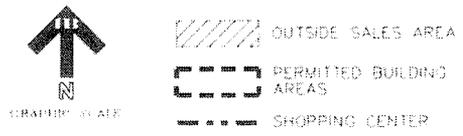
Site Plan

[See following three (3) pages]



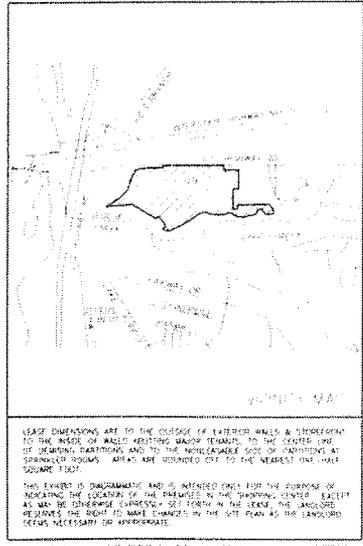
BAY VIEW DRIVE RW VARIES

LAKE FOREST



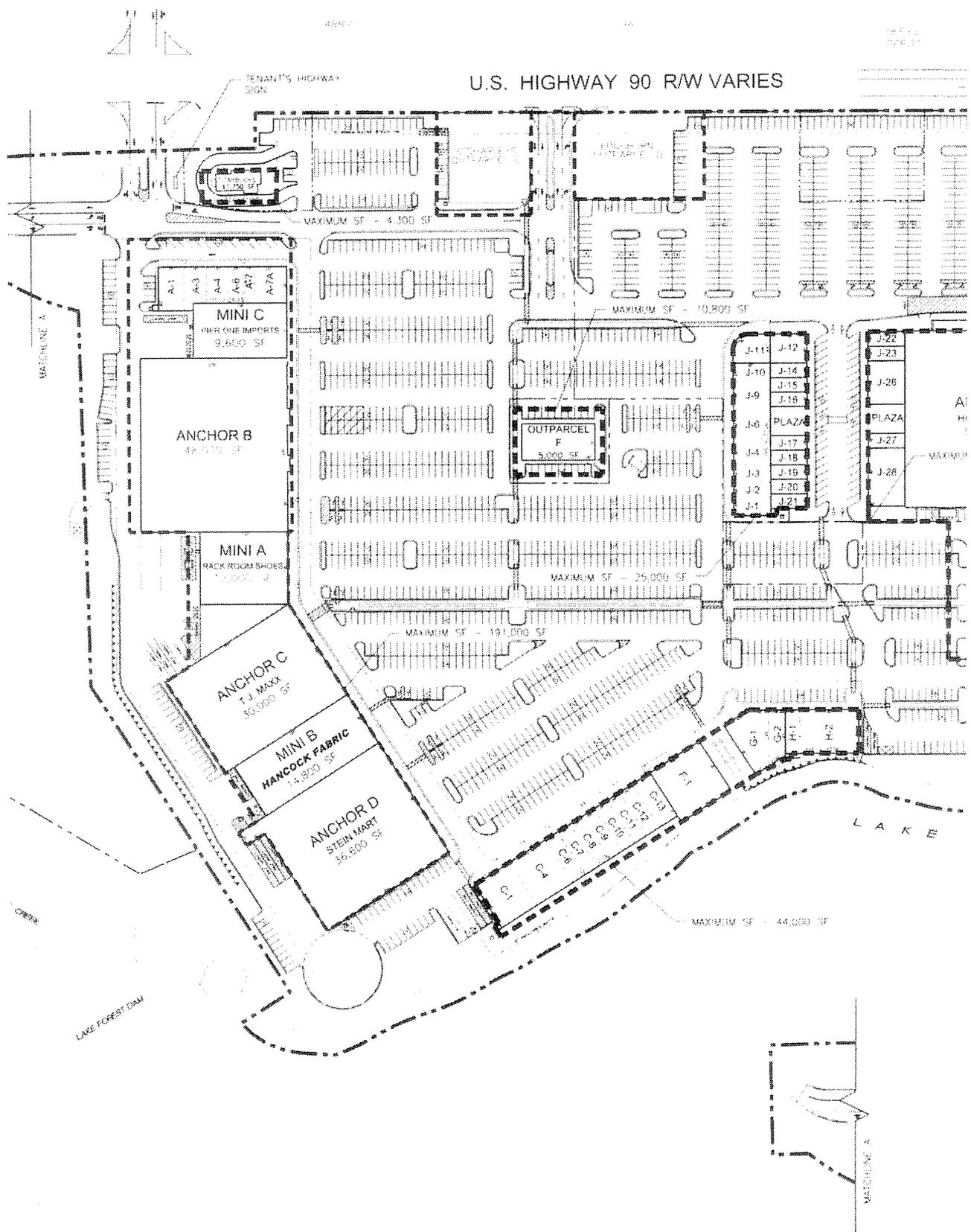
JUBILEE SQUARE
DAPHNE, ALABAMA

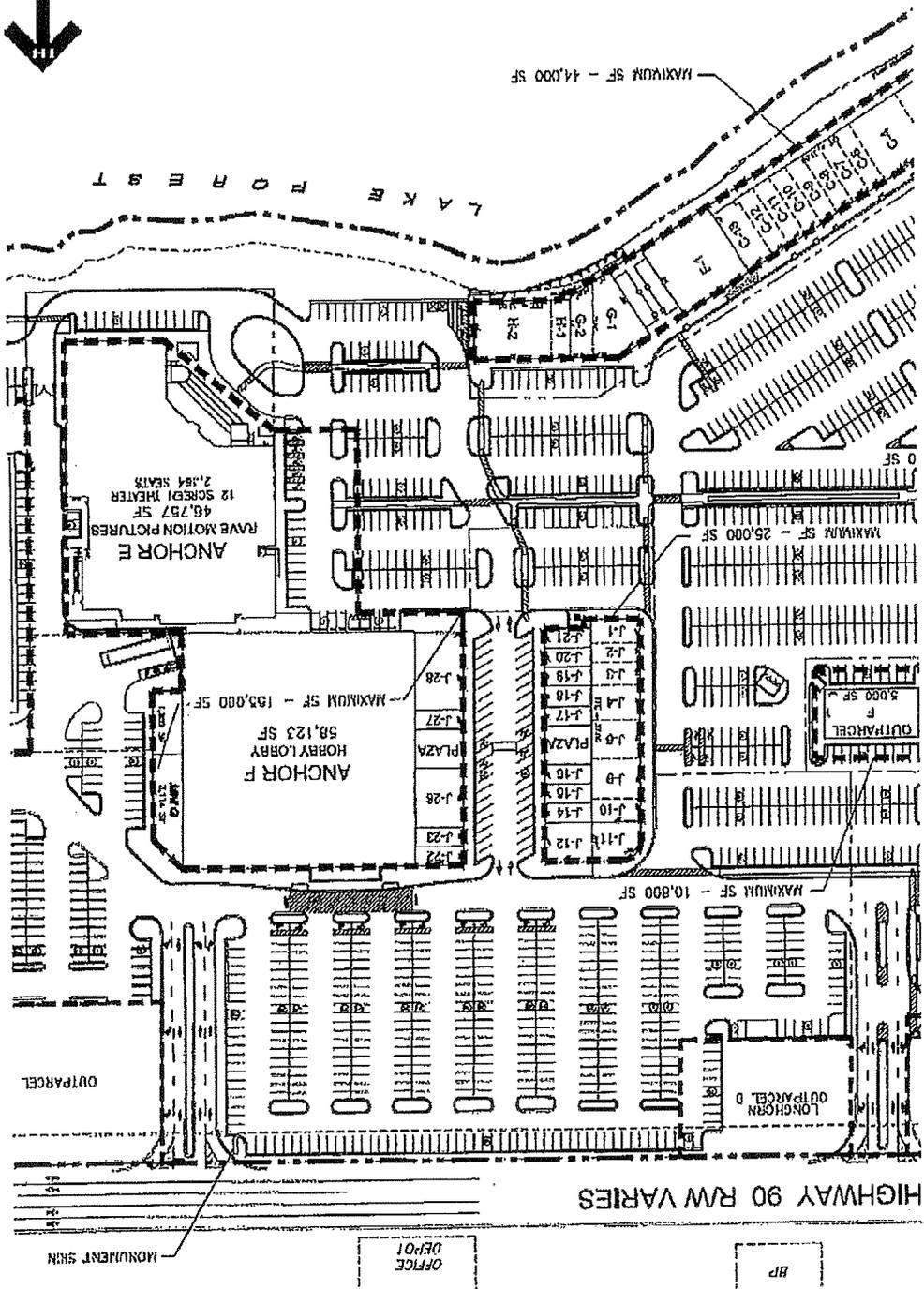
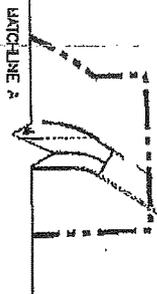
EXHIBIT I



LEASE DIMENSIONS ARE TO THE OUTSIDE OF EXTERIOR WALLS & TYPICALLY TO THE INSIDE OF WALKS SERVING MAJOR TENANTS TO THE CENTER LINE OF DRIVING LANEWAYS AND TO THE NONCIRCULAR SIDE OF CURVATURE AT SPRINKLER ISLANDS. AREAS ARE ROUNDED OFF TO THE NEAREST ONE-HUNDRED SQUARE FEET.

THIS EXHIBIT IS DIAGRAMMATIC AND IS INTENDED ONLY FOR THE PURPOSE OF INDICATING THE LOCATION OF THE PREMISES TO THE SHOPPING CENTER. EXCEPT AS MAY BE OTHERWISE EXPRESSLY SET FORTH IN THE LEASE, THE LANDLORD RESERVES THE RIGHT TO MAKE CHANGES IN THE SITE PLAN AS THE LANDLORD DEEMS NECESSARY OR APPROPRIATE.

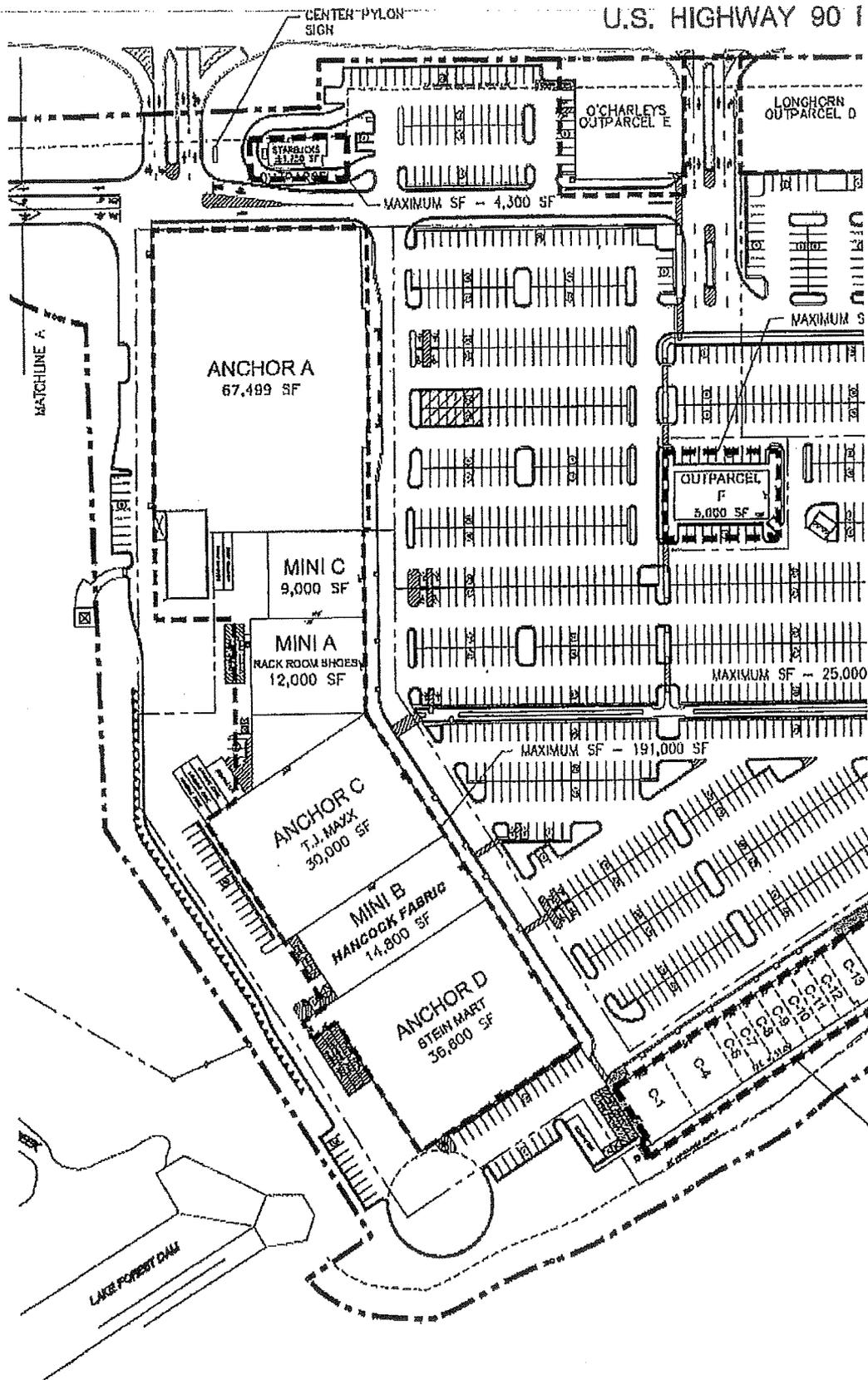




ARBY'S

BP

U.S. HIGHWAY 90 I

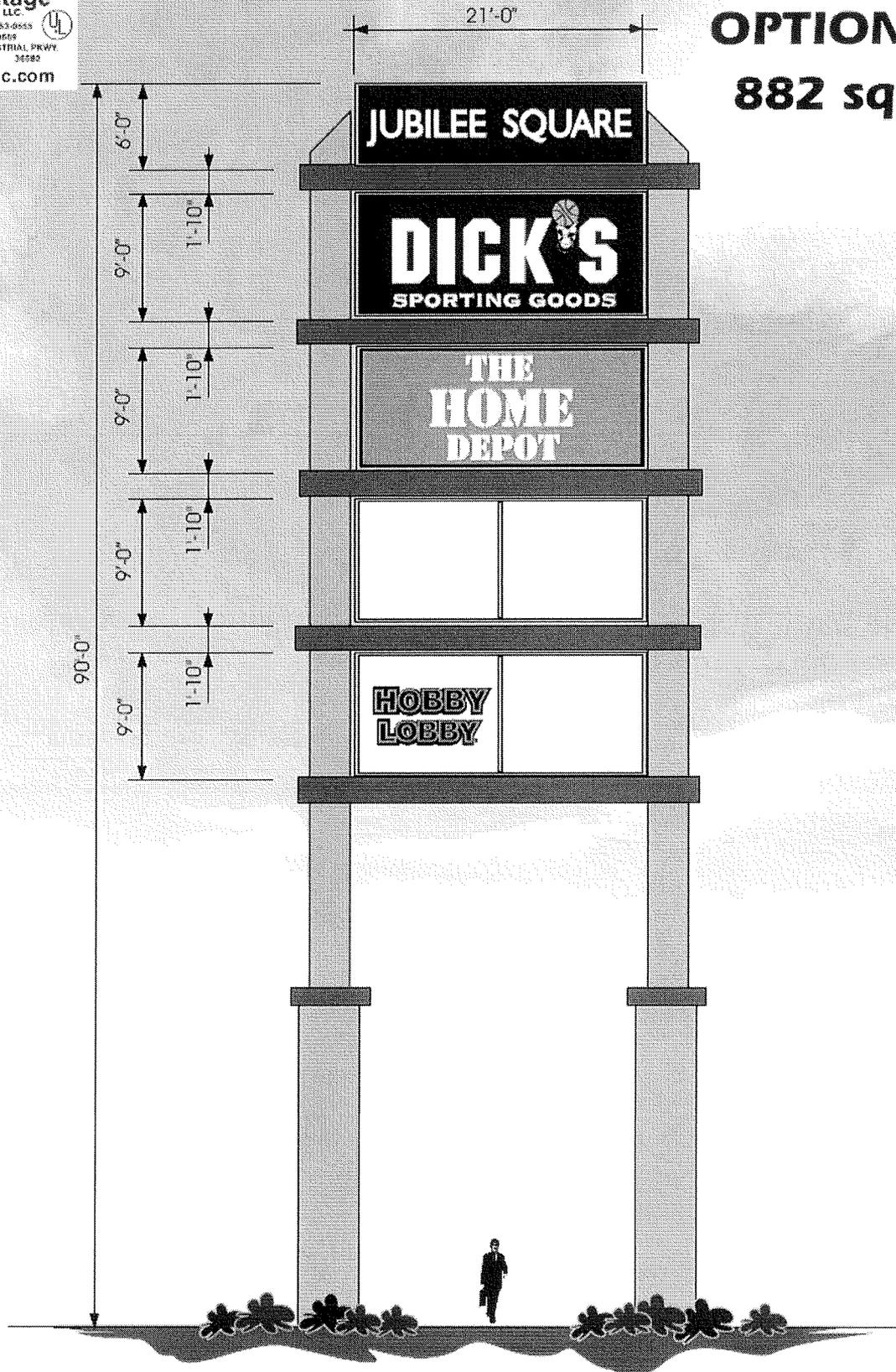


SCHEDULE "J"

Tenant Highway Sign

[See following three (3) pages]

OPTION 1
882 sq ft



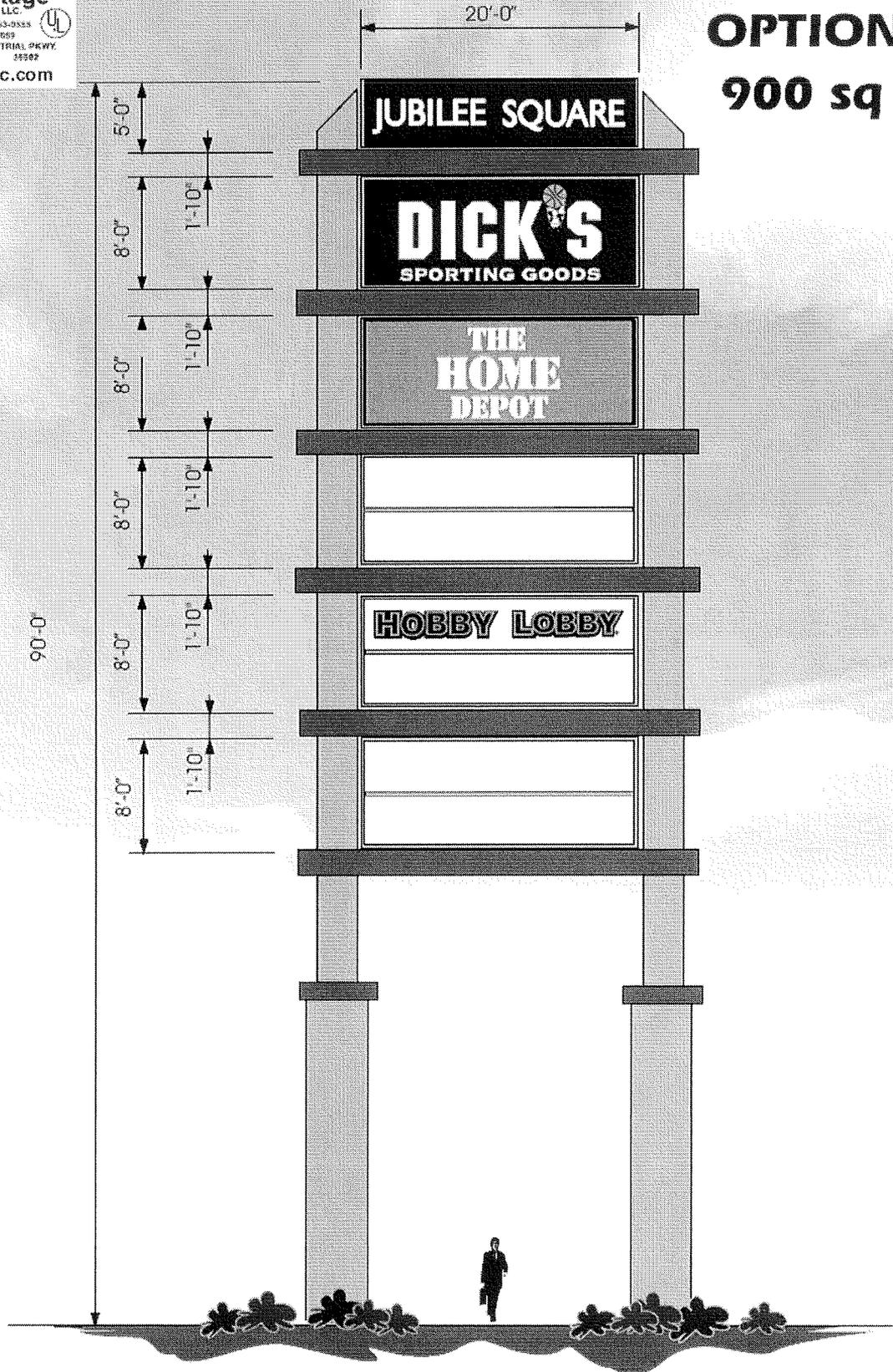
THIS APPROX. VIEW NOT BE REPRODUCED OR COPIED
 WITHOUT THE EXPRESS WRITTEN CONSENT OF ADVANTAGE SIGN CO.

Customer: Jubilee Square

Date: 12-15-10

Scale: 3/32" = 1'

OPTION 2
900 sq ft

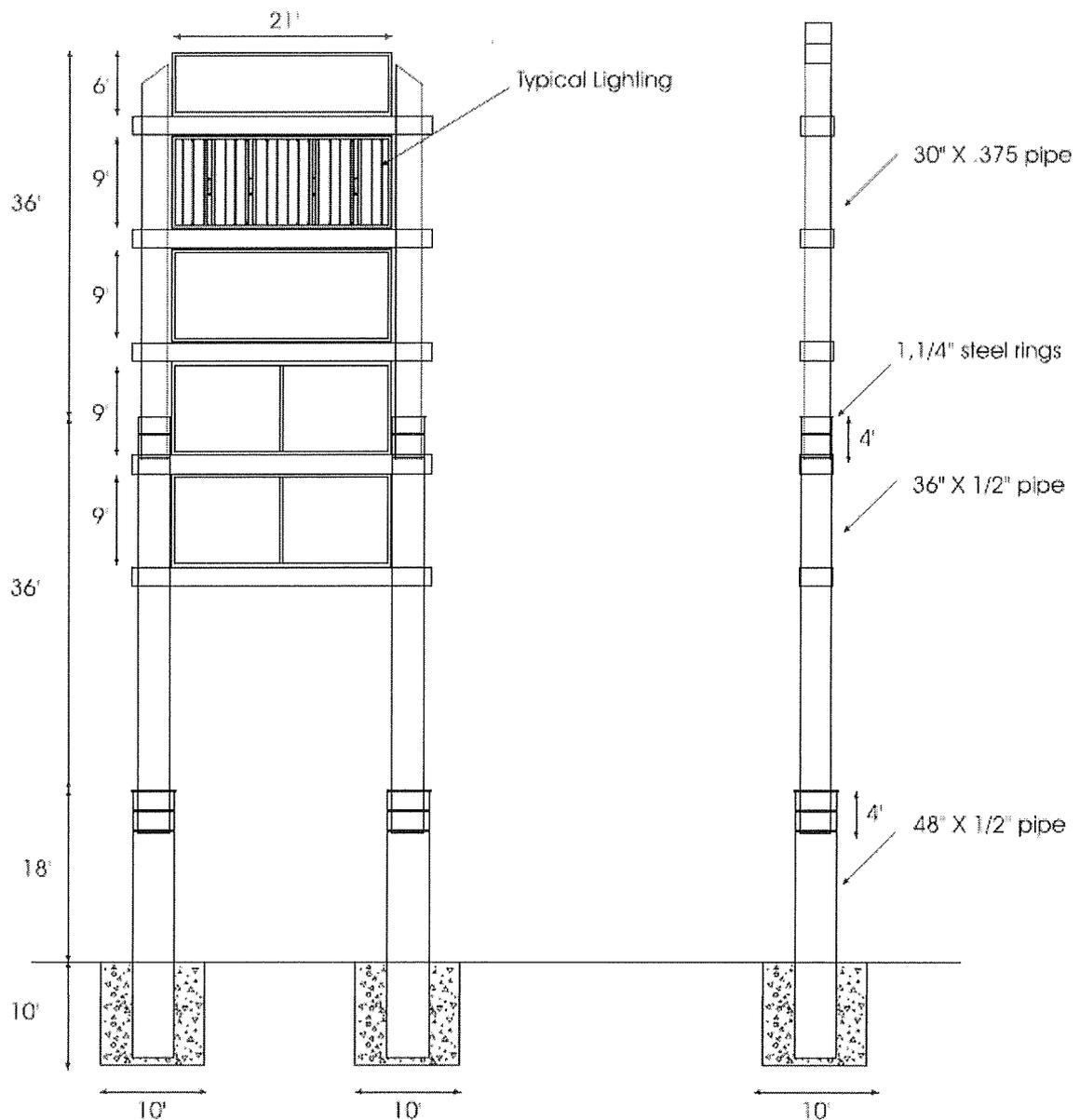


THIS WORK MAY NOT BE REPRODUCED OR COPIED
 WITHOUT THE EXPRESS WRITTEN CONSENT OF ADVANTAGE SIGN CO.

Customer: Jubilee Square

Date: 12-15-10

Scale: 3/32" = 1'



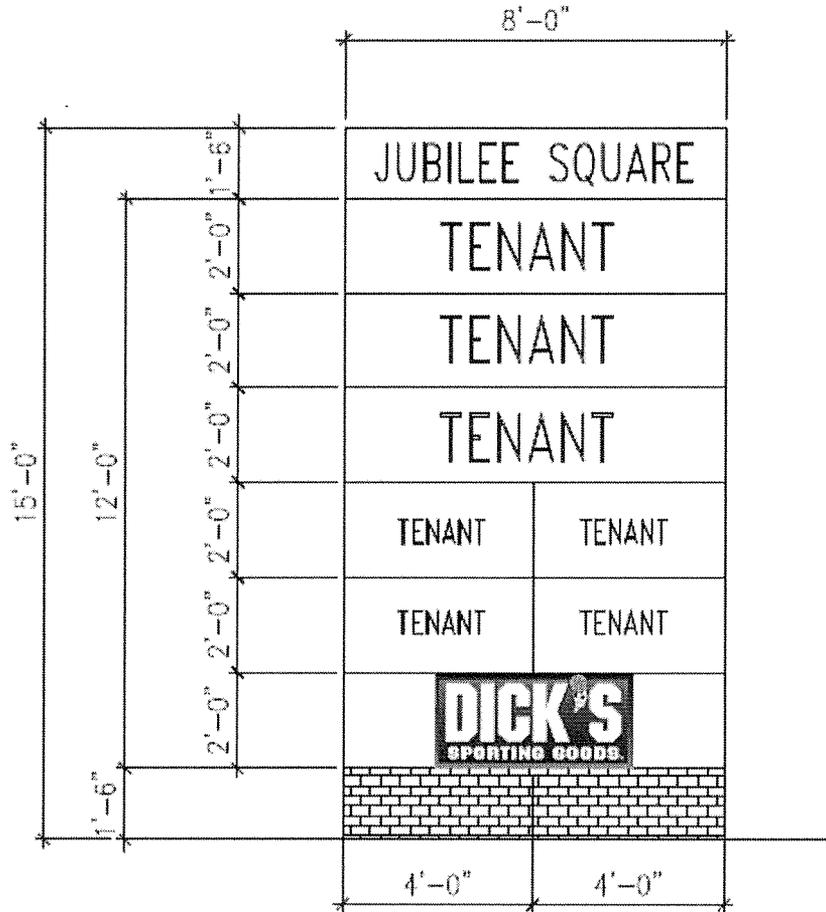
SPECIFICATIONS

- 2-1/2" steel angle frame with primer coat
- .063 alum skin
- Trim sections 1, 1/2" steel angle with .063 alum trim
- Vertical 108" High output flourescent lamps
- Alanson HO ballast 277 vt
- Cooley 20 oz flexible faces
- Graphics - Eradicated or 3M translucent vinyl
- Two part acrylic enamel paint
- Two part acid wash primer
- U/L Listed
- 277 vts X 45 amps
- Concrete foundation 3000 lb mix
- Foundation qty of 2- 10' X 10' X 10' deep 74 yards
- Wind Load 120 mph

	PHONE: (251) 653-0555 FAX: (251) 653-0669 5819 I-10 INDUSTRIAL PKWY. THEODORE, AL 36582
	SCALE: 1/16" = 1' DATE: 12/14/10
CUSTOMER: Jubilee Square	
<small>THIS ARCHITECTURE MAY NOT BE REPRODUCED OR COPIED WITHOUT THE EXPRESS WRITTEN CONSENT OF ADVANTAGE SIGN CO.</small>	

SCHEDULE "J-1"

Monument Development Sign



PROPOSED MONUMENT SIGN

ACTUAL SIGN AREA - 96 SF (12' X 8')

US HIGHWAY 90
NO SCALE

SCHEDULE "J-2"

Home Depot Sign



CITY ATTORNEY'S REPORT

NOTES:

DEPARTMENT HEAD'S COMMENTS

**CITY COUNCIL MEETING
RESOLUTIONS, ORDINANCES, ORDERS & OTHER BUSINESS**

NOTES:

RECOMMENDATIONS

COUNCIL COMMENTS:

RESOLUTION NO. 2011-07
2011-H-TWO (2) 20 CUBIC YARD REAR LOADING REFUSE
COLLECTION TRUCK

WHEREAS, The City of Daphne is required under section 41-16-20 of the Code of Alabama to secure competitive bids for items in excess of \$15,000; and

WHEREAS, The City of Daphne acknowledges that the cost for the 2011-H-TWO (2) 20 CUBIC YARD REAR LOADING REFUSE COLLECTION TRUCK will exceed this amount; and

WHEREAS, Staff has reviewed the bids for the 2011-H-TWO (2) 20 CUBIC YARD REAR LOADING REFUSE COLLECTION TRUCK and determined that the bid as presented is reasonable; and

WHEREAS, Staff recommends the bid for the 2011-H-TWO (2) 20 CUBIC YARD REAR LOADING REFUSE COLLECTION TRUCK be awarded to Ward International Trucks of Alabama LLC; and

WHEREAS, the City Council did heretofore determine that, due to funding constraints, such equipment will be funded through a lease purchase; and

NOW, THEREFORE BE IT RESOLVED, AND IT IS HEREBY RESOLVED, THAT THE MAYOR AND CITY COUNCIL OF THE CITY OF DAPHNE, hereby accept the bid of \$251,539.55 from Ward International Trucks of Alabama LLC as specified in BID SPECIFICATION NO: 2011-H-TWO (2) 20 CUBIC YARD REAR LOADING REFUSE COLLECTION TRUCK pending securing favorable leasing terms. The Mayor is hereby authorized to negotiate and enter into a lease agreement for such purchase.

APPROVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA, THIS _____ day of _____, 2011.

Cathy S. Barnette, Council President

Fred Small, Mayor

ATTEST:

David L. Cohen, City Clerk CMC

AUTHORIZING RESOLUTION

COUNCIL MEMBER _____ moved the adoption of the following Resolution and Order:

A RESOLUTION OF THE CITY COUNCIL, THE GOVERNING BODY (“THE COUNCIL”) OF CITY OF DAPHNE , ALABAMA (THE “LESSEE”), FINDING IT NECESSARY TO ACQUIRE EQUIPMENT FOR GOVERNMENTAL OR PROPRIETARY PURPOSES AUTHORIZED BY LAW: FINDING THAT IT WOULD BE IN THE PUBLIC INTEREST TO ACQUIRE SUCH EQUIPMENT UNDER THE TERMS OF A LEASE PURCHASE AGREEMENT: FINDING THAT HANCOCK BANK (THE “LESSOR”) HAS OFFERED TO ACQUIRE SUCH EQUIPMENT, OR TO ACQUIRE FROM AND REIMBURSE THE LESSEE FOR THE COST OF SUCH EQUIPMENT IN THE EVENT THE EQUIPMENT HAS ALREADY BEEN PURCHASED BY THE LESSEE, AND TO LEASE SUCH EQUIPMENT TO LESSEE: FINDING THAT SUCH PROPOSAL IS IN THE INTEREST OF THE LESSEE AND AUTHORIZING AND DIRECTING THE AUTHORIZED OFFICERS (AS HEREINAFTER DEFINED) TO EXECUTE A LEASE PURCHASE AGREEMENT AND SUPPORTING SCHEDULES AND ATTACHMENTS INCLUDING, BUT NOT LIMITED TO, ASSIGNMENTS OF TITLE TO THE EQUIPMENT TO HANCOCK BANK TO THE END THAT THE EQUIPMENT SHALL BE ACQUIRED BY SUCH BANK AND LEASED TO THE LESSEE ON THE TERMS AND CONDITIONS EXPRESSED IN SUCH LEASE.

WHEREAS, the Council has determined that it is necessary to acquire certain items of Equipment (the “Equipment”) for use by the Lessee for purposes authorized by law and

WHEREAS, the Council has by these presents determined that it would be in the public interest to acquire such Equipment through a Lease Purchase Agreement as provided under Section 41-16A-1 *et seq.* of the Code of Alabama, 1975, and

WHEREAS, the Council anticipates that it will not issue more than \$10,000,000.00 of qualified tax-exempt obligations during calendar year 2011 and desires to designate the Lease Purchase Agreement as a qualified tax-exempt obligation of the Lessee for purposes of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended, (“the Code”).

WHEREAS, to the best knowledge and belief of the Board, this lease qualifies as a qualified project bond within the meaning of the Tax Reform Act of 1986; and

WHEREAS, Hancock Bank has proposed to acquire the Equipment at the offered price and to lease the Equipment to the Lessee at a rate of **2.39%** per annum.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD AS FOLLOWS:

SECTION 1: The Mayor and City Clerk (hereinafter the “Authorized Officers”) are hereby authorized and directed to execute a Lease Purchase Agreement (also referred to as a “Governmental Lease Purchase Agreement”), either reference being the “Agreement”, and all attachments thereto. Such Agreement shall be in substantially the form attached hereto with such appropriate variations, omissions and insertions as are permitted or required by this Resolution and as are consented to by the Lessee’s representatives (the “Authorized Officers”) executing the Agreement, such consent being evidenced by their signatures.

SECTION 2: The Equipment to be leased pursuant to the Agreement shall be more fully described in a schedule to the Agreement titled “Exhibit D – Description of the Equipment”. Upon delivery and acceptance by the Lessee of the Equipment, the Authorized Officers are authorized and directed to execute a Certificate of Acceptance of such Equipment and, as provided in Section 4.01 of such Lease, the lease term shall commence on the date of acceptance.

SECTION 3: The Authorized Officers are further authorized and directed to execute on behalf of the Lessee a Financing Statement and all other documents as provided for under Section 7.02 of such Lease to establish and maintain the security interest of Hancock Bank in such Equipment.

SECTION 4: The Council hereby designates the Lease Purchase Agreement as a qualified tax-exempt obligation for purposes of Section 265(b)(3) of the Code.

SECTION 5: The Lessee and the Council understand Section 8.03 of the Agreement (“Provisions Regarding Insurance”) and agree to provide property damage and liability insurance in accordance with the terms of the Agreement.

COUNCIL MEMBER _____ seconded the motion and after a full discussion, the same was put to vote with the following results:

Bailey Yelding, Jr.	Voted: _____
Cathy Barnette	Voted: _____
John L. Lake	Voted: _____
Kelly D. Reese	Voted: _____
Ron Scott	Voted: _____
Derek Boulware	Voted: _____
August Palumbo	Voted: _____

The motion, having received an affirmative vote, was carried and the resolution adopted this the _____ day of _____, 2011.

By: _____

Cathy Barnette
Council President

By: _____

Fred Small
Mayor

{Seal}

Attest: _____

David L. Cohen
City Clerk

CERTIFICATE OF RECORDING OFFICER

1. I am the duly appointed, qualified and acting City Clerk of City of Daphne, Alabama and keeper of the records thereof, including the minutes of its proceedings;

2. A meeting was duly convened on _____, 2011 in conformity with all applicable requirements; a proper quorum was present throughout said meeting and the instrument hereinafter mentioned was duly proposed, considered and adopted in conformity with applicable requirements; and all other requirements and proceedings incident to the proper adoption of said instrument have been duly fulfilled, carried out and otherwise observed

3. I am duly authorized to execute this Certificate; and

4. The copy of the instrument annexed hereto, entitled:

A RESOLUTION OF THE CITY COUNCIL, THE GOVERNING BODY (“THE COUNCIL”) OF CITY OF DAPHNE, ALABAMA (THE “LESSEE”), FINDING IT NECESSARY TO ACQUIRE EQUIPMENT FOR GOVERNMENTAL OR PROPRIETARY PURPOSES AUTHORIZED BY LAW: FINDING THAT IT WOULD BE IN THE PUBLIC INTEREST TO ACQUIRE SUCH EQUIPMENT UNDER THE TERMS OF A LEASE PURCHASE AGREEMENT: FINDING THAT HANCOCK BANK (THE “LESSOR”) HAS OFFERED TO ACQUIRE SUCH EQUIPMENT, OR TO ACQUIRE FROM AND REIMBURSE THE LESSEE FOR THE COST OF SUCH EQUIPMENT IN THE EVENT THE EQUIPMENT HAS ALREADY BEEN PURCHASED BY THE LESSEE, AND TO LEASE SUCH EQUIPMENT TO LESSEE: FINDING THAT SUCH PROPOSAL IS IN THE INTEREST OF LESSEE.....(continued)....

Is a true, correct and compared copy of the original instrument referred to in said minutes and as finally enacted at said meeting, is in full force and effect and, to the extent required by law, has been duly signed or approved by the proper officer or officers and is on file and of record.

DATED as of this the _____ day of _____, 2011.

CITY OF DAPHNE, ALABAMA

(SEAL)

David L. Cohen
City Clerk of City of Daphne

CITY OF DAPHNE
RESOLUTION 2011-08
Support for House Bill 56

WHEREAS, the BP/Deepwater Horizon Oil Disaster greatly impacted every state fronting the Gulf of Mexico both environmentally and economically; and

WHEREAS, the federal Clean Water Act demands a significant fine be levied against any entity that illegally discharges into a federal water body; and

WHEREAS, the federal Clean Water Act prescribes that the fines go into the federal treasury; and

WHEREAS, we fully support that 80% of those fines and fees be dedicated to the states impacted by this disaster to support environmental restoration; and

WHEREAS, environmental restoration will enhance the Gulf by:

- Contributing to a healthy, productive and biologically diverse coastal and marine ecosystem that supports the seafood, recreation, tourism and other critical industries necessary for our constituents who live and work in the area
- Provide thousands of new jobs and provide economic opportunities to our communities, particularly disadvantaged and distressed communities
- Ensuring a resilient Gulf that is crucial to storm protection, fishing, recreation, seafood and tourism – the cornerstones of the Gulf culture and economy

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA supports House Resolution 56 that establishes 80% of the Clean Water Act fine monies come back to the impacted Gulf States for environmental restoration.

ADOPTED AND APPROVED this _____ day of _____, 2011.

Cathy S. Barnette,
Council President

Fred Small,
Mayor

ATTEST:

David L. Cohen,
City Clerk, MMC

Talking Points – CWA Fines

The BP disaster is only the latest, most visible evidence of environmental destruction that has been ongoing in the Gulf for decades. BP and the oil and gas industry must pay their fair share for coastal restoration.

The Oil Spill Commission Report and the Mabus plan before that have both recommended that, separate from the monies secured through the Natural Resources Damages Assessment, a majority of the Clean Water Act Fines come to the Gulf for environmental restoration.

Growing and diverse constituencies of Gulf residents and organizations recognize that the future of their livelihoods depends on Gulf restoration. Seventy-three percent of voters in Gulf coast states support comprehensive coastal restoration*. (if you have state-specific polling data about this use it)

* Lake Research Partners poll, Septembers 2010

Environmental Restoration will contribute to a healthy, productive and biologically diverse coastal and marine ecosystem that supports the services necessary for your constituents who live and work in the area.

Recovery and restoration efforts can create tens of thousands of new jobs and provide economic opportunities to our communities, particularly disadvantaged and distressed communities.

Recovery must put our communities to work restoring the Gulf and building a healthy economy – leading America into a renewable energy future. (Use this talking point as an opportunity to highlight an example of a project that has been proposed in your state that you support)

The government must act now to restore our *coastal environment and beaches*. A healthy Gulf is a prosperous Gulf crucial to storm protection, fishing, recreation, seafood and tourism – the cornerstones of the Gulf culture and economy.

We encourage competitive, innovative and cost-effective proposals for *environmental* restoration projects. Restoration activities should state a clear, measurable and achievable endpoint

Environmental Restoration projects should be subject to independent scientific review before approval. Restoration must include meaningful public participation at all levels – planning, project design, implementation and review. Restoration must reflect public ownership of the process by timely release and reasonable access to information and data

HR 56 offers an opportunity for you to join an effort to ensure that the funds that [your state] needs for coastal restoration come to the Gulf and are not diverted into the budgets of federal agencies.

HR 56:

Establishes the Gulf Coast Ecosystem Restoration Task Force, which oversees the development and approval of *environmental* restoration plans for all five Gulf States.

Establishes in the Treasury the Gulf Coast Ecosystem Restoration Fund and directs 80% of all Clean Water Act penalties in relation to the Deepwater Horizon explosions and release to that fund for conservation, protection, and *environmental* restoration of the Gulf Coast ecosystem.

This is likely one of the best opportunities to obtain the funding that [your state] needs for long-term restoration plans.

It is critical that lawmakers in the Gulf are unified in their effort to secure funding for *environmental* restoration. The rest of the nation will look to the leadership in the Gulf for guidance on how best to help the Gulf Coast recover from this disaster. Although we understand there are concerns with allocation, it is essential to act fast to ensure Clean Water Act fines return to the Gulf region. Five percent, twenty percent, and seventy percent of \$0 all equal zero dollars for Gulf restoration.

112TH CONGRESS
1ST SESSION

H. R. 56

To provide for restoration of the coastal areas of the Gulf of Mexico affected by the Deepwater Horizon oil spill, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 2011

Mr. SCALISE (for himself, Mr. BOUSTANY, Mr. LANDRY, Mr. CASSIDY, Mr. ALEXANDER, and Mr. RICHMOND) introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committee on Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide for restoration of the coastal areas of the Gulf of Mexico affected by the Deepwater Horizon oil spill, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Gulf Coast Restoration
5 Act".

6 **SEC. 2. GULF COAST ECOSYSTEM RESTORATION.**

7 (a) DEFINITIONS.—In this section:

1 (1) CHAIR.—The term “Chair” means the
2 Chair of the Task Force appointed under subsection
3 (d)(3).

4 (2) STATE COASTAL ECOSYSTEM RESTORATION
5 PLAN.—The term “State Coastal Ecosystem Res-
6 toration Plan” means a plan submitted under sub-
7 section (c) by a qualifying State to the Task Force.

8 (3) FUND.—The term “Fund” means the Gulf
9 Coast Ecosystem Restoration Fund established by
10 subsection (b)(2)(A).

11 (4) GOVERNORS.—The term “Governors”
12 means the Governors of each of the States of Ala-
13 bama, Florida, Louisiana, Mississippi, and Texas.

14 (5) GULF COAST ECOSYSTEM.—The term “Gulf
15 Coast ecosystem” means the coastal zones, as deter-
16 mined pursuant to the Coastal Zone Management
17 Act of 1972 (16 U.S.C. 1451 et seq.), of the States
18 of Alabama, Florida, Louisiana, Mississippi, and
19 Texas and adjacent State waters and areas of the
20 outer Continental Shelf, adversely impacted by the
21 blowout and explosion of the mobile offshore drilling
22 unit Deepwater Horizon that occurred on April 20,
23 2010, and resulting hydrocarbon releases into the
24 environment.

1 (6) SECRETARY.—The term “Secretary” means
2 the Secretary of the Interior.

3 (7) QUALIFYING STATE.—The term “qualifying
4 State” means each of the States of Alabama, Flor-
5 ida, Louisiana, Mississippi, and Texas.

6 (8) TASK FORCE.—The term “Task Force”
7 means the Gulf Coast Ecosystem Restoration Task
8 Force established by subsection (d).

9 (b) GULF COAST ECOSYSTEM RESTORATION.—

10 (1) IN GENERAL.—In accordance with this sec-
11 tion, the Chair shall review and approve or dis-
12 approve State Coastal Ecosystem Restoration Plans
13 submitted by the Governors that provide for restora-
14 tion activities with respect to the Gulf Coast eco-
15 system.

16 (2) GULF COAST ECOSYSTEM RESTORATION
17 FUND.—

18 (A) ESTABLISHMENT.—There is estab-
19 lished in the Treasury of the United States a
20 fund to be known as the “Gulf Coast Eco-
21 system Restoration Fund”.

22 (B) TRANSFERS TO FUND.—Notwith-
23 standing any other provision of law, the Sec-
24 retary of the Treasury shall deposit into the
25 Fund amounts equal to not less than 80 per-

1 cent of any amounts collected by the United
2 States as penalties, settlements, or fines under
3 sections 309 and 311 of the Federal Water Pol-
4 lution Control Act (33 U.S.C. 1319, 1321) in
5 relation to the blowout and explosion of the mo-
6 bile offshore drilling unit Deepwater Horizon
7 that occurred on April 20, 2010, and resulting
8 hydrocarbon releases into the environment.

9 (C) AUTHORIZED USES.—The Fund shall
10 be available to the Chair for the conservation,
11 protection, and restoration of the Gulf Coast
12 ecosystem in accordance with State Coastal
13 Ecosystem Restoration Plans submitted by the
14 Governors and approved by the Chair under
15 this section.

16 (3) DISBURSEMENT.—The Chair shall disburse
17 to each qualifying State for which the Chair has ap-
18 proved a State Coastal Ecosystem Restoration Plan
19 under this section such funds as are allocated to the
20 qualifying State under this section.

21 (4) USE OF FUNDS BY QUALIFYING STATE.—A
22 qualifying State shall use all amounts received under
23 this section, including any amount deposited in a
24 trust fund that is administered by the State and
25 dedicated to uses consistent with this section, in ac-

1 cordance with all applicable Federal and State law,
2 only for 1 or more of the following purposes:

3 (A) Projects and activities for the con-
4 servation, protection, or restoration of coastal
5 areas, including wetlands.

6 (B) Mitigation of damage to fish, wildlife,
7 or natural resources.

8 (C) Planning assistance and the adminis-
9 trative costs of complying with this section.

10 (D) Implementation of a federally ap-
11 proved marine, coastal, or comprehensive con-
12 servation management plan.

13 (c) STATE COASTAL ECOSYSTEM RESTORATION
14 PLAN.—

15 (1) SUBMISSION OF STATE PLANS.—

16 (A) IN GENERAL.—Not later than October
17 1, 2011, the Governor of a qualifying State
18 shall submit to the Chair a State Coastal Eco-
19 system Restoration Plan.

20 (B) PUBLIC PARTICIPATION.—In carrying
21 out subparagraph (A), the Governor shall solicit
22 local input and provide for public participation
23 in the development of the plan.

24 (2) APPROVAL.—

1 (A) IN GENERAL.—The Chair must ap-
2 prove a plan of a qualifying State submitted
3 under paragraph (1) before disbursing any
4 amount to the qualifying State under this sec-
5 tion.

6 (B) REQUIRED COMPONENTS.—The Chair
7 shall approve a plan submitted by a qualifying
8 State under paragraph (1) if—

9 (i) the Chair determines that the plan
10 is consistent with the uses described in
11 subsection (b); and

12 (ii) the plan contains—

13 (I) the name of the State agency
14 that will have the authority to rep-
15 resent and act on behalf of the State
16 in dealing with the Secretary for pur-
17 poses of this section;

18 (II) a program for the implemen-
19 tation of the plan that describes how
20 the amounts provided under this sec-
21 tion to the qualifying State will be
22 used; and

23 (III) a certification by the Gov-
24 ernor that ample opportunity has been
25 provided for public participation in

1 the development and revision of the
2 plan.

3 (3) AMENDMENTS.—Any amendment to a plan
4 submitted under paragraph (1) shall be—

5 (A) developed in accordance with this sub-
6 section; and

7 (B) submitted to the Chair for approval or
8 disapproval under paragraph (4).

9 (4) PROCEDURE.—Not later than 60 days after
10 the date on which a plan or amendment to a plan
11 is submitted under paragraph (1) or (3), respec-
12 tively, the Chair shall approve or disapprove the plan
13 or amendment.

14 (d) GULF COAST ECOSYSTEM RESTORATION TASK
15 FORCE.—

16 (1) ESTABLISHMENT.—There is established the
17 Gulf Coast Ecosystem Restoration Task Force.

18 (2) MEMBERSHIP.—The Task Force shall con-
19 sist of the following members, or in the case of a
20 Federal agency, a designee at the level of Assistant
21 Secretary or the equivalent:

22 (A) The Secretary.

23 (B) The Secretary of Commerce.

24 (C) The Secretary of the Army.

25 (D) The Attorney General.

1 (E) The Secretary of Homeland Security.

2 (F) The Administrator of the Environ-
3 mental Protection Agency.

4 (G) The Commandant of the Coast Guard.

5 (H) The Secretary of Transportation.

6 (I) The Secretary of Agriculture.

7 (J) A representative of each affected In-
8 dian tribe, appointed by the Secretary based on
9 the recommendations of the tribal chairman.

10 (K) Two representatives of each of the
11 States of Alabama, Florida, Louisiana, Mis-
12 sissippi, and Texas, appointed by the Governor
13 of each State, respectively.

14 (L) Two representatives of local govern-
15 ment within each of the States of Alabama,
16 Florida, Louisiana, Mississippi, and Texas, ap-
17 pointed by the Governor of each State, respec-
18 tively.

19 (3) CHAIR.—The Chair of the Task Force shall
20 be appointed by the President from among the mem-
21 bers under paragraph (2) who are Federal officials.

22 (4) DUTIES OF THE TASK FORCE.—The Task
23 Force shall—

1 (A) consult with, and provide recommenda-
2 tions to, the Chair regarding the approval of
3 State Coastal Ecosystem Restoration Plans;

4 (B) coordinate scientific and other re-
5 search associated with restoration of the Gulf

6 Coast ecosystem; and

7 (C) submit an annual report to Congress
8 that summarizes the State Coastal Ecosystem
9 Restoration Plans submitted by the Governors
10 and approved by the Chair.

11 (5) APPLICATION OF THE FEDERAL ADVISORY
12 COMMITTEE ACT.—The Task Force shall not be con-
13 sidered an advisory committee under the Federal
14 Advisory Committee Act (5 U.S.C. App.).

○

**CITY OF DAPHNE
RESOLUTION NO. 2011 - 09**

REVISIONS TO CITY OF DAPHNE STREET MAP

WHEREAS, the Planning Commission of the City of Daphne, Alabama at their regular meeting held on January 27, 2011, favorably recommended to the City Council of the City of Daphne, Alabama a revision to the City of Daphne Street Map as presented at said meeting; and

WHEREAS, said revision to street map is necessary due to additional streets being added to and accepted by the City; and

WHEREAS, due notice of said revisions to the City of Daphne Street Map has been provided to the public as required by law through publication and open display at the City of Daphne Public Library and City Hall; and

WHEREAS, the City Council of the City of Daphne, Alabama, after due consideration, and upon the recommendation of the Planning Commission of the City of Daphne, believe it is in the best interest of the health, safety and welfare of the citizens of the City to accept the revisions to the City of Daphne Street Map; and

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA, as follows:

SECTION I: ADOPTION OF MAP

THAT the City of Daphne Street Map was considered by the City of Daphne Planning Commission on January 27, 2011, and having made a favorable recommendation to the City Council and said revised map being attached hereto as Exhibit "A" is hereby adopted as the official "City of Daphne Street Map."

SECTION II: REPEALER

THAT Resolution No. 2006-22, Resolution No. 2006-66, and Resolution No. 2007-05, Resolution 2007-69, Resolution 2008-02, Resolution 2008-41, and Resolution 2009-06, Resolution 2009-72, Resolution 2010-22, Resolution 2010-76 entitled "City of Daphne Street Map" are hereby repealed in their entirety and any Resolution(s) or parts of Resolution(s) conflicting with the provisions of this Resolution are hereby repealed insofar as they conflict.

SECTION III: EFFECTIVE DATE

THAT This Resolution shall take effect and be in force from and after the date of its approval by the City Council of the City of Daphne, Alabama.

ADOPTED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF
DAPHNE, ALABAMA ON THIS THE _____ DAY OF _____, 2011.

CATHY S. BARNETTE,
COUNCIL PRESIDENT

FRED SMALL,
MAYOR

ATTEST:

DAVID COHEN,
CITY CLERK, MMC

To: Office of the City Clerk +
From: Adrienne Jones,
Community Development Director
Subject: Revised City of Daphne Street Map
Date: January 28, 2010

MEMORANDUM

At the January 27, 2011 regular meeting of the City of Daphne Planning Commission seven members were present and the vote carried unanimously for the favorable recommendation of the acceptance of the above captioned map.

Please prepare a resolution and place on the appropriate agenda for action by the City Council.

Thank you,
ADJ/jd

cc: file

**RESOLUTION 2011-10
2011-I-SEHOY DRAINAGE REPAIR-CLAIBORNE CIRCLE**

WHEREAS, the City of Daphne is required under section 39-1-1(E) of the Code of Alabama to secure competitive bids for public works contracts in excess of \$ 50,000; and

WHEREAS, the City of Daphne acknowledges that SEHOY DRAINAGE REPAIR-CLAIBORNE CIRCLE project will exceed \$50,000; and

WHEREAS, the City of Daphne did receive and review bids for the SEHOY DRAINAGE REPAIR-CLAIBORNE CIRCLE and has determined that the bid as presented is reasonable; and

WHEREAS, staff recommends the bid for SEHOY DRAINAGE REPAIR-CLAIBORNE CIRCLE be awarded to Peavy Construction Company, Inc.

NOW, THEREFORE BE IT RESOLVED, AND IT IS HEREBY RESOLVED, THAT THE MAYOR AND CITY COUNCIL OF THE CITY OF DAPHNE, hereby accept the bid from Peavy Construction Company, Inc. in the amount of \$59,736.00 as specified in BID SPECIFICATION NO. 2011-I-SEHOY DRAINAGE REPAIR-CLAIBORNE CIRCLE for a total project cost of \$64,136 including engineering and testing.

APPROVED AND ADOPTED by the Mayor and City Council of the City of Daphne, Alabama, this _____ day of _____, 2011.

Cathy S. Barnette, Council President

Fred Small, Mayor

ATTEST:

David L. Cohen, City Clerk MMC

ORDINANCE 2011-03
State of Alabama
\$ 465,000 Supplemental Funds: Deepwater Horizon BP Oil Spill

WHEREAS, the Mayor of the City of Daphne did heretofore request funds (in addition to the previously received \$ 500,000) for preventative measures in response to the Deepwater Horizon BP Oil Spill incident pursuant to a June 14, 2010 motion by the Daphne City Council; and

WHEREAS, thereafter, a supplemental grant agreement was executed and the City of Daphne did receive an additional payment in the amount of \$ 465,000 from the State of Alabama on July 7, 2010; and

WHEREAS, the approved additional funding request stipulated the use of the funds was to be for contracted services, response equipment, and supplies; and

WHEREAS, as of August 10, 2010, the BP Oil Spill incident was removed from emergency status by Baldwin County officials and the City of Daphne accepted the same date for the cessation of its emergency response; and

WHEREAS, since such time, the Alabama Emergency Management Agency has, on a case by case basis, authorized the use of any remaining funds for the purpose of preparing and equipping agencies to better respond to disaster and emergency events.

NOW, THEREFORE, BE IT ORDAINED that:

- 1) The City of Daphne does hereby accept additional funds from the Alabama Emergency Management Agency (AEMA) in the amount of \$ 465,000 for the purpose of preparing and equipping Public Safety and Public Works to better respond to future disaster and emergency events; AND
- 2) The following budget as heretofore submitted to the AEMA in the grant application is hereby adopted:

100,000	Absorbent Boom
90,000	Containment Boom
25,000	Response Vehicle
250,000	Skimming

AND

- 3) Any proposed use of funds that is not classified above shall be approved by the Daphne City Council and then forwarded to the State of Alabama for approval and reallocation.

Approved and adopted on this the _____ day of _____, 2011.

Cathy S. Barnette, Council President

ATTEST:

Fred Small, Mayor

David L. Cohen, City Clerk, MMC

ORDINANCE 2011-05

AN ORDINANCE TO ESTABLISH SURETY BOND LIMITS FOR CERTAIN MUNICIPAL OFFICERS AND EMPLOYEES

WHEREAS, a review of Surety Bonds and the Blanket Employee Dishonesty Insurance Policy has been conducted; and

WHEREAS, certain coverage revisions have been recommended.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA, AS FOLLOWS:

Section 1: That Ordinance 2005-09 be and is hereby repealed in its entirety.

Section 2: That the following officers and employees of the City of Daphne, Alabama are each hereby required to maintain Surety Bonds in their term and respective positions in the amount of \$500,000 each to include to-wit:

- a.) Mayor
- b.) Finance Director/Treasurer
- c.) Revenue Officer
- d.) Municipal Court Magistrate

APPROVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA on this the ____ day of _____, 2011.

**Cathy S. Barnette,
Council President**

**Fred Small,
Mayor**

ATTEST:

**David L. Cohen,
City Clerk, MMC**

ROSS, JORDAN & GRAY, P. C.

Attorneys at Law
1111 Dauphin Street
Mobile, AL 36604

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e-mail address of writer: erick@rossandjordan.com

JAY M. ROSS
JOE CARL "BUZZ" JORDAN
MISSTY COCHRAN GRAY
FREDERICK T. "ERICK" BUSSEY
R. JASON CRANE

MAILING ADDRESS:
POST OFFICE BOX 210
MOBILE, AL 36601

January 18, 2011

VIA EMAIL ONLY

Mrs. Cathy Barnette
Council President
CITY OF DAPHNE
Post Office Box 400
Daphne, AL 36526

RE: REQUIRMENT OF MUNICIPAL OFFICERS & AGENTS TO OBTAIN SURETY BOND

Dear Cathy:

You have requested this office to provide you with an opinion letter as to whether Alabama law mandates that individual municipal councilmembers acquire a surety bond. It is the opinion of this office that no such requirement exists.

It should be noted that *Alabama Code §11-43-13 (1975)* provides the only known authority as to a requisite bond. Said statute states:

“All officers or employees handling money or exercising authority over property of municipalities shall, before entering upon the discharge of their duties, give bond, with surety to be approved by the mayor, in such penalty as the council may prescribe, conditioned for the faithful discharge of the duties of his office and faithfully to account for all moneys received.”

Alabama Code §11-43-13 (1975). Clearly, the aforementioned statute provides that only those officers or employees who handle money or exercise authority over municipal property must be “bonded”. It is understood that a council member does not handle money within the context of the statute. Other authorities discern this and similar provisions to be the actual day-to-day management of municipal finances through such positions as a Revenue Officer or a Finance Director, or those with signatory authority to utilize the same such as the Mayor.

However, after thorough research, no binding authority could be found with a definitive answer as to whether a councilmember exercises authority over municipal property. Consultation with the Alabama League of Municipalities rendered the same result in that confirmation was given that no binding authority provides as much.

Interestingly, Section 48 of the *Handbook for Mayors and Councilmembers* states:

“Since a councilmember exercises no authority over property of the municipality, other than in the legislative capacity, a bond under the provisions of Section 11-43-13, Code of Alabama, 1975, is not required.”

Perry C. Roquemore, Jr., & Ken Smith, Alabama League of Municipalities *Handbook for Mayors and Councilmembers*, 78 (2004). Though not binding, the League’s opinions delivered through its publication, *The Handbook for Mayors and Councilmembers*, is a source of instruction for governing officials in cities and towns throughout the State of Alabama. “This publication, however, is not an independent source of authority. Instead, the principles and instruction contained within the handbook are the authors’ interpretations of the laws contained within the Constitution of Alabama and the state statutes. Thus, the text is persuasive, but not controlling.” *Ala. Op. Atty. Gen. No. 2007-076*. In any event, it is the League’s position (through its authors/staff attorneys) that a councilmember is not required to obtain the bonding.

In conclusion, given lack of mandatory authority stating that a councilmember must obtain the bonding, and the League’s position otherwise, it is the opinion of this office that Daphne City Councilmembers are not required to obtain bonding pursuant to Alabama law.

If you have any further questions concerning this matter, please feel free to contact me.

Sincerely yours,

FREDERICK T. BUSSEY

**CITY OF DAPHNE
ORDINANCE NO. 2011-08**

**AN ORDINANCE TO REPEAL ORDINANCE NOS. 2004-20 &
2010-49 AND ESTABLISHING RULES, REGULATIONS,
RATES AND A LEASE AGREEMENT FOR THE RENTAL OF
THE DAPHNE CIVIC CENTER**

WHEREAS, the City Council of the City of Daphne desires that all citizens of the City of Daphne and guests thereof be able to peaceably use and enjoy the Daphne Civic Center; and,

WHEREAS, the City Council of the City of Daphne desires to promote the health and safety of the citizens of the City of Daphne by providing rental schedules, rules, regulations and a lease agreement for the rental of the Daphne Civic Center; and,

WHEREAS, the mission statement of the City of Daphne, Daphne Civic Center, as established by the Mayor and City Council is as follows:

"The Daphne Civic Center will strive to promote a high quality of life, to enhance the spiritual, social, and moral well being of each citizen and visitor, to promote community awareness and serve as a vehicle for total community enjoyment"; and,

WHEREAS, changes in policy have mandated the repealing of the preceding Ordinance establishing rules, regulations, rates, and a lease agreement for the rental of the Daphne Civic Center,

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA, AS FOLLOWS:

SECTION I. DEFINITIONS

A. For the purpose of this Ordinance the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is always mandatory and not merely derived.

1. Lessor: The City of Daphne and Daphne Civic Center.
2. Lessee: Signer of City of Daphne Civic Center Lease Agreement.

3. Facility: Daphne Civic Center.
4. Event: The purpose for which facility is leased.

SECTION II: RULES AND REGULATIONS-GENERAL

A. The Director is authorized to execute on behalf of the City of Daphne, the City of Daphne Civic Center lease agreement as approved by the City Council. The following rules apply.

1. Governmental functions will take precedence over all other functions. All other reservations are on a first come first serve basis.
2. The Lease agreement must be executed by persons 21 years of age or older and the lessee must be in attendance at the event.
3. Dates will not be considered "booked" prior to the completion of a City of Daphne, Daphne Civic Center Lease Agreement and payment of applicable fees.
4. In case the facility, or any part thereof, shall be destroyed or damaged by fire, or any other cause, or if any other casualty or unforeseen occurrence shall render the fulfillment of the lease by the Lessor impossible, then and thereupon the lease shall terminate, and the Lessee shall pay rental for said premises only up to the time of such termination, at the rate specified on the Lease Agreement and the said Lessee waives any claim for damages or compensation should the lease be so terminated.
5. City personnel will inspect the facility after each event. If damage is found, lessee will be notified of charges to be deducted from damage deposit or of additional charges beyond damage deposit.
6. Garbage cans, trash bags, rest room supplies, and outside trash receptacles will be supplied for Lessee use with the exception of Mardi Gras groups, or other large groups as determined by the Director. Additional garbage fees may apply.
7. City functions must portray the City of Daphne in the best light for the good and benefit of the citizens of Daphne.

8. Additional services and/or equipment (other than those specified at the time of lease) which may be requested and utilized will be additionally charged based on Daphne Civic Center prevailing rates.

9. Security, firefighters and other personnel will be charged at the prevailing rates per hour. Lessee is responsible for making necessary arrangements.

10. Arrangements must be confirmed at least fourteen (14) days in advance of an event so as to schedule the personnel, equipment and services required.

11. The Lessor requires that only trained city personnel use and handle Civic Center equipment during events and set-ups.

12. The Lessee is charged with the responsibility of paying all applicable City, County, and State sales tax on admissions and sales at the Civic Center as well as applicable license fees.

13. All fees shall be paid 14 (fourteen) days prior to the event. Exceptions may be made for State, County, and those approved by the Director.

14. Lessee agrees to pay for all fees in lawful money of the United States of America, cashiers check, personal checks, or company checks at the Sales Office of the Daphne Civic Center. Lessee further agrees to pay said Lessor on demand any sum which may be due to said Lessor for additional services and/or accommodation for material furnished or provided to said Lessee.

15. The Lessee will comply with all laws of the United States, and of the State of Alabama, all ordinances of the City of Daphne, Alabama and all rules and requirements of the Police and Fire Departments, or other municipal authorities of the City of Daphne, and will obtain and pay for all necessary permits and licenses, and will not do nor suffer to be done, anything on said premises during the term of the lease in violation of any such laws, ordinances, rules or requirements, and if Lessor calls any such violation to the attention of the Lessee, or any person employed by or admitted to the said premises by said Lessee, such Lessee will immediately desist from and correct such violation. Lessee will provide Lessor with a copy of all applicable permits and licenses 14 days in advance of start of event.

16. No performance, exhibition or entertainment shall be given or held on said demised premises, which shall be objected to by the Lessor.

17. The City of Daphne, Daphne Civic Center, employees, or agents shall not be responsible for any misrepresentation of or failure to perform by any promoter, agent, group, or act that is not booked by the City of Daphne or Daphne Civic Center.

18. LESSEE, IN CONSIDERATION OF THE EXECUTION BY LESSOR OF THE LEASE AGREEMENT REPRESENTS AND GUARANTEES TO LESSOR THAT PERFORMERS BY THEIR SPEECH, SONG, MUSIC, CONDUCT, OR MANNER WILL NOT VIOLATE OR INCITE OTHERS TO VIOLATE ANY STATUTE, LAW, ORDINANCE, RULE, REGULATION OR ORDER OF ANY FEDERAL, STATE, MUNICIPAL OR OTHER GOVERNMENTAL AUTHORITY.

a) If performers speak, sing, play, perform or otherwise act in any manner which shall cause Lessor or any person, organization, or authority whose duty it is to enforce any such statute, law, ordinance, rule, regulation, or order to maintain public safety on the premises, think that performers have violated or incited others to violate any such statute, law, ordinance, rule, regulation, or order, the Lessor shall have the absolute right in its sole discretion to terminate the performance in progress and, regardless of whether the performance is terminated, to delay and withhold payment and settlement of all accounts and funds related to money collected or received by Lessor under this agreement until completion of an investigation relating to any incident thought to be such a violation. Lessee agrees to hold Lessor harmless from any and all damages suffered or sustained by reason of the termination of any performance and will defend any suit instituted against Lessor arising out of such termination at Lessee's expense, all in addition to the remedies otherwise given Lessor herein.

b) If upon completion of the investigation Lessor concludes that performers have violated and/or incited others to violate any such statute, law, ordinance, rule, regulation or order, then Lessee shall be deemed to have committed material breach of the Lease Agreement, for which breach Lessee shall be liable to the Lessor. The Lessee and the Lessor hereto acknowledge and agree that it will be impossible to measure actual damages to premises as the result of a breach of this agreement arising out of a violation or incitement of others to violate any statute, law, ordinance, rule, regulation or order as aforesaid, and therefore, the parties have agreed to the sum of \$5,000.00 as liquidated damages and not as a penalty, which amount Lessee hereby authorizes Lessor to deduct from any accounts or funds held or received by Lessor prior to any payment to Lessee if monies are due or Lessee agrees to pay Lessor the agreed sum of \$5,000.00 as stated above or pay the actual damage amount which will be determined after inspection and or repair of damage.

19. The Lessee shall not admit to said premises a larger number of persons than the seating capacity thereof will accommodate, or can safely or freely move about in said rented areas, and the decision of the Fire Marshal in this respect shall be final. The Daphne Civic Center Director and their agents shall maintain an updated occupancy table with limits pursuant to City of Daphne Fire Marshal's regulations which is to be treated as part of this Ordinance.

20. In rendering said space to the Lessee; the Lessor does not relinquish the right to control the management thereof or to enforce all the necessary and proper rules for the management and operation of the same. The City of Daphne and the Daphne Civic Center, their agents, and their employees may enter said building and all the demised premises, at any time and on any occasion in performance of their duties and responsibilities.

21. The Lessee agrees to pay reasonable attorney's fees on any part of said rental or service charge that may be collected by suit or by attorney after said rental or service charge is past due.

22. The Lessee shall not permit the demised premises to be used for lodging rooms, or for any improper, immoral or objectionable purpose.

23. The Lessee shall not assign the lease, nor suffer any use of said premises, other than specified, nor subject the same premises or any part thereof, without the written consent of the Lessor.

24. The Lessee waives all right under the Constitution and laws of the State of Alabama or any other state to claim personal property exempt as against any liability, debt or obligation arising under the contract.

25. Lessee shall make all necessary arrangements with the union business agents of all trades involved in their presentation of their event.

26. The Civic Center and the keys thereto shall be at all times under the charge and control of the Civic Center Personnel. All exceptions must be approved by the Director.

27. That Lessee shall agree that if any default is made in the payment of the rent or any part thereof or if any default is made in the covenant or agreement the letting and the relation of landlord and tenant at the option of Lessor, shall cease and terminate and the relation of the parties shall be the same in all respect as if said term had fully expired, and the said Lessor may re-enter the said premises and hold the same as of its former estate therein, remove all persons therefrom and resort to any legal proceedings to obtain such possession and the said Lessee shall notwithstanding such reenter and must pay the full amount of said lease for the facility, services, and any usage fees as herein agreed to be paid.

28. The Lessor shall not be responsible for any damage or injury that may happen to the lessee, or the Lessee's agent, employees, property, guests from any cause whatsoever, prior, during or subsequent to the period covered by the lease and the said Lessee will release said Lessor from, and agrees to indemnify it against any and all claims for such loss, damage or injury.

29. That in the handling, control, custody and keeping of receipts and funds, whether the same are received through the box office or otherwise, the Lessor is acting for the accommodations and sole benefit of the Lessee, and that as to such receipts, and funds the Lessor shall be responsible only for gross neglect or bad faith.

30. Any matters not expressly provided for shall be in the discretion of the City of Daphne Mayor, City Council and/or Civic Center Director.

31. That all terms and conditions of the written lease shall be binding upon the parties, their heirs and assigns, and cannot be varied or waived by any oral representations or promise of any agent or other person of the parties hereto unless the same be in writing and mutually

signed by the duly authorized agent or agents who executed the lease. See attached Lease Agreement and information sheet which is incorporated by reference as if fully set forth herein.

32. The signed Lease Agreement will hold the City of Daphne and the Civic Center harmless and indemnify them against any claims or liability for compensation under the Alabama Workmen's Compensation law or similar laws arising out of injuries sustained by any employees of Lessee or of any contractor or subcontractor under Lessee.

33. Renters shall adhere to all signs posted at location.

34. The Mayor and/or his designee are authorized to promulgate and post rules and regulations at the facility which provide for proper operation and protect the health, safety, and welfare of persons attending events at the facility.

35. Lessee, Lessee's agent, employees, guests, or anyone entering the building that are under the supervision of the Lessee may not move or remove any City owned decorations or property in the facility. Doing so will be in violation of said ordinance and may incur additional damage fees.

36. Lessor reserves the right to refuse to lease to any person, group or organization known to willfully violate any provisions of this ordinance.

SECTION III: ADVERTISING

A. All advertising will be straight forward, accurate, true and when admission is charged, must state the total admission prices. Advertising of any event or the appearance of any performer, selling of tickets, acquiring sponsorships, selling of tradeshow booths or the like is prohibited until all contracts between all parties involved have been properly executed and exhibited to the Director.

B. All advertising with reference to the Daphne Civic Center and use of the City of Daphne Civic Center logo(s) by city departments or otherwise must be approved by the Director of the Daphne Civic Center prior to usage.

SECTION IV: COPYRIGHT

Lessee/Artist/Promoter warrants at the signing of the Lease Agreement that all copyrighted material to be performed has been duly licensed or authorized by the copyright owners or their representatives and agrees to indemnify and hold the City of Daphne and the Daphne Civic Center harmless from any and all claims, losses or expenses incurred with regard thereto.

SECTION V: CONCESSION

The Lessor relinquishes all food and beverage concession rights to the Lessee. All City, County, and State taxes and fees apply.

SECTION VI: DECORATIONS

A. The Lessor requires that all decorations, signs, and posters must be coordinated with Civic Center personnel prior to placing or erecting in the Civic Center building or on facility grounds.

B. All decorations must be free standing. No nails, tacks, brackets, glue or self-adhesive tape or any other similar items will be allowed on or in the walls, ceilings, floors or any material that will deface, mar, or damage a finish. ANY SUCH DAMAGE MAY RESULT IN AN EXTRA CHARGE FOR DAMAGES AND WILL BE THE RESPONSIBILITY OF THE LESSEE. No shaving cream, toilet paper, silly string, rice, birdseed, sparklers, glitter, confetti (including decorative jewels) or the like will be thrown or used for decoration inside or outside the facility. All candles must be self-contained. If any of these items are found on the floor, additional clean-up/damage fees will be imposed on Lessee.

C. Combustible decorative materials such as, but not limited to, cotton batting, paper, foam plastics, cloth, vegetation, moss straw, hay, vines, split bamboo, leaves and similar material shall not be used in the facility unless materials are flame resistant or have been treated with a fire retardant coating. The classification of fire retardant coatings shall apply only when the coating is applied at the rates of coverage and to the type or kind of surfaces indicated on the test report when the coating is applied in accordance with the manufacturer's directions supplied with the container. These coatings shall be applied in accordance with the manufacturer's direction. The applications shall be certified by the applicator as being in conformance with the manufacturer's direction for application. A flame test will be done on the material before being approved by the Fire Official. **WARNING!!!!** You are advised to contact the Daphne Fire Marshal for approval of decorations at least fourteen (14) days prior to your event. Decorations not meeting the Fire Marshal's approval will not be allowed in the facility. Lessee must present in writing to Lessor the approval from the Fire Marshal which will be kept on file.

SECTION VII: FLOOR PLANS

The Lessee shall file with the Sales Assistant or Event Assistant at least fourteen (14) days prior to the occurrence of the event for which this agreement is issued, a full and detailed outline of all facilities required, stage, sound, and electrical requirements, table and chair set-up, and such other information as may be required by the Director for planning, staging and preparation for such event. The number of attendees is to be included on the Daphne Civic Center Lease Agreement.

SECTION VIII: INSURANCE

A. By the acceptance of the lease agreement the Lessee covenants to indemnify, save and keep free and harmless the City of Daphne, its officers and employees, from and against any and all claims, demands, loss, liability, cost or expense of any kind or nature whatsoever which the City, its officers or employees, or any of them, may sustain or incur, or that may be imposed upon them, or any damages to property arising out of, connected with or attributable to the use and occupancy of the facility by Lessee. Lessee agrees to pay for any damage to the facility and for any damage to or loss of any City property resulting from the occupancy of said facility by Lessee or resulting from the conduct or actions of Lessee, its agents or employees, or any person, or person's participation in or attending the event during Lessee's occupancy.

B. Simultaneously with the acceptance of this lease and as a condition precedent to the effectiveness hereof, Lessee shall procure and maintain, in full force, and effect during Lessee's occupancy of the facility, and during the term of this permit, a policy of public liability and property damage insurance from a reliable insurance company authorized to transact business in the State of Alabama. The insurance company must have a minimum rating of A- in the current issue of the A. M. Best Manual. The Lessee, the City, and its officers and employees shall be named co-insured in said policy and the policy shall cover the insured's against whom claim is or may be, in the same manner as if separate policies had been issued to each. Said policy shall contain not less than the following limits of liability:

\$1,000,000.00 combined single limit per occurrence. (Bodily injury and property damage)

C. If the proposed use or occupancy by Lessee is such as to present a high degree of exposure to bodily injury or property damage, the Director may, in his/her discretion require higher limits of bodily injury and/or damage insurance.

D. The policy shall provide that the same shall not be cancelled prior to the termination of this lease until the Director shall have received a ten-day written notice of such proposed cancellation. Said policy shall provide that the insurance afforded thereby shall be primary insurance to the full limits of liability stated in the declarations, and if the City, its officers and employees have other insurance against a loss covered by said policy, that such other insurance shall be excess insurance only.

E. Lessee shall, coincidentally with the acceptance of this lease, deliver said policy of insurance, or certified photo static copy thereof, to the Director. Said policy shall be approved by the Director as to sufficiency.

F. The signed Lease Agreement shall hold the City of Daphne and the Daphne Civic Center harmless and indemnify them against any claims or liability arising or resulting from any injury to any visitor, spectator or participant in any activity in any part or portion of the Civic Center, regardless of entrance gained to said Civic Center whether by paid admissions, by pass issued by Lessee or Lessor or by any unlawful admission gained without knowledge of Lessor or Lessee. To indemnify Lessor as herein provided, Lessee shall carry public liability insurance with the coverage and the amount thereof to be specified and approved by the Director of the Civic Center with Lessee to furnish Lessor with a certificate of insurance or other satisfactory evidence of compliance with this requirement prior to commencement of Lessee's event. This insurance requirement may be waived depending on circumstances.

G. Upon approval of said policy, the same shall be filed with the Director or designee. After said policy has been so approved the Lessee shall file with the City a certificate of insurance issued by an insurance carrier certifying that the aforesaid insurance is in full force and effect and that all operations of the insured under the permit are covered thereby. In lieu of the presentation of the original policy, or of a certified photo static copy thereof, the Lessee may file a certificate of insurance to which is attached an endorsement in a form approved by the City Attorney. The endorsement shall provide that liability assumed by Lessee under this permit is covered by the policy, that the City, its officers, and employees, are named insured under said policy, and that in event of anyone of the insured's incurring liability to any other of the insured's, the policy shall cover the insured against whom claim is or may be made in the same manner as if separate policies have been issued to each, and that said insurance is primary insurance as set forth hereinabove. The endorsement shall also provide that the policy shall not be cancelled prior to the termination of the permit or until the Director shall have received a ten-day notice~ in writing of such proposed cancellation and that such endorsement controls over all other provisions of the policy, or endorsements thereto, which are inconsistent therewith. Lessee shall be responsible for all insurance deductibles.

H. Liquor Liability Insurance must be obtained in an amount not less than \$1,000,000 and the City of Daphne, Daphne Civic Center must be listed as additional insured on the policy. Proof of this policy must be presented to the sales office not less than fourteen (14) days prior of the event.

I. Proof of all policies applicable must be presented to the Daphne Civic Center Sales Assistant not less than 14 days prior to event.

SECTION IX: INVENTORY

Facility inventory will not be loaned or permitted to be removed from the premises. These items include but are not limited to chairs, tables, podiums, audiovisual equipment, kitchen equipment, plants, decorations, or displays. The City of Daphne shall impose a fine of three hundred dollars (\$300.00) for each violation in addition to a charge for damage.

SECTION X: DEFACING OF PROPERTY

A. The Lessee will not injure, nor mar, nor in any manner deface said premises, and shall not cause or permit anything to be done whereby the ¹⁴⁸said premises shall be in any manner injured,

marred or defaced, and will not drive or permit to be driven nails, hooks, tacks or screws into any part of said building, and will not make, or allow to be made, any alterations of any kind therein. Glue hooks or tacky putty will not be permitted (contact Civic Center Sales Assistant for suggestions).

B. No decorations shall be placed in or on the building, nor shall any devices or signs be supported by any means on wall or woodwork without the consent of the Sales Agent. Sets, scenery, exhibit material, et cetera, shall be of flameproof material and conform to the Fire Prevention code of the City of Daphne.

C. If said premises, or any portion of said building, during the term of the lease, shall be damaged by the act, default or negligence of the Lessee's agents, employees, patrons, guests, or any person admitted to said premises by Lessee, or unlawful admission gained, LESSEE WILL PAY TO THE LESSOR UPON DEMAND SUCH SUM AS SHALL BE NECESSARY TO RESTORE SAID PREMISES TO THEIR ORIGINAL CONDITION. The Lessee hereby assumes full responsibility for the character, acts and conduct of all persons admitted to said premises, or to any portion of said building by the consent of the said Lessee, or by or with the consent of any person acting for or on behalf of said Lessee, and said Lessee agrees to have on hand at all times sufficient Police and Fire Personnel to maintain order and protect persons and property. Daphne Police and Fire Personnel will be provided at the expense of the Lessee. In addition, the City of Daphne's fine of three hundred dollars (\$300.00) for Damage/Defacing City Property will be imposed.

SECTION XI: TICKET OUTLET SALES/BOX OFFICE

A. All ticketed events will be handled through the Daphne Civic Center Sales office unless otherwise stated by the Director. The basic Box Office charge will be 5% of all Gross Ticket Sales. Civic Center Box Office sales and services are the exclusive right of the City of Daphne Civic Center.

B. The Civic Center Ticket Office hours shall be 8:00 a.m. - 5:00 p.m., Monday through Friday.

C. All tickets must be sold at advertised prices and any deviation must be approved in writing by the Director.

D. All Moneys' collected for advance ticket sales must be paid in cash and are not be subject to 'draw' by the promoter until such time show time occurs, all specifications of the Civic Center Lease Agreement have been met and all funds have been collected which exceed Civic Center expenses therefore.

E. Final show settlement payment will not be made until the final act has been on the stage at least 20 minutes and all box office transactions have been completed as well as all contractual agreements.

F. All tickets purchased must be paid for in cash. The Director shall notify the Lessee if other payment plans are permissible.

G. Back stage passes will only be accepted for admission of entertainers, stage crews and

business associates, and must be dated with the day and date of performance. These passes will be honored at the back stage door only and will not be admitted through regular ticket gates.

H. Civic Center management will deal only with the individual who negotiated the contract or their duly authorized representative's with regards to box office transactions, show settlement, and facility usage.

I. In the event of show cancellation, the Civic Center Director reserves the right to determine the ticket refund procedures. Refunds will be made at the outlet location of purchase only.

J. Any deviation or changes to the stated regulations must be approved by the Civic Center Director.

SECTION XII: POSTING BILLS

A. The Lessee will not post or exhibit, nor allow to be posted or exhibited, signs, advertisements, show bills, lithographs, posters or cards of any description, inside or in front of, or on any part of said building except upon the regular billboards provided by the Lessor therefore and will use, post or exhibit only such signs, advertisements, show bills, lithographs, posters or cards upon said billboards as relate to the performance or exhibit to be given in the demised premises. Amounts and contents of Lessee's display advertising materials at the Civic Center shall be at the discretion of the Director.

B. The Lessee shall take down and remove forthwith all signs, advertisements, show bills, lithographs, posters or cards of any description objected to by said Lessor, or its representatives.

SECTION XIII: PASSAGEWAYS

A. The Lessee will permit no chair or movable seat to be or remain in the passageways, and will keep said passageways clear at all times.

B. No portion of the sidewalks, entries, passage, vestibules, halls, stairways, or access to public utilities or said building shall be obstructed by the Lessee, or used for any purpose other than for ingress to and from the demised premises. The doors, stairways, or openings that reflect or admit light into any place in the building, including hallways, corridors, passages, also house-lighting attachments, shall not be covered or obstructed by the Lessee. The water closets or other water apparatus shall not be used for any purpose other than for which they were constructed, and no sweepings, rubbish, rags, papers or other substance shall be thrown therein. Any damage resulting to them from misuse of any nature or character whatever shall be paid for by the Lessee.

SECTION XIV: REMOVAL OF PROPERTY

A. All personal property, including rental items, brought into the Civic Center for any event must be dismantled and removed immediately following the event unless pre-approved by the Civic Center Director. Any personal property not removed shall become the property of the City of Daphne. The City of Daphne will hold all lost¹⁵⁰ and found items for seven (7) days following

the event. Thereafter, the City reserves the right to dispose of all unclaimed items. City of Daphne, Daphne Civic Center employees will be held harmless for any property approved by the Director to be left in the building or on Civic Center property. Approval must be made at least ten (10) working days prior to start of event. No exceptions will be made.

B. Civic Center employees, workers, volunteers, or any representative of the Civic Center cannot assist in the load-in, event set-up and/or load-out of any personal event or handle any personal property.

C. The Lessor shall have the sole right to collect and have the custody of articles left in the building by persons attending any performance, exhibition or entertainment given or held in the demised premises, and the Lessee, or any person in Lessee's employ shall not collect nor interfere with the collection or custody of such article.

D. The Lessor reserves the right to remove from the building all effects remaining in building after time specified at the expense of the Lessee or to charge the daily rental as shown on the current Civic Center rate sheet for the area in which the effects have been left or stored.

SECTION XV: BUILDING DEPARTURE

Lessee shall agree that the music would be stopped, all bars must be closed and the building must be cleared at the ending time stated on the contract. If the Lessee goes over stated time on contract the Lessee will be charged with additional rental that must be paid at the time that the function goes over the ending time as is stated on the contract.

SECTION XVI: WAIVED FEES

All requests for waived fees must be sent in writing and addressed to the Civic Center Director. The Director will forward all requests to the Mayor, who shall have the final decision.

SECTION XVII: RENTAL FEES

A. Daphne Civic Center Minimum Rental Fees and hourly rates shall start as listed below:

Entire Facility:	\$1,250.00+\$375.00 cleaning fee
Exhibit Hall	
w/ Stage:	\$565.00 + \$250.00 cleaning fee
(Exhibit Hall	
w/ Stage 2 Dressing Rooms):	\$690.00 + \$250.00 cleaning fee
The Wisteria Reception Hall	
& North Gallery:	\$345.00 + \$250.00 cleaning fee
North Gallery:	\$65.00 + \$65.00 cleaning fee
South Gallery:	\$65.00 + \$65.00 cleaning fee
The Willow:	\$190.00 + \$65.00 cleaning fee
Kitchen:	\$220.00 + \$100.00 cleaning fee
Greenroom:	\$250.00 + \$65.00 cleaning fee
Greenroom/Dressing Room 2:	\$300.00 + \$125.00 cleaning fee

Greenroom/Dressing Room 2 & Stage:	\$375.00 + \$250.00 cleaning fee
Greenroom/Dressing Room 1, 2 & Stage:	\$425.00 + \$250.00 cleaning fee
Parking Lot	\$25.00 per displayed vehicle

B. In addition to the base rental fees the following hourly rates shall apply: \$20.00 per hour for each hour of usage with a minimum of 4 hours required and \$50.00 per hour of usage for all holidays. The Director shall maintain an updated list of rental items which is to be treated as part of this Ordinance's fee schedule.

C. Lease rates for the Daphne Civic Center are based on the prevailing rates as set forth in this Ordinance. In addition to the base rental fees, depending on each events setup and needs to have a successful event, an additional labor fee may be required. This fee is at the discretion of the Civic Center Director and will be presented to lessee prior to the execution of Civic Center contract.

D. The City shall apply rental proceeds to the operating requirements of the facility.

E. Lessee shall not split rental hours.

F. Lessee shall pay a \$300.00 refundable damage deposit. The damage deposit will be refunded after the facility is inspected by Civic Center personnel and no damage is found. Any additional damage charges over \$300.00 will be charged to the lessee.

G. If children are present during event, they must be supervised at all times and for safety/security reasons, should remain with parents or guardians. Children will not be allowed in any non-rental or off-limit areas. Any damaged or broken items caused from lack of supervision will be the Lessee's responsibility.

H. Any event having 500+ attendees will be required to pay an additional cleaning fee of \$300.00.

SECTION XVIII: CANCELLATIONS

Cancellations must be in writing, dated and signed by the Lessee. Reimbursements for cancelled events will be refunded as follows: 75% refund for cancellations received at least 9 months prior to the day of start of event; 50% refund for cancellations received at least 6 months prior to the day of start of event; no refunds will be made for cancellations received under 6 months prior to the day of start of event. Any exceptions to this rule must be approved by the Buildings and Property committee. **Should Daphne Civic Center be able to book another event of equal or greater economic value, then 100% refund will be issued. Refunds will be issued by check.

SECTION XIX: CLEANING FEES

Cleaning fees are mandatory and are based on the prevailing rates as prescribed in this

ordinance. Any event having 500+ attendees will be required to pay an additional cleaning fee of \$300.00.

SECTION XX: SECURITY (FIRE/POLICE)

A. The City of Daphne Police Department and Fire Department reserve the right to determine the appropriate amount of security and fire protection needed for any and all events held at the Daphne Civic Center. The Lessee shall provide security and/or fire protection if it is determined necessary for any event. If security and/or fire protection is required, it must be obtained through the City of Daphne Police Department and the City of Daphne Fire Department no later than fourteen (14) days prior to an event. If the Lessee fails to provide the required security or fire protection, a fine of \$300.00 shall be imposed and the relation of the landlord and tenant at the option of Lessor shall cease and terminate and the relation of the parties shall be the same in all respects as if said term had fully expired. The Lessor may re-enter the said premises and hold the same as of its former estate, remove all persons therefrom, and resort to any legal proceedings to obtain such possession.

B. The Lessor reserves the right through its Director or his/her representatives to eject any objectionable person or persons from said building, and upon the exercise of this authority through its Director, agents or policemen, the Lessee hereby waives any rights and all claims for damages against the Management.

C. The Lessee shall not, without written consent of the Lessor, put up or operate any engine or motor machinery on the demised premises, or use oils, burning fluids, camphene, kerosene, naphtha, or gasoline for either mechanical or other purposes or any other agent than natural gas or electricity for illuminating the demised premises.

D. Should an event require security, then Lessee shall comply with Ala. Code § 6-5-338 (1975) by the purchasing of general liability insurance in the amount of \$100,000.00 per off-duty officer.

SECTION XXI: ALCOHOL/BEVERAGE

A. Consumption of alcohol will be allowed inside the facility only during the time of function. No Alcohol/beverages shall be allowed on the dance floor at any time. Consumption of alcohol is not allowed in the parking lot or on the grounds of the facility. The City of Daphne is not liable for accidents, deaths, or injuries that may occur as a result of the consumption of alcohol.

B. The Lessee shall be fined three hundred dollars (\$300.00) by the City of Daphne for violation by Lessee, Lessee's agents, employees, patrons, guests, or any person admitted to said premises by Lessee per occurrence.

C. No Alcohol shall be "SOLD" on the grounds or inside of the Daphne Civic Center without proper permits or license.

D. Distribution of alcohol is to be made in one of the following forms:

- a. Alcohol and/or all mixers may be brought by attendees and checked at the door where a bartender (hired by Lessee) will distribute alcohol for the duration of the event. Said bartender must be 21 years of age or older and

must possess any and all then applicable licensing pursuant to local, state, and federal law.

- b. An event may contract with a licensed caterer for said event to set up cash bar or distribute alcohol. A licensed caterer is one that has purchased the requisite host liquor liability insurance, a City of Daphne business license, and attained all requisite alcohol licensing.

E. Should an event have alcohol, host liquor liability insurance in a minimum amount of \$1,000,000.00 must be purchased. All insurance certificates and proof of requisite licensing must be on file at least 14 days prior to the event.

F. Alcohol shall not be served or sold to anyone under 21 years of age.

G. Appropriate police action will be taken against any person deemed to be intoxicated and posing a danger to himself or others.

H. A list of bartenders and/or caterers possessing additional voluntary certifications(s), provided through alcoholic beverage distributors for the serving of alcoholic beverages, may be provided by the Civic Center upon request.

SECTION XXII: SMOKING

ALL CITY OF DAPHNE BUILDINGS ARE SMOKE FREE 20 FEET FROM ANY AND ALL ENTRANCES. There will be no smoking in the Daphne Civic Center. A fine of three hundred dollars (\$300.00) shall be imposed per occurrence by the City of Daphne. A three hundred dollar (\$300.00) cleaning fine shall be imposed on the Lessee if smoking has occurred in the Daphne Civic Center.

SECTION XXIII: PETS

No pets allowed inside the facility other than those for the express use by disabled persons, or by permission of the Civic Center Director.

SECTION XXIV: BUILDING ACCESS

The City will provide reasonable access according to the Americans with Disabilities Act.

SECTION XXV: THEFT

The City of Daphne is not responsible for theft of property on the grounds of the Daphne Civic Center, in automobiles, in the facility or any other structure on the property.

SECTION XXVI: HEAVY METAL/RAP/ALTERNATIVE CONCERTS

A. The City of Daphne has set forth the following guidelines to establish rules and regulations for Heavy Metal, Rap, and Alternative concerts ~~in~~ effort to provide a safe and enjoyable concert experience for attendees.

B. The Daphne City Council must approve all heavy metal, rap, and alternative concerts prior to the concert booking. The Buildings and Property Committee will determine if a concert is Alternative. The following are necessary:

- 1 . Names of all artists to appear must be provided to the Civic Center Director.
2. Date of the event and ticket information must be provided to the Civic Center Director.
3. A letter stating that approved security and fire arrangements have been made for the concert from the Daphne Police Department and Daphne Fire Department must be presented to the Civic Center Director. All special effects must be approved by the Fire Marshal and a letter stating this information must be provided to the Director.
4. A letter of approval must be obtained from the Civic Center Director and presented to the Buildings and Property Committee along with the above listed documentation. The Buildings and Property Committee will make recommendation to the full City Council. The Civic Center Director shall provide the Council's approval or disapproval to the proposed Lessee.
5. A security bond or deposit may be required for potential damages. If required, the bond or deposit must be presented to the Director no later than thirty (30) days prior to the event.
6. A five hundred-dollar cleaning fee may be required.
7. The promoter must obtain a public liability and property damage policy in an amount not less than \$3,000,000. The policy must be written by an insurance company licensed to do business in the State of Alabama and having a minimum rating of A- in the current issue of the A. M. Best Manual. The policy must name the City of Daphne and the Daphne Civic Center as additional insured. This certificate must be presented to the Director at least thirty (30) days prior to the scheduled concert.
8. If required by the State of Alabama, a promoter must obtain Liquor Liability Insurance in an amount not less than \$1,000,000 and must list the City of Daphne, Daphne Civic Center as additional insured on the policy. Proof of this policy must be presented to the sales office not less than one week prior of the event.
9. House lights are not allowed to go dark. A minimum of 20% of house lights must be on at all times.
10. An addendum may be required to the contract if any of the performing acts have a history of performing songs or making statements that are considered by the Daphne City Council to incite or provoke violence by the audience.
11. Other rules and regulations as deemed necessary by the Director, Buildings and Property Committee, or Daphne City Council may apply.

SECTION XXVII: SOUND EQUIPMENT

A. The Lessor shall not be responsible for any damage or injury that may occur from the result of sound, lighting, or electrical equipment being utilized by the Lessee, Lessee's agent, employees, or, guests from any cause whatsoever, prior, during or subsequent to the period covered by the lease and the said Lessee will release said Lessor from, and agrees to indemnify it against any and all claims for such loss, damage or injury.

B. Any damage to the City of Daphne, Civic Center sound, lighting, or electrical equipment shall be at the expense of the Lessee when Lessee utilizes said equipment or services. Civic Center personnel, The City of Daphne Police Department, or any authorized city employee can request that the Lessee or their agents desist from utilizing city property at any time.

C. The Civic Center must be notified of all sound and lighting requirements at least fourteen (14) days prior to the event.

SECTION XXVIII: FEE WAIVERS

A. The City of Daphne shall provide the following fee waivers with no others to be considered in Committee meetings or City Council meetings. All bookings are on a first come first serve basis.

1. DAPHNE CIVIC CENTER REDUCED RATE PROGRAM MONDAY, TUESDAY & WEDNESDAY

(a) This program will apply to all with the following exceptions. This program excludes paid concerts, all for profit events, Mardi Gras balls/meetings and fund raising events. These events will pay full fare.

All rental items remain the same. The reduced rate will consist of half rate for the base rental fee. The cleaning fee will remain the same. The booking includes four (4) hours of usage and must be between the hours of 7:00 a.m. - 5:00 p.m. Any usage over four (4) hours and any hours used after 5:00 p.m. will be charged an additional \$20.00 per hour. If requested, the City of Daphne, Daphne Civic Center shall be listed as a Sponsor of the event. Any Monday, Tuesday, or Wednesday that is a holiday or city holiday will be charged all regular holiday rates.

All bookings remain on a first come first serve basis. This program is not to be used for continued bookings. The City of Daphne reserves: the right to deny any group or organization usage of these provisions.

2. DAPHNE CIVIC CENTER REDUCED RATE PROGRAM (CIVIC GROUPS AND NOT FOR PROFITS - 501-C3 MONDAY, TUESDAY & WEDNESDAY)

(b) This program will apply to all civic groups that are not for profit and have a 501-C3 status. Proof of this status is required. This program excludes paid concerts, all for profit events, and fund raising events. These events will pay full fare ~ All rental items remain the same. The reduced rate will consist of a waived base fee, full rate on cleaning fees, and a \$20.00 per hour charge. Any Monday, Tuesday, or Wednesday booking that is a

holiday or city holiday will be charged all regular holiday rates. If requested, the City of Daphne, Daphne Civic Center shall be listed as a Sponsor of the event. All bookings remain on a first come first serve basis. This program is not to be used for continued bookings. The City of Daphne reserves the right to deny any group or organization usage of these provisions. All groups utilizing this reduced rate program must use the facility between 8:00 am to 10:00 p.m. All groups that have not left the facility by 10:00 p.m. will be charged all regular rates.

3. CITY OF DAPHNE DEPARTMENTS FOR CONDUCTING CITY BUSINESS.

- (a) The City of Daphne encourages all City Departments to utilize the Daphne Civic Center for your entire department booking needs. For tracking purposes all City departments must estimate their projected bookings for the Civic Center and budget all fees, rental items, cleaning fees, and per hour charges needed at regular rates for their facility functions. The department may submit in writing to the Director a request to wave base rental fees only. The decision will be based on the criteria for event, time of day and year and day of week. The approval of this request will be at the discretion of the Director and/or Mayor. Invoices will be routed from the Civic Center to the Finance Department for journal entry after each event. The Finance Department will notify the Civic Center sales office when the journal entry is complete and make report to the Buildings and Property Committee at the monthly meeting.

4. CITY EMPLOYEES FOR PERSONAL BUSINESS

- (a) Current City of Daphne employees will be entitled to a 20% discount off of base rental rates only for events that the employee is hosting. This discount is not applicable for family or friends, only the employee him/herself. All rules, guidelines and all other fees of this ordinance apply. The employee must make a request in writing which should include type of event, day and time. The approval of this request will be at the discretion of the Director and/or Mayor. Should for any reason the employee violate the guidelines mentioned above, said employee will not be entitled to this benefit in the future and will be responsible for full base rental rate which will be deducted from damage fee or billed with additional damage fee.

SECTION XXIX: BOOKING POLICY - ALL OTHER GROUPS

If an organization or group desires to book the same date continually, year after year, such organizations must submit a letter to the Director making such request listing the exact dates and years that the organization is requesting and all facility needs. All base fees must be paid in advance for the first two consecutive years. At the end of the second year a new request must be made in writing and delivered to the sales department of the Civic Center no later than 7 days after the second year event for the following two years, along with the fees for the next two years. Future bookings will also be secured using the same guidelines. All bookings are on a first come first serve basis.

SECTION XXX: PENALTY

A. Any person found guilty of violating any provision of this Ordinance shall be punished by a fine of not less than fifty dollars (\$50.00) no more than five hundred dollars (\$500.00), or by imprisonment for a period not exceeding six (6) months, or both, at the discretion of the Municipal Judge.

B. This Ordinance shall also be subject to enforcement by the issuance of a summons and complaint.

SECTION XXXI: REPEALER

Ordinance Nos. 2004-20 and 2010-49 are hereby repealed in their entirety. All other City Ordinances or parts thereof in conflict with the provision of this Ordinance, in so far as they conflict, are hereby repealed.

SECTION XXXII: SEVERABILITY

The provisions of this Ordinance are severable. If any provision, section, paragraph, sentence or part thereof shall be held unconstitutional or invalid, such decision shall not affect or impair the remainder of the Ordinance, it being the legislative intent to ordain and enact each provision, section, paragraph, sentence : and part thereof separately and independently of each other.

SECTION XXXII: EFFECTIVE DATE

This Ordinance shall become effective and be in force from and after the date of its approval and adoption by the City Council of Daphne and publication as required by law.

ADOPTED AND APPROVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA, this the ____ day of _____ 2011.

**Cathy S. Barnette,
Council President**

**Fred Small,
Mayor**

ATTEST:

David Cohen, City Clerk, MMC

**CITY OF DAPHNE
ORDINANCE NO. 2011-09**

**AN ORDINANCE TO REPEAL ORDINANCE NOS. 2004-21 &
2010-50 AND ESTABLISHING RULES, REGULATIONS,
RATES AND A LEASE AGREEMENT FOR THE RENTAL OF
THE BAYFRONT PARK PAVILION**

WHEREAS, the City Council of the City of Daphne desires that all citizens of the City of Daphne and guests thereof be able to peaceably use and enjoy the Bayfront Park Pavilion; and,

WHEREAS, the City Council of the City of Daphne desires to promote the health and safety of the citizens of the City of Daphne by providing rental schedules, rules, regulations and a lease agreement for the rental of the Bayfront Park Pavilion, and,

WHEREAS, changes in policy have mandated the repealing of the preceding Ordinance establishing rules, regulations, rates, and a lease agreement for the rental of the Bayfront Park Pavilion,

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA, AS FOLLOWS:

SECTION I: DEFINITIONS

A. For the purpose of this Ordinance the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directive.

1. Lessor: The City of Daphne and Bayfront Park Pavilion.
2. Lessee: Signer of City of Bayfront Park Pavilion Lease Agreement.
3. Facility: Bayfront Park Pavilion.
4. Event: The purpose for which facility is leased.

SECTION II: RULES AND REGULATIONS-GENERAL

A. The Director is authorized to execute on behalf of the City of Daphne, the Bayfront Park Pavilion lease agreement as approved by the City Council. The following rules apply.

1. Governmental functions will take precedence over all other functions. All other reservations are on a first come first serve basis.
2. The Lease agreement must be executed by persons 21 years of age or older and the executor of said lessee agreement must be in attendance at the event.
3. Dates will not be considered "booked" prior to the completion of a City of Daphne Bayfront Park Pavilion Lease Agreement and payment of applicable fees.
4. In case the facility, or any part thereof, shall be destroyed or damaged by fire, or any other cause, or if any other casualty or unforeseen occurrence shall render the fulfillment of the lease by the Lessor impossible, then and thereupon the lease shall terminate, and the Lessee shall pay rental for said premises only up to the time of such termination, at the rate specified on the Lease Agreement and the said Lessee waives any claim for damages or compensation should the lease be so terminated.
5. City personnel will inspect the facility after each event. If damage is found, lessee will be notified of charges to be deducted from damage deposit or of additional charges beyond damage deposit.
6. Garbage cans, trash bags, rest room supplies, and outside trash receptacles will be supplied for Lessee use with the exception of Mardi Gras groups, or other large groups as determined by the Director. Additional charges may apply.
7. City functions must portray the City of Daphne in the best light for the good and benefit of the citizens of Daphne.
8. Additional services, personnel and/or equipment (other than those specified at the time of lease) which may be requested and utilized will be additionally charged based on Bayfront Park Pavilion prevailing rates.

9. Security, firefighters and other personnel will be charged at the prevailing rates per hour. Lessee must make necessary arrangements.
10. Arrangements must be confirmed at least fourteen (14) days in advance of an event so as to schedule the personnel, equipment and services required.
11. The Lessor requires that only trained city personnel use and handle facility equipment during events and set-ups.
12. The Lessee is charged with the responsibility of paying all applicable City, County, and State sales tax on admissions and sales at the Bayfront Pavilion as well as applicable license fees.
13. All fees shall be paid 14 (fourteen) days prior to the event. Exceptions may be made for State, County, and those approved by the Director.
14. The Lessor will bill any final charges that cannot be determined prior to, during, or after the event by Bayfront Park personnel. These fees must be paid no later than 7 days after the event date. All accounts that are not paid within the 7 days will be turned in for collection.
15. Lessee agrees to pay for all fees in lawful money of the United States of America, cashier's check, personal checks, or company checks at the Sales Office of the Bayfront Park Pavilion. Lessee further agrees to pay said Lessor on demand any sum which may be due to said Lessor for additional services and/or accommodation for material furnished or provided to said Lessee.
16. The Lessee will comply with all laws of the United States, and of the State of Alabama, all ordinances of the City of Daphne, Alabama and all rules and requirements of the Police and Fire Departments, or other municipal authorities of the City of Daphne, and will obtain and pay for all necessary permits and licenses, and will not do nor suffer to be done, anything on said

premises during the term of the lease in violation of any such laws, ordinances, rules or requirements, and if Lessor calls any such violation to the attention of the Lessee, or any person employed by or admitted to the said premises by said Lessee, such Lessee will immediately desist from and correct such violation. Lessee will provide Lessor with a copy of all necessary permits and licenses fourteen (14) days in advance from start of event.

17. No performance, exhibition or entertainment shall be given or held on said demised premises, which shall be objected to by the Lessor.

18. The City of Daphne, Bayfront Park Pavilion, employees, or agents shall not be responsible for any misrepresentation of or failure to perform by any promoter, agent, group, or act that is not booked by the City of Daphne or Bayfront Park Pavilion.

19. LESSEE, IN CONSIDERATION OF THE EXECUTION BY LESSOR OF THE LEASE AGREEMENT REPRESENTS AND GUARANTEES TO LESSOR THAT PERFORMERS BY THEIR SPEECH, SONG, MUSIC, CONDUCT, OR MANNER WILL NOT VIOLATE OR INCITE OTHERS TO VIOLATE ANY STATUTE, LAW, ORDINANCE, RULE, REGULATION OR ORDER OF ANY FEDERAL, STATE, MUNICIPAL OR OTHER GOVERNMENTAL AUTHORITY.

a) If performers speak, sing, play, perform or otherwise act in any manner which shall cause Lessor or any person, organization, or authority whose duty it is to enforce any such statute, law, ordinance, rule, regulation, or order to maintain public safety on the premises, think that performers have violated or incited others to violate any such statute, law, ordinance, rule, regulation, or order, the Lessor shall have the absolute right in its sole discretion to terminate the performance in progress and, regardless of whether the performance is terminated, to delay and withhold payment and settlement of all accounts and funds related to money collected or received by Lessor under this agreement until completion of an investigation relating to any incident thought to be such a violation. Lessee agrees to hold Lessor harmless from any and all damages suffered or sustained by reason of the termination of any performance and will defend any suit instituted against Lessor arising out of such termination at Lessee's expense, all in addition to the remedies otherwise given Lessor herein.

b) If upon completion of the investigation Lessor concludes that performers have violated and/or incited others to violate any such statute, law, ordinance, rule, regulation or order, then Lessee shall be deemed to have committed material breach of the Lease Agreement, for which breach Lessee shall be liable to the Lessor. The Lessee and the Lessor hereto acknowledge and agree that it will be impossible to measure actual damages to premises as the result of a breach of this agreement arising out of a violation or incitement of others to violate any statute, law, ordinance, rule, regulation or order as aforesaid, and therefore, the parties have agreed to the sum of \$5,000.00 as liquidated damages and not as a penalty, which amount Lessee hereby authorizes Lessor to deduct from any accounts or funds held or received by Lessor prior to any payment to Lessee if monies are due or Lessee agrees to pay Lessor the agreed sum of \$5,000.00 as stated above or pay the actual damage amount which will be determined after inspection and or repair of damage.

20. The Lessee shall not admit to said premises a larger number of persons than the seating capacity thereof will accommodate, or can safely or freely move about in said rented areas, and the decision of the Fire Marshal in this respect shall be final. The Bayfront Pavilion Director and their agents shall maintain an updated occupancy table with limits pursuant to City of Daphne Fire Marshal's regulations which is to be treated as part of this Ordinance.

21. In rendering said space to the Lessee; the Lessor does not relinquish the right to control the management thereof or to enforce all the necessary and proper rules for the management and operation of the same. The City of Daphne and the Bayfront Park Pavilion, their agents, and their employees may enter said building and all the demised premises, at any time and on any occasion in performance of their duties and responsibilities.

22. The Lessee agrees to pay reasonable attorney's fees on any part of said rental or service charge that may be collected by suit or by attorney after said rental or service charge is past due.

23. The Lessee shall not permit the demised premises to be used for lodging rooms, or for any improper, immoral or objectionable purpose.

24. The Lessee shall not assign the lease, nor suffer any use of said premises, other than specified, nor subject the same premises or any part thereof, without the written consent of the Lessor.

25. The Lessee waives all right under the Constitution and laws of the State of Alabama or any other state to claim personal property exempt as against any liability, debt or obligation arising under the contract.

26. Lessee shall make all necessary arrangements with the union business agents of all trades involved in their presentation of their event.

27. The Bayfront Park Pavilion and the keys thereto shall be at all times under the charge and control of the Bayfront Park Pavilion personnel. All exceptions must be approved by the Director.

28. That Lessee shall agree that if any default is made in the payment of the rent or any part thereof or if any default is made in the covenant or agreement the letting and the relation of

landlord and tenant at the option of Lessor, shall cease and terminate and the relation of the parties shall be the same in all respect as if said term had fully expired, and the said Lessor may re-enter the said premises and hold the same as of its former estate therein, remove all persons there from and resort to any legal proceedings to obtain such possession and the said Lessee shall notwithstanding such re-enter and must pay the full amount of said lease for the facility, services, and any usage fees as herein agreed to be paid.

29. The Lessor shall not be responsible for any damage or injury that may happen to the lessee, or the Lessee's agent, employees, property, guests from any cause whatsoever, prior, during or subsequent to the period covered by the lease and the said Lessee will release said Lessor from, and agrees to indemnify it against any and all claims for such loss, damage or injury.

30. That in the handling, control, custody and keeping of receipts and funds, whether the same are received through the box office or otherwise, the Lessor is acting for the accommodations and sole benefit of the Lessee, and that as to such receipts, and funds the Lessor shall be responsible only for gross neglect or bad faith.

31. Any matters not expressly provided for shall be in the discretion of the City of Daphne Mayor, City Council and/or Bayfront Director.

32. That all terms and conditions of the written lease shall be binding upon the parties, their heirs and assigns, and cannot be varied or waived by any oral representations or promise of any agent or other person of the parties hereto unless the same be in writing and mutually signed by the duly authorized agent or agents who executed the lease. See attached Lease Agreement and information sheet which is incorporated by reference as if fully set forth herein.

33. The signed Lease Agreement will hold the City of Daphne and the Bayfront Park Pavilion harmless and indemnify them against any claims or liability for compensation under the Alabama Workmen's Compensation law or similar laws arising out of injuries sustained by any employees of Lessee or of any contractor or subcontractor under Lessee.

34. Renters shall adhere to all signs posted at location.

35. The Mayor and/or his designee are authorized to promulgate and post rules and regulations at the facility which provide for proper operation and protect the health, safety, and welfare of persons attending events at the facility.

36. Lessee, Lessee's agent, employees, guests, or anyone entering the building that are under the supervision of the Lessee may not move or remove any City owned decorations or property in the facility. Doing so will be in violation of said ordinance and may incur additional damage fees.

37. Lessor reserves the right to refuse to lease to any person, group or organization known to willfully violate any provisions of this ordinance.

SECTION III: ADVERTISING

A. All advertising will be straightforward, accurate, and true and when admission is charged, must state the total admission prices. Advertising of any event or the appearance of any performer, selling of tickets, acquiring sponsorships, selling of tradeshow booths or the like is prohibited until all contracts between all parties involved have been properly executed and exhibited to the Director is prohibited.

B. All advertising with reference to the Bayfront Park Pavilion and use of Bayfront Park Pavilion by city departments or otherwise must be approved by the Director of the Bayfront Park Pavilion prior to usage.

SECTION IV: COPYRIGHT

Lessee/Artist/Promoter warrants at the signing of the Lease Agreement that all copyrighted material to be performed has been duly licensed or authorized by the copyright owners or their representatives and agrees to indemnify and hold the City of Daphne and the Bayfront Park Pavilion harmless from any and all claims, losses, or expenses incurred with regard thereto.

SECTION V: CONCESSION

The Lessor relinquishes all food and beverage concession rights to the Lessee. All City, County, and State taxes and fees apply.

SECTION VI: DECORATIONS

A. The Lessor requires that all decorations, signs, and posters must be coordinated with Bayfront Park Pavilion personnel prior to placing or erecting in the Bayfront Park Pavilion building or on facility grounds.

B. All decorations must be free standing. No nails, tacks, brackets, glue or self-adhesive tape or any other similar items will be allowed on or in the walls, ceilings, floors or any material that will deface, mar, or damage a finish. ANY SUCH DAMAGE MAY RESULT IN AN EXTRA CHARGE FOR DAMAGES AND WILL BE THE RESPONSIBILITY OF THE LEESSEE. No shaving cream, toilet paper, silly string, rice, birdseed, sparklers, glitter, confetti (including decorative jewels) or the like will be thrown or used for decoration inside or outside the facility. ALL FIRE MUST BE 30 FEET FROM THE BUILDING; ABSOLUTLEY NO FIRE INSIDE OR ON DECK. If any of these items are found on the floor, additional clean-up/damage fees will be imposed on Lessee.

C. Combustible decorative materials such as, but not limited to, cotton batting, paper, foam plastics, cloth, vegetation, moss straw, hay, vines, split bamboo, leaves and similar material shall not be used in the facility unless materials are flame resistant or have been treated with a fire retardant coating. The classification of fire retardant coatings shall apply only when the coating is applied at the rates of coverage and to the type or kind of surfaces indicated on the test report when the coating is applied in accordance with the manufacturer's directions supplied with the container. These coatings shall be applied in accordance with the manufacturer's direction. The applications shall be certified by the applicator as being in conformance with the manufacturer's direction for application. A flame test will be done on the material before being approved by the Fire Official. **WARNING!!! You are advised to contact the Daphne Fire Marshal for approval of decorations at least 2 weeks prior to your event. Decorations not meeting the Fire Marshal's**

approval will not be allowed in the facility. Lessee must present in writing to Lessor the approval from the Fire Marshal which will be kept on file.

FLOOR PLANS

SECTION VII:

A. The Lessee shall file with the Sales Office or Event Office at least fourteen (14) days prior to the occurrence of the event for which this agreement is issued, a full and detailed outline of all facilities required, stage requirements, table and chair set-up, and such other information as may be required by the Director for planning, staging and preparation for such event. The number of attendees is to be included on the Bayfront Park Pavilion Lease Agreement.

B. Occupancy Limits. Pursuant to City of Daphne Fire Department regulations:

Room	Square Ft.	Chairs/people	Chairs/Tables
The Sunset	4,500	290	210/21
The Jubilee	1,200	49	50/10

SECTION VIII: INSURANCE

A. By the acceptance of the lease agreement the Lessee covenants to indemnify, save and keep free and harmless the City of Daphne, its officers and employees, from and against any and all claims, demands, loss, liability, cost or expense of any kind or nature whatsoever which the City, its officers or employees, or any of them, may sustain or incur, or that may be imposed upon them, or any damages to property arising out of, connected with or attributable to the use and occupancy of the facility by Lessee. Lessee agrees to pay for any damage to the facility and for any damage to or loss of any City property resulting from the occupancy of said facility by Lessee or resulting from the conduct or actions of Lessee, its agents or employees, or any person, or person's participation in or attending the event during Lessee's occupancy.

B. Simultaneously with the acceptance of this lease and as a condition precedent to the effectiveness hereof, Lessee shall procure and maintain, in full force, and effect during Lessee's occupancy of the facility, and during the term of this permit, a policy of public liability and property damage insurance from a reliable insurance company authorized to transact business in the State of Alabama. The insurance company must have a minimum rating of A- in the current issue of the A. M. Best Manual. The Lessee, the City, and its officers and employees shall be named co-insured in said policy and the policy shall cover the insured's against whom claim is or may be, in the same manner as if separate policies had been issued to each. Said policy shall contain not less than the following limits of liability:

\$1,000,000.00 combined single limit per occurrence. (Bodily injury and property damage)

C. If the proposed use or occupancy by Lessee is such as to present a high degree of exposure to bodily injury or property damage, the Director may, in his/her discretion require higher limits of bodily injury and/or damage insurance.

D. The policy shall provide that the same shall not be cancelled prior to the termination of this lease until the Director shall have received a ten-day written notice of such proposed cancellation. Said policy shall provide that the insurance afforded thereby shall be primary insurance to the full limits of liability stated in the declarations, and if the City I its officers and employees have other insurance against a loss covered by said policy, that such other insurance shall be excess insurance only.

E. Lessee shall, coincidentally with the acceptance of this lease, deliver said policy of insurance, or certified photo static copy thereof, to the Director. Said policy shall be approved by the Director as to sufficiency.

F. The signed lease Agreement shall hold the City of Daphne and the Bayfront Park Pavilion harmless and indemnify them against any claims or liability arising or resulting from any injury to any visitor, spectator or participant in any activity in any part or portion of the Bayfront Park, regardless of entrance gained to said Bayfront Park Pavilion whether by paid admissions, by pass- issued by Lessee or Lessor or by any unlawful admission gained without knowledge of Lessor or Lessee. To indemnify Lessor as herein provided, Lessee shall carry public liability insurance with the coverage and the amount thereof to be

specified and approved by the Director of the Bayfront Park Pavilion with Lessee to furnish Lessor with a certificate of insurance or other satisfactory evidence of compliance with this requirement prior to commencement of Lessee's event. This insurance requirement may be waived depending on circumstances.

G. Upon approval of said policy, the same shall be filed with the Director or designee. After said policy has been so approved the Lessee shall file with the City a certificate of insurance issued by an insurance carrier certifying that the aforesaid insurance is in full force and effect and that all operations of the insured under the permit are covered thereby. In lieu of the presentation of the original policy, or of a certified photo static copy thereof, the Lessee may file a certificate of insurance to which is attached an endorsement in a form approved by the City Attorney. The endorsement shall provide that liability assumed by Lessee under this permit is covered by the policy, that the City, its officers, and employees, are named insured under said policy, and that in event of anyone of the insured's incurring liability to any other of the insured's, the policy shall cover the insured against whom claim is or may be made in the same manner as if separate policies have been issued to each, and that said insurance is primary insurance as set forth hereinabove. The endorsement shall also provide that the policy shall not be cancelled prior to the termination of the permit or until the Director shall have received a ten-day notice in writing of such proposed cancellation and that such endorsement controls over all other provisions of the policy, or endorsements thereto, which are inconsistent therewith. Lessee shall be responsible for all insurance deductibles.

H. Host Liquor Liability Insurance must be obtained in an amount not less than \$1,000,000 and the City of Daphne, Bayfront Park Pavilion must be listed as additionally insured on the policy. Proof of this policy must be presented to the sales office not less than fourteen (14) days prior of the event.

I. Proof of all policies applicable must be presented to the Bayfront Pavilion Sales Office not less than fourteen (14) days prior to event.

SECTION IX: INVENTORY

Facility inventory will not be loaned or permitted to be removed from the premises. These items include but are not limited to chairs, tables, podiums, audiovisual equipment, kitchen equipment, plants, decorations, or displays. The City of Daphne shall impose a fine of three hundred dollars (\$300.00) for each violation in addition to a charge for damage.

SECTION X: DEFACING OF PROPERTY

A. The Lessee will not injure, nor mar, nor in any manner deface said premises, and shall not cause or permit anything to be done whereby the said premises shall be in any manner injured, marred or defaced; and will not drive or permit to be driven nails, hooks, tacks or screws into any part of said building, and will not make, or allow to be made, any alterations of any kind therein. Glue hooks or tacky putty will not be permitted (contact Bayfront Pavilion Sales Assistant for suggestions).

B. No decorations shall be placed in or on the building, nor shall any devices or signs be supported by any means on wall or woodwork without the consent of the Sales Agent. Sets, scenery, exhibit material, et cetera, shall be of flameproof material and conform to the Fire Prevention code of the City of Daphne.

C. If said premises, or any portion of said building, during the term of the lease, shall be damaged by the act, default or negligence of the Lessee's agents, employees, patrons, guests or any person admitted to said premises by Lessee, or unlawful admission gained, LESSEE WILL PAY TO THE LESSOR UPON DEMAND SUCH SUM AS SHALL BE NECESSARY TO RESTORE SAID PREMISES TO THEIR ORIGINAL CONDITION. The Lessee hereby assumes full responsibility for the character, acts and conduct of all persons admitted to said premises, or to any portion of said building by the consent of the said Lessee, or by or with the consent of any person acting for or on behalf of said Lessee, and said Lessee agrees to have on hand at all times sufficient Police and Fire Personnel to maintain order and protect persons and property. Daphne Police and Fire Personnel will be provided at the expense of the Lessee. Fire Personnel to maintain order and protect persons and property. Daphne Police and fire Personnel will be provided at the expense of the Lessee. In addition, the City of Daphne's fine of three hundred dollars (\$300.00) for Damage/Defacing City Property will be imposed.

SECTION XI: TICKET OUTLET SALES/BOX OFFICE

A. The City of Daphne stipulates that all ticketed events will be handled through the Bayfront Park Pavilion Sales office unless otherwise stated by the Director. The basic Box Office charge will be 5% of all Gross Ticket Sales. Bayfront Park Pavilion Box Office sales and services are the exclusive right of Bayfront Park Pavilion.

B. The Bayfront Park Pavilion Ticket Office hours shall be 8:00 a.m. - 5:00 p.m., Monday through Friday.

C. All tickets must be sold at advertised prices and any deviation must be approved in writing by the Director.

D. All Moneys' collected for advance ticket sales must be paid in cash and are not be subject to 'draw' by the promoter until such time show time occurs, all specifications of the Bayfront Park Pavilion Lease Agreement have been met and all funds have been collected which exceed Bayfront Park Pavilion expenses therefore.

E. All tickets purchased must be paid for in cash. The Director shall notify the Lessee if other payment plans are permissible.

F. The Bayfront Park Pavilion management will deal only with the individual who negotiated the contract or their duly authorized representative's with regards to box office transactions, show settlement, and facility usage.

G. In the event of show cancellation, the Bayfront Park Pavilion Director reserves the right to determine the ticket refund procedures. Refunds will be made at the outlet location of purchase only.

H. Any deviation or changes to the stated regulations must be approved by the Director.

SECTION XII: POSTING BILLS

A. The Lessee will not post or exhibit, nor allow to be posted or exhibited, signs, advertisements, show bills, lithographs, posters or cards of any description, inside or in front of, or on any part of said building except upon the regular billboards provided by the Lessor therefore and will use, post or exhibit only such signs, advertisements, show bills, lithographs, posters or cards upon said billboards as relate to the performance or exhibit to be given in the demised premises. Amounts and contents of Lessee's display advertising materials at the Bayfront Park shall be at the discretion of the Director.

B. The Lessee shall take down and remove forthwith all signs, advertisements, show bills, lithographs, posters or cards of any description objected to by said Lessor, or its representatives.

SECTION XIII: PASSAGEWAYS

A. The Lessee will permit no chair or movable seat to be or remain in the passageways, and will keep said passageways clear at all times.

B. No portion of the sidewalks, entries, passage, vestibules, halls, stairways, or access to public utilities or said building shall be obstructed by the Lessee, or used for any purpose other than for ingress to and from the demised premises. The doors, stairways, or openings that reflect or admit light into any place in the building, including hallways, corridors, passages, also house-lighting attachments, shall not be covered or obstructed by the Lessee. The water closets or other water apparatus shall not be used for any purpose other than for which they were constructed, and no sweepings, rubbish, rags, papers or other substance shall be thrown therein. Any damage resulting to them from misuse of any nature or character whatever shall be paid for by the Lessee.

SECTION XIV: REMOVAL OF PROPERTY

A. All personal property, including rental items, brought into the Bayfront Pavilion for any event must be dismantled and removed immediately following the event unless pre-approved by the Director. Any personal property not removed shall become the property of the City of Daphne. The City of Daphne will hold all lost and found items for seven (7) days following the event. Thereafter, the City reserves the right to dispose of all unclaimed items. City of Daphne, Bayfront Pavilion employees will be held harmless for any property approved by the Director to be left in the building or in Bayfront Park Pavilion. Approval must be made at least fourteen (14) working days prior to start of event. No exceptions will be made.

B. Bayfront Park Pavilion employees, workers, volunteers, or any representative of the Bayfront Park Pavilion cannot assist in the load-in, event set-up and/or load-out of any personal event or handle any personal property.

C. The Lessor shall have the sole right to collect and have the custody of articles left in the building by persons attending any performance, exhibition or entertainment given or held in the demised premises, and the Lessee, or any person in Lessee's employ shall not collect nor interfere with the collection or custody of such article.

D. The Lessor reserves the right to remove from the building all effects remaining in building after time specified at the expense of the Lessee or to charge the daily rental as shown on the current Bayfront Park rate sheet for the area in which the effects have been left or stored.

SECTION XV: BUILDING DEPARTURE

Lessee shall agree that the music would be stopped, all bars must be closed and the building must be cleared at the ending time stated on the contract. If the Lessee goes over stated time on contract the Lessee will be charged with additional rental that must be paid at the time that the function goes over the ending time as is stated on the contract.

SECTION XVI: WAIVED FEES

All requests for waived fees must be sent in writing and addressed to the Director. The Director will forward all requests to the Mayor.

SECTION XVII: RENTAL FEES

A. Bayfront Park Rental Fees and hourly rates shall start as listed below:

Entire Facility:	\$475.00 (This reserves sections of the parking area)
The Sunset	\$300.00
The Jubilee	\$150.00
The Kitchen	\$40.00
Cleaning	200.00 (Optional)

B. In addition to the base rental fees the following hourly rates shall apply: \$15.00 per hour for each hour of usage with a minimum of 4 hours required and \$50.00 per hour of usage for all holidays and City holidays. The Director shall maintain an updated list of rental items which is to be treated as part of this Ordinance's fee schedule.

C. Lease rates for the Bayfront Park Pavilion are based on the prevailing rates as set forth in this Ordinance. In addition to the base rental fees, depending on each events setup and needs to have a successful event, an additional labor fee may be required. This fee is at the discretion of the Bayfront Pavilion Director and will be presented to lessee prior to the execution of Bayfront Pavilion contract.

D. The City shall apply rental proceeds to the operating requirements of the facility.

E. Lessee shall not split rental hours.

F. Lessee shall pay a \$150.00 refundable damage deposit. The damage deposit will be refunded after the facility is inspected by Bayfront Park Pavilion personnel and no damage is found. Any additional damage charges over \$150.00 will be charged to the lessee.

G. If children are present during event, they must be supervised at all times and for safety/security reasons, should remain with parents or guardians. Children will not be allowed in any non-rental or off-limit areas. Any damaged or broken items caused from lack of supervision will be the Lessee's responsibility.

SECTION XVIII: CANCELLATIONS

Cancellations must be in writing, dated and signed by the Lessee. Reimbursements for cancelled events will be refunded as follows: 75% refund for cancellations received at least 9 months prior to the day of start of event; 50% refund for cancellations received at least 6 months prior to the day of start of event; no refunds will be made for cancellations received under 6 months prior to the day of start of event. Any exceptions to this rule must be approved by the Buildings and Property committee. **Should Bayfront Pavilion be able to book another event of equal or greater economic value, then 100% refund will be issued. Refunds will be issued by check.

SECTION XIX: CLEANING FEES

Cleaning fees will be waived if and only if lessee does own cleanup – Bayfront will provide all necessary cleaning supplies and check list as reference. Should lessee choose to forgo this option, then the \$200.00 is mandatory.

SECTION XX: SECURITY (FIRE/POLICE)

A. The City of Daphne Police Department and Fire Department reserve the right to determine the appropriate amount of security and fire protection needed for any and all events held at the Bayfront Park. The Lessee shall provide security and/or fire protection if it is determined necessary for any event. If security and/or fire protection is required, it must be obtained through the City of Daphne Police Department and the City of Daphne Fire Department no later than fourteen (14) days prior to an event. If the Lessee fails to provide the required security or fire protection if required, a fine of \$300.00 shall be imposed and the relation of the landlord and tenant at the option of Lessor, shall cease and terminate and the relation of the parties shall be the same in all respects as if said term had fully expired, and the said Lessor may re-enter the said premises and hold the same as of its former estate therein, remove all persons there from and resort to any legal proceedings to obtain such possession.

B. The Lessor reserves the right through its Director or his/her representatives to eject any objectionable person or persons from said building, and upon the exercise of this authority through its Director, agents or policemen, the Lessee hereby waives any rights and all claims for damages against the Management.

C. The Lessee shall not, without written consent of the Lessor, put up or operate any engine or motor machinery on the demised premises, or use oils, burning fluids, camphene, kerosene, naphtha, or gasoline for either mechanical or other purposes or any other agent than natural gas or electricity for illuminating the demised premises.

D. Should an event require security, then Lessee shall comply with Ala. Code § 6-5-338 (1975) by the purchasing of general liability insurance in the amount of \$100,000.00 per off-duty officer.

SECTION XXI: ALCOHOL/BEVERAGE

A. Consumption of alcohol will be allowed inside the facility only during the time of function. No Alcohol/beverages shall be allowed on the dance floor. Consumption of alcohol is not allowed in the parking lot or on the grounds of the facility. **The City of Daphne is not liable for accidents, deaths, or injuries that may occur as a result of the consumption of alcohol.**

B. The Lessee shall be fined three hundred dollars (\$300.00) by the City of Daphne for violation by Lessee, Lessee's agents, employees, patrons, guests, or any person admitted to said premises by Lessee per occurrence.

C. No Alcohol shall be "SOLD" on the grounds or inside of the Bayfront Pavilion without proper permits or license.

D. Alcohol shall not be served or sold to anyone under 21 years of age.

E. Appropriate police action will be taken against any person deemed to be intoxicated and posing a danger to himself or others.

F. Distribution of alcohol is to be made in one of the following forms:

- a. Alcohol and/or all mixers may be brought by attendees and checked at the door where a bartender (hired by Lessee) will distribute alcohol for the duration of the event. Said bartender must be 21 years of age or older and must possess any and all then applicable licensing pursuant to local, state, and federal law.
- b. An event may contract with a licensed caterer for said event to set up cash bar or distribute alcohol. A licensed caterer is one that has purchased the requisite host liquor liability insurance, a City of Daphne business license, and attained all requisite alcohol licensing.

G. Should an event have alcohol, host liquor liability insurance in a minimum amount of \$1,000,000.00 must be purchased. All insurance certificates and proof of requisite licensing must be on file at least 14 days prior to the event.

H. A list of bartenders and/or caterers possessing additional voluntary certifications(s), provided through alcoholic beverage distributors for the serving of alcoholic beverages, may be provided by the Bayfront Pavilion Director upon request.

SECTION XXII: SMOKING

ALL CITY OF DAPHNE BUILDINGS ARE SMOKE FREE 20 feet from any and all entrances. There will be no smoking in the Bayfront Pavilion. A fine of three hundred dollars (\$300.00) shall be imposed per occurrence by the City of Daphne. A three hundred dollar (\$300.00) cleaning fine shall be imposed on the Lessee if smoking has occurred in the Bayfront Pavilion. No smoking on the deck, all fire must be 30 feet from the building.

SECTION XXIII: PETS

No pets allowed inside the facility other than those for the express use by disabled persons, or by permission of the Bayfront Pavilion Director.

SECTION XXIV: BUILDING ACCESS

The City will provide reasonable access according to the Americans with Disabilities Act.

SECTION XXV: THEFT

The City of Daphne is not responsible for theft of property on the grounds of the Daphne Bayfront Pavilion, in automobiles, in the facility or any other structure on the property.

SECTION XXVI: HEAVY METAL/RAP/ALTERNATIVE CONCERTS

A. The City of Daphne has set forth the following guidelines to establish rules and regulations for Heavy Metal, Rap, and Alternative concerts in effort to provide a safe and enjoyable concert experience for attendees.

B. The Daphne City Council must approve all heavy metal, rap, and alternative concerts prior to the concert booking. The Buildings and Property Committee will determine if a concert is Alternative. The following are necessary:

1. Names of all artists to appear must be provided to the Bayfront Pavilion Director.
2. Date of the event and ticket information must be provided to the Bayfront Pavilion Director.
3. A letter stating that approved security and fire arrangements have been made for the concert from the Daphne Police Department and Daphne Fire Department must be presented to the Bayfront Pavilion Director. All special effects must be approved by the Fire Marshal and a letter stating this information must be provided to the Director.
4. A letter of approval must be obtained from the Bayfront Pavilion Director and presented to the Buildings and Property Committee along with the above listed documentation. The Buildings and Property Committee will make recommendation to the full City Council. The Bayfront Pavilion Director shall provide the Council's approval or disapproval to the proposed Lessee.
5. A security bond or deposit may be required for potential damages. If required, the bond or deposit must be presented to the Director no later than thirty (30) days prior to the event.
6. A five hundred-dollar cleaning fee may be required.
7. The promoter must obtain a public liability and property damage policy in an amount not less than \$1,000,000.00. The policy must be written by an insurance company licensed to do business in the State of Alabama and having a minimum rating of A- in the current issue of the A. M. Best Manual. The policy must name the City of Daphne and the Bayfront ~~Park~~ Pavilion as additional insured. This certificate must be presented to the Director at least thirty (30) days prior to the scheduled concert.

8. If required by the State of Alabama, promoter must obtain Liquor Liability Insurance in an amount not less than \$1,000,000 and list the City of Daphne, Bayfront Pavilion as additional insured on the policy. Proof of this policy must be presented to the sales office not less than one week prior of the event.

9. House lights are not allowed to go dark. A minimum of 20% of house lights must be on at all times.

10. An addendum may be required to the contract if any of the performing acts have a history of performing songs or making statements that are considered by the Daphne City Council to incite or provoke violence by the audience.

11. Other rules and regulations as deemed necessary by the Director, Buildings and Property Committee, or Daphne City Council may apply.

SECTION XXVII: SOUND EQUIPMENT

A. The Lessor shall not be responsible for any damage or injury that may occur from the result of sound, lighting, or electrical equipment being utilized by the Lessee, Lessee's agent, employees, or guest from any cause whatsoever, prior, during, or subsequent to the period covered by the lease and the said Lessee will release said Lessor from, and agrees to indemnify it against any and all claims for such Joss, damage, or injury.

B. Any damage to the City of Daphne, Bayfront Pavilion sound, lighting, or electrical equipment shall be at the expense of the Lessee when Lessee utilizes said equipment or services. Bayfront Park personnel, The City of Daphne, Daphne Police Department, or any authorized City Employee can request that the Lessee, or their agents, desist from utilizing City Property at any time.

C. The Bayfront Pavilion must be notified of all sound requirements at least fourteen (14) days prior to the event.

D. The City of Daphne shall provide the following fee waivers with no others to be considered in Committee meetings or City Council meetings. **All bookings are on a first come first serve basis.**

SECTION XXVIII: FEE WAIVERS

A. The City of Daphne shall provide the following fee waivers with no others to be considered in Committee meetings or City Council meetings. All bookings are on a first come first serve basis.

1. BAYFRONT PAVILION REDUCED RATE PROGRAM MONDAY, TUESDAY & WEDNESDAY

(a) This program will apply to all with the following exceptions. This program excludes paid concerts, all for profit events, Mardi Gras balls/meetings and fund raising events. These events will pay full fare. AU rental items remain the same. The reduced rate will consist of half rate for the base rental fee. The cleaning fee will remain the same. The booking includes four (4) hours of usage and must be between the hours of 7:00 a.m. - 5:00 p.m. Any usage over four (4) hours and any hours used after 5:00 p.m. will be charged an additional \$15.00 per hour. If requested, the City of Daphne, Bayfront Pavilion shall be listed as a Sponsor of the event. Any Monday,

Tuesday, or Wednesday that is a holiday or city holiday will be charged all regular holiday rates. All bookings remain on a first come first serve basis. This program is not to be used for continued bookings. The City of Daphne reserves the right to deny any group or organization usage of these provisions.

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2. BAYFRONT PAVILION REDUCED RATE PROGRAM (CIVIC GROUPS AND NOT FOR PROFITS -501-C3 MONDAY, TUESDAY & WEDNESDAY)

(a) This program will apply to all civic groups that are not for profit and have a 501-C3 status. Proof of this status is required. This program excludes paid concerts, all for profit events, and fund raising events. These events will pay full fare. All rental items remain the same. The reduced rate will consist of a waived base fee, full rate on cleaning fees, and a \$15.00 per hour charge. Any Monday, Tuesday, or Wednesday booking that is a holiday or city holiday will be charged all regular holiday rates. If requested, the City of Daphne, Daphne Bayfront Pavilion shall be listed as a Sponsor of the event. All bookings remain on a first come first serve basis. This program is not to be used for continued bookings. The City of Daphne reserves the right to deny any group, or organization usage of these provisions. All groups utilizing this reduced rate program must use the facility between 8:00 a.m. to 10:00 p.m. All groups that have not left the facility by 10:00 p.m. will be charged all regular rates.

3. CITY OF DAPHNE DEPARTMENTS FOR CONDUCTING CITY BUSINESS.

(a) The City of Daphne encourages all City Departments to utilize the Bayfront Pavilion for your entire department booking needs. For tracking purposes all City departments must estimate their projected bookings for the Bayfront Pavilion and budget all fees, rental items, cleaning fees, and per hour charges needed at regular rates for their facility functions. The department may submit in writing to the Director a request to wave base rental fees only. The decision will be based on the criteria for event, time of day and year and day of week. The approval of this request will be at the discretion of the Director and Mayor. Invoices for usage will be routed from the Bayfront Pavilion to the Finance Department for journal entry after each event. The Finance Department will notify the Bayfront Pavilion sales office when the journal entry is complete to make report to the Buildings and Property Committee at the monthly meeting.

4. CITY EMPLOYEES FOR PERSONAL BUSINESS

(a) Current and in good standing City of Daphne employees will be entitled to a 20% discount off of base rental rates only for events that the employee is hosting. This discount is not applicable for family or friends, only the employee him/herself. All rules, guidelines and all other fees of this ordinance apply. The employee must make a request in writing which should include type of event, day and time. The approval of this request will be at the discretion of the Director and/or Mayor. Should for any reason the employee violate the guidelines mentioned above, said employee will not be entitled to this benefit in the future and will be responsible for full base rental rate which will be deducted from damage fee or billed with additional damage fee.

SECTION XXIX: BOOKING POLICY - ALL OTHER GROUPS

If an organization or group desires to book the same date continually, year after year, such organizations must submit a letter to the Director making such request listing the exact dates and years that the organization is requesting and all facility needs. All base fees must be paid in advance for the first two consecutive years. At the end of the second year a new request must be made in writing and delivered to the sales department of the Bayfront Pavilion no later than 7 days after the second year event for the following two years, along with the fees for the next two years. Future bookings will also be secured using the same guidelines. All bookings are on a first come first serve basis.

SECTION XXX: PENALTY

A. Any person found guilty of violating any provision of this Ordinance shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00), or by imprisonment for a period not exceeding six (6) months, or both, at the discretion of the Municipal Judge.

B. This Ordinance shall also be subject to enforcement by the issuance of a summons and complaint.

SECTION XXXI: REPEALER

Ordinances Nos. 2004-21 and 2010-50 are hereby repealed in their entirety. All other City Ordinances or parts thereof in conflict with the provision of this Ordinance, in so far as they conflict, are hereby repealed.

SECTION XXXII: SEVERABILITY

The provisions of this Ordinance are severable. If any provision, section, paragraph, sentence or part thereof shall be held unconstitutional or invalid, such decision shall not affect or impair the remainder of the Ordinance, it being the legislative intent to ordain and enact each provision, section, paragraph, sentence and part thereof separately and independently of each other.

SECTION XXXIII: EFFECTIVE DATE

This Ordinance shall become effective and be in force from and after the date of its approval and adoption by the City Council of Daphne and publication as required by law.

ADOPTED AND APPROVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA, this the ____ day of _____ 2011.

**Cathy S. Barnette,
Council President**

**Fred Small,
Mayor**

ATTEST:

David Cohen, City Clerk, MMC

ORDINANCE 2011-10

**Sehoy Sub Division-Claiborne Circle Drainage Project:
Additional Funding**

WHEREAS, Ordinance 2010-71 approved and adopted the Fiscal Year 2011 Budget on December 20, 2010; and

WHEREAS, subsequent to the adoption of the Fiscal Year 2011 budget, the City Council has determined that certain appropriations are required and should be approved and made a part of the Fiscal Year 2011 budget; and

WHEREAS, Ordinance 2010-64 did heretofore appropriate \$ 60,098 for the completion of the Claiborne Circle Drainage Project; and

WHEREAS, bids were let and the total project cost, including engineering, is \$64,136.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Daphne, Alabama, that an additional appropriation in the amount of \$ 4,038 (\$64,136-\$60,098) from the General Fund is hereby approved for drainage improvements at Claiborne Circle.

APPROVED AND ADOPTED by the Mayor and City Council of the City of Daphne, Alabama, this _____ day of _____, 2011.

Cathy S. Barnette, Council President

Fred Small, Mayor

ATTEST:

David L. Cohen,
City Clerk MMC

CITY OF DAPHNE, ALABAMA

ORDINANCE 2011-11

MANDATORY RECYCLING ALL MUNICIPAL BUILDINGS

WHEREAS, the Mayor and City Council of the City of Daphne requires that each City of Daphne Municipal Building Directors put a recycling program together for their department with the assistance of the City of Daphne Solid Waste Coordinator; and

WHEREAS, diverting waste generated from residential and commercial facilities is essential to assist the efforts of our city's recycling program to maintain the State mandated waste diversion rate; and

WHEREAS, mandating the municipal facilities of the City of Daphne will help the City of Daphne exceed the State mandated waste diversion rate; and

WHEREAS, the Mayor and City Council of the City of Daphne intends through this Ordinance to further the diversion goals through mandatory recycling for all municipal and city owned buildings; and

WHEREAS, the Mayor and the City Council of the City of Daphne intends to utilize its resources to stay in compliance with the State of Alabama 25% diversion rate and exceed our short term goal of 200 tons of recyclable materials per month.

This Ordinance shall take effect and be in force on **March 1, 2011** after the date of its approval by the City Council of the City of Daphne and after publication as required by law.

ADOPTED AND APPROVED by the City Council of the City of Daphne, Alabama this ____ day of _____, 2011.

Cathy S. Barnette,
Council President

Fred Small,
Mayor

ATTEST:

David L. Cohen,
City Clerk, MMC