

**CITY OF DAPHNE
CITY COUNCIL BUSINESS MEETING AGENDA
CITY HALL COUNCIL CHAMBERS
AUGUST 1, 2005**

1. CALL TO ORDER

2. ROLL CALL/INVOCATION:

PLEDGE OF ALLEGIANCE:

3. APPROVE MINUTES: July 18, 2005

PRESENTATION: FY 2004 Audit / Jeff Allen

PRESENTATION: Metro Cable, Inc / Bob Bennett

PRESENTATION: Eagle Scout Project at Gator Alley / Paul Siegel

PUBLIC HEARING: Eastern Shore Park Overlay District

PUBLIC HEARING: Application for LWCF or Recreational Trails Grant

4. REPORT STANDING COMMITTEES:

A. FINANCE COMMITTEE - Scott

Review minutes Special Meeting held July 18th

B. BUILDINGS AND PROPERTY COMMITTEE- Lake

C. PUBLIC SAFETY - Burnam

Review minutes Board of Adjustment & Appeals/fire Code held April 13th

Review minutes Board of Adjustment & Appeals/Fire Code held May 18th

D. CODE ENFORCEMENT/ORDINANCE COMMITTEE – Landry

E. PUBLIC WORKS COMMITTEE / SOLID WASTE AUTHORITY – Yelding

Review minutes meeting held July 22nd

5. REPORTS OF SPECIAL BOARDS & COMMISSIONS:

A. Board of Zoning Adjustments – Eady

B. Downtown Redevelopment Authority -Barnette

C. Industrial Development Board – Yelding

D. Library Board - Lake

E. Planning Commission – Barnette

F. Recreation Board - Burnam

G. Utility Board - Scott

6. REPORTS OF THE OFFICERS:

A. *Mayors Report*

a.) *Ordinance 2005-38 / Fiber Optics Franchise / Southern Lights LLC*

B. *City Attorney's Report*

C. *Department Head Comments*

7. PUBLIC PARTICIPATION:

8. RESOLUTIONS & ORDINANCES:

RESOLUTIONS:

- a.) Installation of a Traffic Control signal at US Hwy 181 and Eastern Shore Park Main Site Access Intersection. /Resolution 2005-58
- b.) Authorize Mayor to Enter into an Agreement for the Cooperative Maintenance of Public right-of-Way with the Alabama Department of Transportation. /Resolution 2005-59

ORDINANCES:

- a.) Annexation / Crystal Springs, LLC / Property Located at the NW AL Hwy 181 Corner of Intersection US Hwy 90 and Hwy 181 2nd READ. /Ordinance 2005-15
- b.) Ordinance to Correct Certain Scrivener’s Errors in Ordinance Numbers: 2003-12 and 2003-32, and to Amend Ordinance Number 2004-43 to Include Repealer 2nd READ. /Ordinance 2005-30
- c.) Abatement Ordinance / Repeals 2004-15 2ND READ. /Ordinance 2005-31
- d.) Restricting the Use of Funds: \$1,000,000,000 De-Annexation Proceeds 2ND READ /Ordinance 2005-32
- e.) Appropriating Funds: Site Containment Inspector 2ND READ /Ordinance 2005-34
- f.) Appropriating Funds: Community Action 2ND READ /Ordinance 2005-35
- g.) Granting a Non-Exclusive Franchise to Southern Light, LLC For the Purpose of Constructing and Maintaining a Fiber-Optic Transmission Line within Certain Public Rights-of-Way Within the City of Daphne, AL & Franchise Agreement. /Ordinance 2005-37
- h.) Amending the Land Use Ordinance / Establishing the Eastern Shore Park Overlay District. /Ordinance 2005-38

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__ _

COUNCILWOMAN LANDRY

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

1. CALL TO ORDER

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

2. ROLL CALL/INVOCATION/PLEDGE OF ALLEGIANCE

Mr. Eady gave the invocation.

COUNCIL MEMBERS PRESENT: Bailey Yelding; Cathy Barnette; John Lake; Greg Burnam arrived at 6:37 p.m.; Ron Scott; Regina Landry; August Palumbo.

Also present: Mayor Small; David Cohen, City Clerk; Rebecca Hayes, Assistant City Clerk; Tim Fleming, Attorney; Bill Eady, Planning Department Director; Ken Eslava, Public Works Director; David McKelroy, Recreation Director; Kim Briley, Finance Director; Mund Hanson, Fire Chief; David Carpenter, Police Chief; Sandra Morse, Civic Center Director; Ronnie Phillips, Building Inspection Director; Dale Foster, Librarian; Sharon Cureton, Human Resource Director; Scott Hutchinson, City Engineer; John Coulter, IDB, Planning Commission; Willie Robison, BZA;

3. APPROVE MINUTES:

**MOTION BY Mr. Yelding to approve the minutes meeting held July 5, 2005.
Seconded by Mrs.. Landry.**

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

PRESENTATION: 2004 Jubilee Girls Court

The 2004 Jubilee Girls Court said farewell to the Mayor and Council, and thanked them for their support, and presented them with their portrait.

PRESENTATION: Alabama Coastal Foundation / Mr. David Yeager with Mobile Bay National Estuary Program

Mr. Yeager announced to the Council a training seminar being held August 23, 24, and 25, 2005 for elected officials and Utilities regarding Waste Water and Waste Water Management. He stated that they can get Continuing Education credits for attending the course. He mentioned they could register on line.

4. REPORT OF STANDING COMMITTEES:

A. FINANCE COMMITTEE – Scott

a.) Treasurers Report

MOTION BY Mr. Scott to accept the Treasurers Report as of June 2005 with a balance of \$11,293,676.15. Seconded by Mr. Yelding.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

b.) Sales & Use Tax

Mr. Scott said that they adjusted the budget some time ago and increased it some 8% above what they had originally budgeted, and even with that the collection continues to exceed the revised budget for the month of May. In the month of May \$867,445.44 had been collected, which was \$64,379 above what was budgeted, and in comparison to 2004 it is up over \$100,000. Lodging Tax continues to show a strong increase over last year, for the month of May \$42,479.97 was collected, and year to date \$347,094.79, which is \$77,777 more than was collected for all of last year, and there is still four (4) months to go in the fiscal year.

B. BUILDINGS AND PROPERTY COMMITTEE – Lake

No report.

C. PLANNING/ZONING/CODE ENFORCEMENT – Barnette

No report. Mrs. Barnette suggested that the code Enforcement part of the committee should go to the Ordinance Committee, since the Planning/Zoning/Code Enforcement does not exist, and Code Enforcement and Ordinance seem to go nicely together.

MOTION BY Mrs. Barnette to suspend the rules to consider a motion to separate the Planning/Zoning/Code Enforcement Committee and combine Code Enforcement with the Ordinance Committee. Seconded by Mr. Scott.

ROLL CALL VOTE

Yelding	Aye	Landry	Aye
Barnette	Aye	Palumbo	Aye
Lake	Aye	Burnam	Aye
Scott	Aye		

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Mrs. Barnette to eradicate the Planning/Zoning part of the Planning/Zoning//Code Enforcement Committee and to combine Code Enforcement with the Ordinance Committee to become Code Enforcement/Ordinance Committee. Seconded by Mr. Scott.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

D. PUBLIC SAFETY – Burnam

The minutes for the July 5th meeting are in the packet, and no Council action is needed.

E. ORDINANCE COMMITTEE – Landry

The minutes are in the packet from the July 5th meeting Council action is needed. The next meeting will be August 2nd. There are two (2) Ordinances that the Council will consider at the end of the meeting.

F. PUBLIC WORKS COMMITTEE/SOLID WASTE AUTHORITY – Yelding

Mr. Yelding stated that they are trying to establish an Erosion Authority, which the Mayor and City Attorney are checking into. The Committee is also looking into storm water run-off. The next meeting will be July 22nd at 8:00 at the Public Works building.

5. REPORTS OF SPECIAL BOARDS & COMMISSIONS:

A. Board of Zoning Adjustments – Eady

There will be a meeting August 4th 6:00 p.m. in the Council Chambers with one (1) appeal.

B. Downtown Redevelopment Authority – Barnette

There will be a meeting tomorrow at 5:15 p.m. in the Executive Chambers.

C. Industrial Development Board – Yelding

The next meeting will be July 25th in the Executive Council Chambers.

D. Library Board – Lake

The next meeting will be August 8th 4:30 p.m. in the Library.

E. Planning Commission – Barnette

The minutes for the June 23rd and June 30th meeting are in the packet. Mrs. Barnette reported that Mr. Ken Day had resigned from the Planning Commission for personal and professional reasons. She said that Mr. Bob Segalla is now the Chairman, Mr. West is the Vice Chairman, and Mr. Chason is still the Secretary. The Site Review meeting is Wednesday 9:00 a.m. in the Council Chambers, and next Thursday, July 28th is the Planning Commission meeting. Mrs. Barnette stated that this Thursday is the High Density Committee meeting at 3:30 p.m. in the Council Chambers, and the Aronov Committee has information for the August 4th meeting.

F. Recreation Board – Burnam

No report.

G. Utility Board – Scott

The next meeting is July 27th. Mr. Scott introduced the new General Manager of the Utilities, Mr. Rob McElroy.

6. REPORTS OF THE OFFICERS:

A. Mayor's Report

a.) *Parade Permit / Baldwin County Bar Association Annual 5K Run*

MOTION BY Mrs. Landry to approve the Parade Permit for the Baldwin County Bar Association Annual 5K Run for September 10, 2005. Seconded by Mrs. Barnette.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

b.) Resolution 2005-57 / Disaster Relief Act

MOTION BY Mr. Lake to suspend the rules to consider Resolution 2005-57. Seconded by Mrs. Landry.

ROLL CALL VOTE

Yelding	Aye	Landry	Aye
Barnette	Aye	Palumbo	Aye
Lake	Aye	Burnam	Aye
Scott	Aye		

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Mr. Lake to waive the reading of Resolution 2005-57. Seconded by Mrs. Landry.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Mr. Lake to adopt Resolution 2005-57. Seconded by Mrs. Barnette.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

c.) Ordinance 2005-36 / Appropriating Funds: Deputy Planning Director

MOTION BY Mr. Lake to suspend the rules to consider Ordinance 2005-36. Seconded by Mrs. Landry.

ROLL CALL VOTE

Yelding	Aye	Landry	Aye
Barnette	Aye	Palumbo	Aye
Lake	Aye	Burnam	Aye
Scott	Aye		

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Mr. Lake to waive the reading of Ordinance 2005-36. Seconded by Mr. Scott.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Mr. Lake to adopt Ordinance 2005-36. Seconded by Mr. Yelding.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

Mayor Small reported that it was mentioned on CNN that Daphne is in the top 100 list of best places to live in the United States. Daphne was rated number 96.

B. City Attorney's Report

No report.

C. Department Head Comments

Mund Hanson – Fire Chief – commented that Daphne dodged the bullet again with hurricane Dennis. He thanked everyone for working as a team during the storm. He said they did not receive any emergency calls during the storm.

David Carpenter – Police Chief – said there was some confusion during the storm regarding the curfew, but the curfew came in handy because of the mandatory evacuation order, it made it easier to protect homes and businesses.

David McKelroy – Recreation Director - reported that soccer camp has started with 100 14 year olds and below. They have two (2) coaches from Great Britain. He said that both the 13 year and 14 year olds

Dixie Boys won their district, and they will be participating in the State Tournament starting Friday in Selma.

Kim Briley – Finance Director – said that they skipped a motion under the Finance report to restructure the Court Department.

Council President Burnam said that they will consider that after Department Head Comments.

Ken Eslava – Public Works Director – reported that the city did something unique during this hurricane, in that, along with the Emergency Management Agency they opened Daphne East as a shelter. He thanked everyone for their help in this undertaking.

Mr. Eady – Planning Director – thanked the Mayor and Council for approving the Deputy Planning Director Ordinance.

Mr. Scott and Mrs. Landry reported that the Finance Committee had received a request from the Court Department to eliminate the Court Administrative Technician position and a second Magistrate position be created for a total annual cost increase of \$2,525. This request came from Judge Doyle’s office.

MOTION BY Mrs. Landry to authorize the restructuring of the Court Department eliminating the Court Administrative Technician position and creating a second Magistrate position. Seconded by Mr. Scott.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

7. PUBLIC PARTICIPATION

Mr. Tom Hess – Daphne – spoke regarding drainage on hole 9 of the Lake Forest Golf Course.

Mrs. Sherry Weller – Daphne – spoke regarding the School Feasibility Study.

8. RESOLUTIONS, ORDINANCES, ORDERS AND OTHER BUSINESS

RESOLUTIONS

- a.) Prepaid Travel / David Cohen / Rebecca Hayes / Ha Le Riggo. . . . /Resolution 2005-54
- b.) Bid Award / Uniforms / Zoghby’s Uniforms. /Resolution 2005-55
- c.) AIG Baker Development Agreement / Third Amendment
and Supplement. /Resolution 2005-56
- d.) Disaster Relief Act Application. /Resolution 2005-57

MOTION BY Mr. Lake to waive the reading of Resolutions 2005-54, 2005-55 and 2005-56.
Seconded by Mrs. Landry.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Mr. Lake to adopt Resolutions 2005-54, 2005-55 and 2005-56.
Seconded by Mr. Yelding.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

Resolution 2005-57 was adopted earlier in the meeting.

ORDINANCES

- a.) Ordinance to Correct Certain Scrivener's Errors in Ordinance Numbers:
2003-12 and 2003-32, and to Amend Ordinance Number 2004-43
to Include Repealer. /Ordinance 2005-30
- b.) Abatement Ordinance / Repeals 2004-15. /Ordinance 2005-31
- c.) Restricting the Use of Funds: \$1,000,000,000 De-Annexation
Proceeds. /Ordinance 2005-32
- d.) Appropriating Funds: School Feasibility Study /Ordinance 2005-33
- e.) Appropriating Funds: Site Containment Inspector. /Ordinance 2005-34
- f.) Appropriating Funds: Community Action /Ordinance 2005-35
- g.) Appropriating Funds: Deputy Planning Director /Ordinance 2005-36

JULY 18, 2005
CITY OF DAPHNE, AL
CITY COUNCIL MEETING
CITY COUNCIL CHAMBERS
6:30 PM

9. ADJOURN

MOTION BY Mr. Lake to adjourn. *Seconded by Mrs. Barnette.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

THERE BEING NO FURTHER BUSINESS TO DISCUSS, THE MEETING ADJOURNED AT 7:24 P.M.

Respectfully submitted by,

David L. Cohen, City Clerk, MMC

Certification of Presiding Officer:

Greg Burnam

Date & Time Signed: _____

**Eagle Scout Project
Paul Siegel
Troop 7**

Project summary

The area of interest is the Gator Ally boardwalk and sidewalk area. Ideas for additions to the area are as follows:

- (1) a corner bench for people to rest and watch for alligators**
- (2) a bench as soon as the concrete sidewalk starts**
- (3) informational sign on the history of the area (D'Olive family etc.)**
- (4) informational sign on turtles found in the area**
- (5) a bench overlooking the bay**
- (6) informational sign on alligators found in the area**
- (7) picnic table**
- (8) informational sign on the history of the causeway.**

I would also look into cleaning the area of weeds and doing some minimal landscaping to keep the area looking good. This project could later be continued by future scouts and/or community groups.

I feel these improvements would enhance the area and attract more people to take in the beauty of Baldwin county. Thank you for your time and consideration.

Paul Siegel

A handwritten signature in black ink that reads "Paul Siegel". The signature is written in a cursive style with a large, looping initial "P".

AUGUST 1, 2005

CITY COUNCIL MEETING

PUBLIC HEARING:

- 1. Eastern Shore Park Overlay District**

To: Office of the City Clerk
From: William H. Eady, Sr.,
Director of Community
Development
Subject: Overlay District Agreement
proposed by Frank Johnston of
Aronov
Date: June 24, 2005

MEMORANDUM

At the regular meeting of the City of Daphne Planning Commission, June 23, 2005, nine members were present and the vote was unanimous for the affirmative recommendation of the above-mentioned overlay district agreement.

Upon receipt of said documentation, please place on the agenda for action by the City Council on July 5, 2005.

If you should have any questions, please do not hesitate to contact the undersigned.

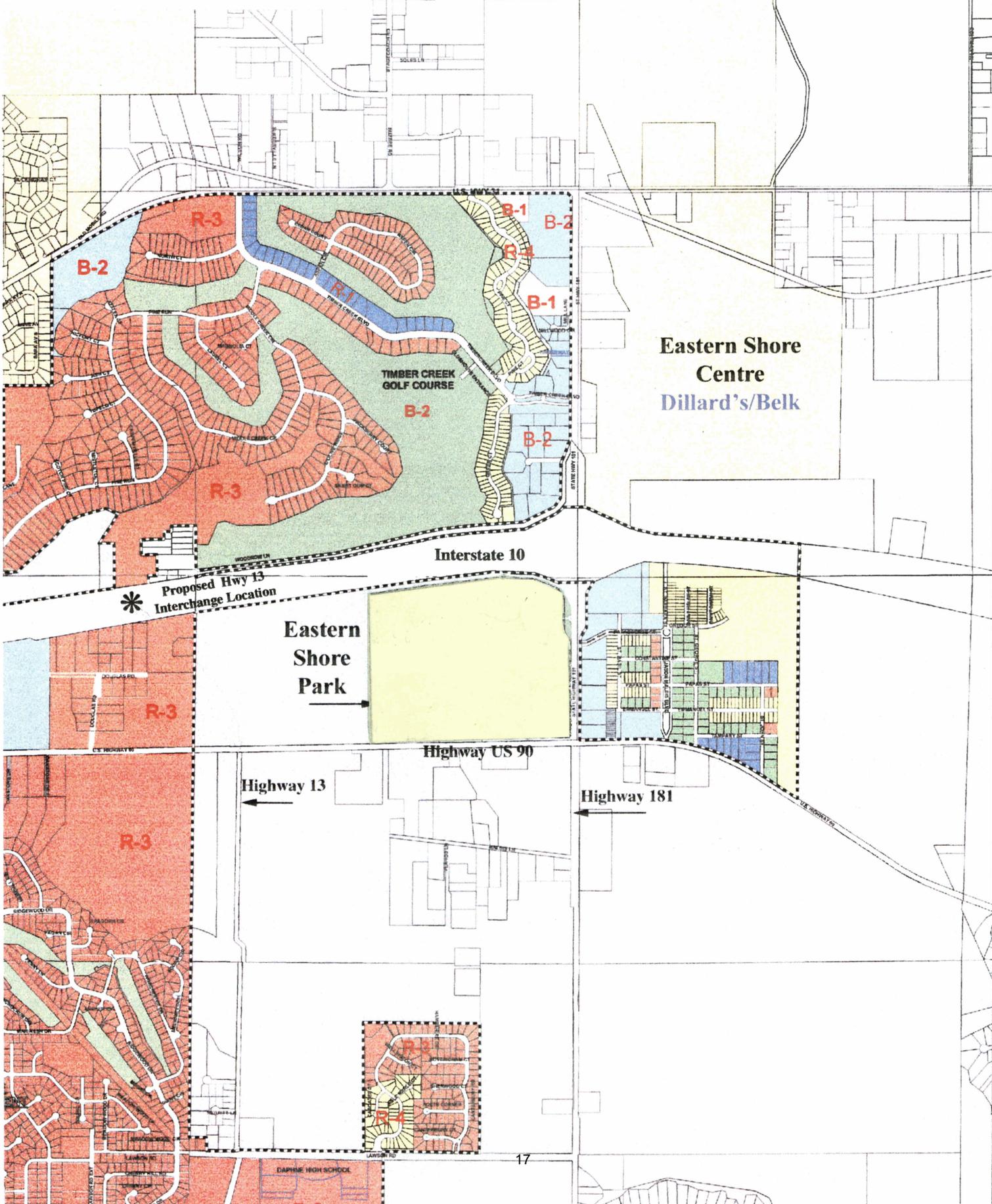
Thank you,

WHE/jd

cc: Mayor Small
file

Supporting documentation to follow via email from Jay Ross,
City Attorney.

ZONING MAP



**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

**CITY OF DAPHNE
SPECIAL FINANCE COMMITTEE MINUTES
JULY 18, 2005
6:00 P.M.**

I. CALL TO ORDER/ROLL CALL

The meeting was called to order at 6:00 P.M. Present were Chairman Ron Scott; Councilman Bailey Yelding; Councilwoman Regina Landry; Finance Director Kim Briley; and Accountant I Belinda Job.

Also in attendance were Bill Eady, Planning Director and Sharon Cureton, Human Resources Director.

II. ISSUES REQUIRING ACTION BY CITY COUNCIL

A. Deputy Planning Director

Mr. Scott discussed a proposed ordinance to create a Deputy Planning Director position for the City. Mr. Yelding discussed the salary range for the proposed position noting that the minimum states \$39,111; Midpoint \$46,933 and Maximum \$60,622. Mr. Yelding discussed the proposed ordinance reflects annual salary and benefits totaling \$52,598 and inquired as to where in the pay scale the position would start. Ms. Briley noted the position would start at Grade 27, Step 1 (\$39,111) with the remainder being the cost of benefits. Mr. Scott asked if the City was required to start a new hire at Step 1. Ms. Cureton noted Mr. Eady can hire up to Step 4, however, if he wishes to pay more than Step 4, he will have to come back before the Finance Committee.

Ms. Landry asked Mr. Eady for his thoughts on the position. Mr. Eady discussed he felt the position was well needed, noting he possibly would be retiring in the coming years and this would allow him the opportunity to prepare someone to assume the Director position for the Planning Department. Mr. Yelding asked if the filling of this position will follow the normal steps. Ms. Cureton noted the position would be advertised and once all the applications are received, Mr. Eady would proceed with reviewing the applications and conducting the interviews. Ms. Cureton noted the Human Resources Department would be available to assist if needed.

Motion by Mr. Yelding to recommend to Council to adopt an ordinance amending the FY 2005 budget in the amount of \$8,760 for the creation of a Deputy Planning Director position. Seconded by Ms. Landry.

B. Alabama Emergency Management Agency: Hurricane Dennis

Ms. Briley discussed a resolution authorizing the City to make application with FEMA to be reimbursed for costs related to Hurricane Dennis. Discussion continued the estimated cost is \$50,000-\$60,000. Ms. Briley noted the resolution form that has been completed is provided by FEMA. Mr. Yelding asked if this item was on the agenda for the Council Meeting at 6:30. Ms. Briley noted this resolution was not received until Friday afternoon; therefore, it could not be included in the council packet and will be a handout. Discussion continued the City needs to move forward with adopting this resolution so it can move forward with requesting FEMA funds.

Motion by Ms. Landry to recommend to Council to adopt a resolution authorizing the City to apply for Federal Disaster Relief as a result of Hurricane Dennis. Seconded by Mr. Yelding.

III. ADJOURN

The meeting was adjourned at 6:10 P.M.

**CITY OF DAPHNE FIRE DEPARTMENT
BOARD OF ADJUSTMENTS & APPEALS/FIRE CODES
HEARING AGENDA**

Wednesday, April 13, 2005

5:30 p.m.

Fire Station #2

I. Call to Order

Jeff Hudson called meeting to order at 5:30 p.m.

II. Roll Call

Attending: Jeff Hudson III, Vice Chairman, Billy Pappas, John Dunn, Stephanie Pierce, Fire Chief Mund Hanson, Fire Marshal Chip Martin and recording secretary Kristie Faircloth.

Public Participation: John Kirkpatrick and Barry McClung, owners of Ollie's Barbecue, and City of Daphne Building Official Ronnie Phillips.

III. Public Participation/Hearing – Ollie's Barbecue

A. Statement of the case by the Vice Chairman

Jeff Hudson, III, Vice Chairman, welcomed Mr. Kirkpatrick and Mr. McClung and introduced the Board members.

Hudson stated that the Appeal Hearing was prompted by the request of Ollie's Barbecue requesting a variance to a fire code that requires a hood system be installed above a piece of equipment that can produce smoke or grease-laden vapors. According to Mr. Kirkpatrick and Mr. McClung's letter requesting the appeal/variance, the use of the griddle in question will not produce the grease-laden vapors requiring the hood system.

B. Supporting arguments by the applicant or his/her agent

John Kirkpatrick addressed the Board and thanked the Board for accepting his Appeal Hearing request. Kirkpatrick stated that he, in anyway, did not want to indicate to Fire Marshal Chip Martin that he and his partner did not have complete respect for his position and the fact that he has a responsibility to interpret and enforce the fire codes.

Kirkpatrick stated that the griddle suits his process ideally in preparing sandwiches but will not be used in its intended function. It is typically used for cooking breakfast meats or burgers and in all those cases the griddle has to be kept under a fire suppression apparatus. In his case, it is an important part of Ollie's Barbecue's sandwich line where they simply place the buns down on the griddle to toast the bread and then the sandwich is made at the next station on the preparation line. The griddle

gives a great deal of efficiency in the production of the sandwiches as opposed to other pieces of equipment that really don't lend themselves to be used in this capacity. Kirkpatrick stated that he is requesting the variance to use this griddle without installing the hood system. The griddle will only be used for the sole purpose of warming the buns and under no circumstances will it be used for any other reason.

Barry McClung's grandfather started the other two Ollie's Barbecue's and he stated that this was never an issue in Jefferson County because of the Fire Code at that time. However, this issue came up at the location in Shelby County in a similar situation. The building was almost finished and the fire marshal in Shelby County had the same concerns as Fire Marshal Martin. McClung stated that he explained to the Fire Marshal in Shelby County the purpose of the griddle and the fire marshal requested that a written agreement be signed stating the specific use of the griddle, confirming that the griddle would not be operated for any other use.

C. Supporting arguments by persons at the hearing

No one was present to address the Board.

D. Opposing arguments by persons at the hearing

Fire Marshal Chip Martin asked everyone to review their packet which included the 1999 Standard Fire Prevention Code and the 1997 Standard Mechanical Code. The Fire Code is referencing the Mechanical Code which states '*An exhaust hood shall be installed for all commercial, industrial, institutional and other food heat-processing equipment producing smoke or grease-laden air*'. The equipment in question is a commercial piece of equipment that is used for heating food and is capable of producing smoke or grease-laden air. Both of these Codes are adopted by the City of Daphne.

Ronnie Phillips, Building Official of the City of Daphne, stated that he understands the applicants' reason for their request and respects that they are only intending on using the equipment to toast buns. Phillips commented that the City Officials are not purposed to monitor such equipment and stated that the City Officials have to look at the function of the equipment and what it is capable of doing. A griddle type service, with the right food, whether it is a piece of toast or barbecue sauce, will produce grease-laden air or smoke. The City Officials have to interpret the Code.

E. Rebuttal by supporters other than the applicant or his agent

No one was present to address the Board.

F. Rebuttal by persons in opposition

No further rebuttal was presented to the Board.

G. Rebuttal by the applicant or his agent

Kirkpatrick responded that the Code reads that a hood system should be installed over a piece of equipment producing smoke or grease-laden air and the equipment in question will not. He stated that the Code, as he reads it, does not contain the word 'capable'. Kirkpatrick feels the Code is more explicit to specific purposes of equipment. Ollie's has 20 square feet of grills that are protected by hood systems and Ollie's has no intention of producing any grease-laden air from this griddle.

H. Final Questions from the Board

Hudson asked if Mr. Kirkpatrick and Mr. McClung could describe the set-up and dimensions of the kitchen.

Kirkpatrick said that he does not have the exact dimensions with him but the dimensions are approximately 40 ft. long and 22 ft. wide. The hood system is along a wall with the cooking equipment under the hood system. About 6 ft. over is the sandwich line which includes a cutting board for the cooked meat to be sliced, the buns would be laid out on the griddle and then there is another cutting board where condiments will be placed on the sandwich and cut to be placed on the pickup counter which is at the end of this line. The line is clear of any other obstructions.

Kirkpatrick stated there are two hood systems that are equipped with Ansul and a third to remove heat. Kirkpatrick said the griddle is 6 ft. from the other hood systems on the wall.

"Are there any options to this piece of equipment?" Hudson asked.

Kirkpatrick stated there is no equipment that Ollie's evaluated that would be comparable to the griddle.

John Dunn stated that he feels this could be rectified by the word capable. The griddle is capable of producing this grease-laden air but it's not Ollie's intended use of the equipment. If Ollie's makes a written guarantee saying that it would not be used for any other purpose other than the one described, he feels that a variance should be granted.

Pappas asked if it is a gas or electric griddle.

Kirkpatrick stated electric.

Pappas asked what temperature Ollie's was going to set it.

Kirkpatrick stated probably about 350 degrees.

Pappas asked if there was any barbecue sauce or other combustible type liquid that will be anywhere near the griddle.

Kirkpatrick stated that the barbecue sauce is kept in another unit after the griddle in the processing line.

Pappas asked if the meat is already hot and the only thing going on the griddle top is the bread.

Kirkpatrick stated the meat will not be on the griddle.

Pappas asked if this was already built and if we could go and review the placement.

Hudson stated that he felt a certified letter saying the equipment will only be used for dried toast and the Fire Inspector can resend the variance during his periodic inspections if the equipment is used otherwise.

Phillips stated that the City doesn't have the kind of personnel to follow up and make sure that everything is adhered to.

Martin stated that he is worried if the Board issued a variance for this Code for Ollie's Barbecue that precedence would be set for other businesses and restaurants wanting be granted variances from the Code. In his opinion, the Code is spelled out saying '*an exhaust hood system shall be installed for all*'.

Phillips gave the Board a copy of the interpretation of the limits of the variance itself in the Administration section of the Mechanical Code.

Pappas feels that 108.4.2 Item #3, which states '*That granting the variance requested will not confer on the applicant any special privilege that is denied by this code to other buildings, structures or service system*', might become a problem.

Hudson requested that we suspend this meeting and travel to the site in question.

I. Public participation is then closed and the hearing concluded.

Hudson suspended the meeting at 6:06 p.m. to visit the site.

IV. Board Examination/Discussion

Hudson called the meeting back to order at 6:34 p.m.

Hudson stated that after the site visit, an actual visual of the set-up, placement of the equipment, operation and a further description of the process, he does not feel that a variance to this Code should be granted.

Pappas stated that he felt the process described in the meeting was fairly different than what we actually saw. Pappas also stated that there is no question that this equipment will produce smoke.

Pierce concurred with Pappas and commented that she feels it was extremely helpful to travel to the site to actual see where the griddle was located in the restaurant. The process will include the meat being on the griddle, it is going to produce smoke, there will be grease from the fat in the meat and the possibility of the sauce being spilled as they construct the sandwiches over the griddle. Pierce feels a variance should not be granted.

Hudson stated that after looking at the griddle, it changed his opinion. They do have the option of installing the hood system or another option would be to find another piece of equipment to replace the griddle.

Pappas stated that even if they do not use the griddle to actually cook, it will ignite anything flammable that is placed on it. Pappas stated that after seeing the griddle he does not feel comfortable with granting a variance.

Stephanie Pierce made a motion that we deny the variance of this Fire Code.

Billy Pappas seconded the motion and the motion carried with a unanimous vote.

Hudson requested that recording secretary, Kristie Faircloth, write a letter to the applicants stating the decision of this Board.

V. Adjournment

Hudson adjourned the meeting at 6:43 p.m.

Respectfully Submitted,

Board of Adjustments and Appeals/Fire Codes

The Board of Adjustments and Appeals/Fire Codes will meet the 2nd week in May. The date and time will be announced at a later date.

502.8 Asphalt Kettles

It shall be unlawful to transport or permit to be transported over any highway, road or street, any asphalt kettle beneath which is maintained any open fire, heated coals or ashes. Asphalt kettles shall not be used inside of or on the roof of any building, or within 10 ft (3.0 m) of any building or property line. Asphalt kettles shall be in good working order and complete with an operational kettle lid. There shall be at least one approved fire extinguisher of a minimum of 20-B:C classification within 30 ft (9.1 m) of each asphalt kettle during the period such kettle is in use, and one additional 20-B:C classification fire extinguisher on the roof being covered.

502.9 Vacant Structures

Every person owning, or in charge or control of, any vacant building shall remove therefrom all accumulations of flammable or combustible waste or rubbish and shall securely lock, barricade, or otherwise secure all doors, windows and other openings thereof. The premises shall be maintained clear of any waste or hazardous material.

**SECTION 503
FIRE REPORTING AND FALSE ALARMS**

503.1 Reporting of Fires

503.1.1 In the event a fire occurs on any property, the owner or occupant shall immediately report such fire to the fire department.

503.1.2 A fire shall mean any fire not used for cooking, heating or recreational purposes or one not incidental to the normal operations of the property.

503.2 Fire Alarms

503.2.1 For the purpose of 503.2, a fire alarm shall be deemed and construed as being the giving, signaling or transmission to any public fire station, or company or to any officer or employee thereof, whether by telephone, spoken word or otherwise, information to the effect that there is a fire at or near the place indicated by the person giving, signaling, or transmitting such information.

503.2.2 It shall be unlawful for any person to give, signal, or transmit or for any person to cause or permit to be given, signaled, or transmitted, in any manner any false alarm.

503.2.3 It shall be unlawful for any person to tamper with or maliciously injure any fire alarm equipment maintained for the purpose of transmitting fire alarms to the fire department.

503.2.4 Nothing in 503.2 shall prohibit the sounding of any such signal essential for the carrying on of any fire drill.

503.3 Fire Protection System Activation

The activation or use of any fire protection system or device in connection with the control or extinguishment of a fire shall be reported to the fire official. Such report shall be made by the owner or occupant of the premises in which the system or device is installed. In the absence of such a report, the contractor or service firm responsible for restoring the system to normal operation or servicing the actuated system or unit shall report its use and performance as required by 603.2.4.

**SECTION 504
USE OF EQUIPMENT, APPLIANCES AND DEVICES**

504.1 Heating Appliances

504.1.1 Heating appliances shall be listed. The heating element or combustion chamber in any such appliance shall be permanently guarded so as to prevent accidental contact by any person or material.

504.1.2 Gas appliances shall be connected to the gas supply by approved connectors and vented to approved flues in conformance with the mechanical and gas codes.

504.1.3 Heating appliances shall be installed and maintained with clearance from combustibles in conformance with the mechanical code.

504.1.4 The use of any liquid fueled unvented heating appliance shall be permitted in one and two family residences only, providing such appliance is tested and listed by an approved laboratory according to requirements of UL 647, complies with the labeling standards of the National Kerosene Heater Association and is packaged with consumer education materials complying with the standards of the National Kerosene Heater Association as evidenced by the mark of the National Kerosene Heater Association or any nationally recognized laboratory certifying compliance with such labeling and consumer education requirements; and providing the fuel is stored in containers in accordance with NFPA 30.

504.1.5 Fuel Burning Engines. Temporary or fixed internal combustion or fuel burning engines shall be installed and operated as outlined in NFPA 37.

*** 504.2 Maintenance of Chimneys and Heating Appliances**

504.2.1 All chimneys, incinerators, smokestacks or similar devices for conveying smoke or hot gases to the outer air and the stoves, furnaces, fire-boxes or boilers to which they are connected shall be constructed in accordance with the mechanical code and the building code, and maintained in such a manner as not to create a fire hazard.

CHAPTER 5 EXHAUST SYSTEMS

SECTION 501 GENERAL

501.1 Scope. This chapter is intended to insure the safe design, construction, installation, and repair of exhaust systems.

501.2 Pressure equilization. If a greater quantity of air is supplied by a mechanical ventilating supply system than is removed by a mechanical exhaust system for a room, adequate means shall be provided for the natural exit of the excess air supplied. If only a mechanical exhaust system is installed for a room or if a greater quantity of air is removed by a mechanical exhaust system than is supplied by a mechanical ventilating supply system for a room, adequate means shall be provided for the natural supply of the deficiency in the air supplied.

501.3 Outdoor discharge. The air removed by every mechanical exhaust system shall be discharged outdoors at a point where it will not cause a nuisance and from which it cannot again be readily drawn in by a ventilating system. Exhausting air into an attic or crawl space shall be prohibited. Air which is to be used for recirculation may be discharged to a supply system.

Exception: Attic fans may be permitted to discharge into attic space of residences having private attics.

501.4 Independent system required. Mechanical exhaust from bath, toilet, urinal, locker, service sink, closets and similar rooms shall be an independent system and shall not be recirculated unless treated by a listed or approved air treatment system. When exhaust systems are used, they may be combined with similar exhaust except kitchen exhaust shall be on an independent system.

501.5 Ducts. The materials used in every mechanical exhaust system shall be of sheet metal or other approved materials in accordance with Chapter 6.

SECTION 502 DEFINITIONS

Refer to Chapter 2 for definitions.

SECTION 503 REQUIRED SYSTEMS

503.1 General. An exhaust system shall be provided, maintained and operated for all occupied areas where machines, vats, tanks, furnaces, forges, salamanders, and any other equipment and processes in such areas produce or throw off dust or particles sufficiently light to float in the air, or which emit heat, odors, fumes, spray, gas, or smoke, in such quantities as to be irritating or injurious to health or

safety, and shall mechanically discharge such exhaust to the outdoor atmosphere. The total outdoor air supplied shall be equal in volume to that removed.

503.2 Equipment and service rooms. All equipment and system service rooms, which house sources of odors, fumes, noxious gases, smoke, steam, dust, spray, or other contamination, shall be such as to prevent spreading of any such contamination to any other occupied parts of the building.

503.3 Lavatories, toilets, bathrooms and restrooms

503.3.1 Air exhausted from bath, toilet, urinal, lavatory, locker, coat room or similar rooms shall not be recirculated. Air within a room that contains a bathtub and/or shower shall be mechanically exhausted to the outdoors, or shall have windows as specified for habitable rooms providing in no case less than 3 sq ft (0.28 m²) of open space.

503.3.2 Where natural ventilation or an approved air treatment system is not provided, 2 cu ft of air per minute per sq ft (10 L/s/m²) of floor area shall be exhausted from lavatories, toilets, bathrooms and restrooms.

Exceptions:

1. For lavatories, toilets, bathrooms, and restrooms in one and two family dwellings, exhaust air may be reduced to a minimum of 1 cu ft per minute per sq ft (5 L/s/m²) of floor area.
2. For private toilet rooms with not more than one water closet and one lavatory, exhaust air may be reduced to a minimum of 1 cu ft per minute per sq ft (5 L/s/m²) of floor area.

SECTION 504 COMMERCIAL HOODS

504.1 General. An exhaust hood shall be installed for all commercial, industrial, institutional and other food heat-processing equipment producing smoke or grease-laden air.

Exceptions:

1. Domestic equipment installed within a dwelling unit.
2. Cabinet type ovens which do not heat the food product core to a temperature above 212°F (100°C).

504.2 Minimum volume of exhaust. The hood shall be designed with a sufficient air volume to properly exhaust all grease and smoke vapor produced by the equipment which it serves. Unless the hood is designed and certified by a licensed architect or professional engineer or is an approved prefabricated hood tested and certified by the manufacturer, the following requirements shall be met:

to the Construction Board of Adjustment and Appeals whenever any one of the following conditions are claimed to exist:

1. The building official rejected or refused to approve the mode or manner of construction proposed to be followed or materials to be used in the installation or alteration of a building, structure or service system.
2. The provisions of this code do not apply to this specific case.
3. That an equally good or more desirable form of installation can be employed in any specific case.
4. The true intent and meaning of this code or any of the regulations thereunder have been misconstrued or incorrectly interpreted.

108.4.2 Variances. The Construction Board of Adjustments and Appeals, when so appealed to and after a hearing, may vary the application of any provision of this code to any particular case when, in its opinion, the enforcement thereof would do manifest injustice and would be contrary to the spirit and purpose of this or the technical codes or public interest, and also finds all of the following:

1. That special conditions and circumstances exist which are peculiar to the building, structure or service system involved and which are not applicable to others.
2. That the special conditions and circumstances do not result from the action or inaction of the applicant.
3. That granting the variance requested will not confer on the applicant any special privilege that is denied by this code to other buildings, structures or service system.
4. That the variance granted is the minimum variance that will make possible the reasonable use of the building, structure or service system.
5. That the grant of the variance will be in harmony with the general intent and purpose of this code and will not be detrimental to the public health, safety and general welfare.

108.4.2.1 Conditions of the variance. In granting the variance, the board may prescribe a reasonable time limit within which the action for which the variance is required shall be commenced or completed or both. In addition, the board may prescribe appropriate conditions and safeguards in conformity with this code. Violation of the conditions of a variance shall be deemed a violation of this code.

108.4.3 Notice of appeal. Notice of appeal shall be in writing and filed within 30 calendar days after the decision is rendered by the building official. Appeals shall be in a form acceptable to the building official.

108.4.4 Unsafe or dangerous buildings or service systems. In the case of a building, structure or service system which, in the opinion of the building official, is unsafe,

unsanitary or dangerous, the building official may, in his order, limit the time for such appeals to a shorter period.

108.5 Procedures of the Board

108.5.1 Rules and regulations. The board shall establish rules and regulations for its own procedure not inconsistent with the provisions of this code. The board shall meet on call of the chairman. The board shall meet within 30 calendar days after notice of appeal has been received.

108.5.2 Decisions. The Construction Board of Adjustment and Appeals shall, in every case, reach a decision without unreasonable or unnecessary delay. Each decision of the board shall also include the reasons for the decision. If a decision of the board reverses or modifies a refusal, order, or disallowance of the building official or varies the application of any provision of this code, the building official shall immediately take action in accordance with such decision. Every decision shall be promptly filed in writing in the office of the building official and shall be open to public inspection. A certified copy of the decision shall be sent by mail or otherwise to the appellant and a copy shall be kept publicly posted in the office of the building official for two weeks after filing. Every decision of the board shall be final, subject however to such remedy as any aggrieved party might have at law or in equity.

SECTION 109 SEVERABILITY

If any section, subsection, sentence, clause or phrase of this code is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this code.

SECTION 110 VIOLATIONS AND PENALTIES

Any person, firm, corporation or agent who shall violate a provision of this code, or fail to comply therewith, or with any of the requirements thereof, or who shall erect, construct, alter, install, demolish or move any structure, electrical, gas, mechanical or plumbing system, or has erected, constructed, altered, repaired, moved or demolished a building, structure, electrical, gas, mechanical or plumbing system, in violation of a detailed statement or drawing submitted and permitted thereunder, shall be guilty of a misdemeanor. Each such person shall be considered guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this code is committed or continued, and upon conviction of any such violation such person shall be punished within the limits and as provided by state laws.

CITY OF DAPHNE
BOARD OF ADJUSTMENT & APPEALS/FIRE CODES

May 18, 2005

5:30 p.m.

City of Daphne Fire Station #2

Attending: Jeff Hudson, Vice Chairman; Billy Pappas, John Dunn, Stephanie Pierce, Barry Giles, newly appointed Board Member; Fire Marshal C. P. 'Chip' Martin, Fire Chief A. Mund Hanson, and Secretary Kristie Faircloth.

I. Call to Order

Vice Chairman Jeff Hudson called the meeting to order at 5:36 p.m.

II. Public Participation/Hearing of Cases

There was no one present to address the Board.

III. Old Business

A. ICC (International Code Council) Codes

Hanson reported that the adoption of these codes is still being discussed. He stated that there is no movement at this time. The Fire Department would like to adopt these codes; however, the Building Department is not ready to make that move. The ICC encompasses the International Fire Codes and the International Building Codes. With the ICC codes, both departments would have to agree and adopt at the same time.

Martin reported that the State Fire Marshal's office has adopted the 1994 edition of the Standard Fire Prevention Code and the 1997 edition of the Standard Building Code. Martin also reported that the State Building Commission has adopted the International Building Code and the State Health Department has adopted the International Fire Code.

Hanson stated that with so many entities under different codes, it makes things confusing.

V. New Business

A. By-Laws Update and Adoption

Our By-Laws state 'The Board shall consist of five (5) members to be selected and appointed by the City Council from among the electors residing in the City of Daphne. No member shall hold any other public office or position. In addition to the five (5) regular members, the City Council shall appoint two (2) supernumerary members.'

Hanson has discussed the issue of Board members not ‘residing in the City of Daphne’ with Mayor Brown in the past. Mayor Brown, at that time, didn’t want anyone relieved of their duties on the Board because they did not reside in Daphne.

Recently, Chief Hanson spoke to Mayor Small concerning this issue. The Staff Attorney of the Alabama League of Municipalities recommends that ‘the Board members be residents of the City’. Therefore, 3 members of the Board will no longer be able to serve. (Doug Cover, Jeff Hudson, and Stan Keel) Hanson sent a request to Mayor Small to appoint replacements for these members. However, until these members are replaced, this Board will still depend on these members if an appeal should arise. Hudson stated that he will be glad to attend as a consultant to the Board at any time.

Barry Giles was appointed to the Board to fill a current vacancy.

There was some discussion concerning the updates to the By-Laws.

Pappas made a motion to adopt the By-Laws with the recommended changes. Pierce seconded the motion and the motion carried.

VI. Reports and Announcements

A. Fire Chief Report: Mund Hanson

Hanson reported that things are going smoothly.

B. Fire Marshal Report: Chip Martin

Martin reported that his division is operating efficiently.

VII. Adjournment

Hudson adjourned the meeting at 5:45 p.m.

The next BOARD OF ADJUSTMENTS & APPEALS/FIRE CODES meeting is scheduled to be held in September 2005.

Respectfully submitted,

Jeff Hudson, Vice Chairman

Kristie A. Faircloth, Secretary

DRAFT

PUBLIC WORKS COMMITTEE MEETING July 22, 2005

Councilman Bailey Yelding, District 1
Councilwoman Cathy Barnette, District 2
Councilman John Lake, District 3

I. CALL TO ORDER

The July meeting of the Public Works Committee was called to order at 8:06 a.m.

Present: Mayor Fred Small, Councilman Bailey Yelding, Councilwoman Cathy Barnette, Councilman John Lake, Ken Eslava, Melvin McCarley, Roger Gandolfo, Aileen Trotter

II. PUBLIC PARTICIPATION & CORRESPONDENCE

Mr. Gandolfo expressed his concerns about the mosquito problem created by the overgrowth on the easement on the property located at Old County Road to the North edge of his property. Mr. Gandolfo indicated that the property is heavily overgrown with vegetation, which results in stagnant standing water in the area. He acknowledges that the City has been spraying and baiting for the mosquitoes in the area, but it has not been enough to correct the problem. Mr. Ken Eslava informed Mr. Gandolfo that the City is not the owner of the property in question, and has only been provided an easement to the property in order to provide access. Mr. Eslava indicated that the owner of the property would be responsible for maintenance of that property, however the property is currently included in the regular rotation for mosquito spraying. Councilman Yelding requested that Mr. Eslava work with Mr. Gandolfo and his neighbor to determine who is the owner of the property.

Councilwoman Barnette has received a letter from Mr. Ray Moore requesting the paving of Schieffelin Lane. Mr. Eslava has indicated that he will include it on the list of roads being considered.

Councilwoman Barnette indicated that Mr. Shawn Alves is concerned about the drainage behind his house. Mr. Eslava, who is familiar with the homeowner's situation, stated that the gully behind his house is a natural drainage way.

Councilman Yelding has inquired about a light pole on Gaskin Lane. Melvin McCarley will look into it.

Councilwoman Barnette inquired into how the effectiveness of the mosquito spraying can be tracked. Mr. Eslava indicated that the effectiveness is tracked through complaints, public input, and a limited number of sentinel chickens placed in the City by the Health Department. Public Works is currently spraying weekly by truck and hand spraying when a complaint is received. Mr. Eslava indicated that the City has a routine spraying program. He indicated that Public Works would visit the address when a complaint is received to evaluate the situation and spray by hand as needed.

III. OLD BUSINESS

DRAFT

The committee reviewed the minutes from the Public Works Committee meeting held June 24, 2005. **Councilwoman Cathy Barnette motioned to approve the minutes; Councilman John Lake seconded the motion.**

IV. NEW BUSINESS

V. DIRECTOR'S REPORT

A. HHW Program Update

Ken Eslava informed the committee that the bids for the expansion of the two bays for the HHW are due to the City by July 29. Mayor Small has indicated that he has written a letter to Chairman Bishop to request that they share the cost of pick-up. Once the facility is capable of accepting the HHW, the possibility of the facility being opened for half a day on Saturday was discussed. Councilwoman Barnette questioned if the City would accept HHW from residents outside of the City limits. Mayor Small and Councilman Yelding indicated that they would be in favor of a fee for non-residents in order to recoup the cost of disposal of the HHW. Councilman Lake was not in favor of charging fees to non-residents. Councilman Yelding suggested that the Mayor and Mr. Eslava get together and provide information back to the Committee on the fee proposal. Fees on other City services, such as recreation, for non-residents were mentioned, but not decided upon.

Councilman Yelding inquired as to who will be taking care of the trash that is sitting in the Right-of-Way on C.R. 13. Ken will discuss the situation with Baldwin County to determine who will be handling it.

Mayor Small has received correspondence from Jo Bonner concerning a grant for the community at Well Road. The application is at ADECA and they will keep the City informed.

B. Capital Equipment Purchase – FY 05 Budget

Ken Eslava informed the committee that one garbage truck, one truck for rescue, three other trucks, and the car for the Mayor's office have not yet been received. The Mayor indicated that the vehicle would replace the older vehicle currently used by City Hall for out-of-town transportation. He indicated that the old vehicle would still be used in town for local errands. The Mayor has also indicated that he would be interested in allowing local car dealerships to bid for the vehicle contract. He would like to expand the brands of vehicles that could be chosen from. It was discussed that the local companies would be allowed to bid and could be given a 3% allowance in order to compete with the State bid in order to do business within the City's tax base.

C. Speed Bump Update – Caroline Avenue & Old Spanish Trail

The Committee acknowledged the location of the new speed bump in between the two curves in this area. Councilman Yelding expressed concern as to the location of the new speed bump, as this does not appear to be the area that the citizens originally requested the speed bump be installed. Mayor Small indicated that the funds for a speed bump on the straightaway would be located so that another speed bump could be installed in the area.

DRAFT

D. Sidewalk and Road Resurfacing

Councilman Yelding inquired into the installation of sidewalks as previously committed to by the City. Mayor Small indicated that he would like to investigate the installation of a sidewalk in the median in Lake Forest. Ken Eslava stated that the removal of some of the trees in the media would prevent further deterioration of the road by the root systems of those trees. He suggested rolling the installation of sidewalks and the resurfacing of the roads within the City into a project for consideration.

Councilwoman Barnette made a motion, which was amended by Councilman Yelding, to send a report to the finance Committee to install the sidewalks that the City has committed to complete. The motion was seconded by Councilman Lake.

Councilwoman Barnette motioned that Mayor Small and Mr. Eslava work up a street maintenance program to take to the work session. The motion was seconded by Councilman Lake.

Councilman Lake requested that preventive maintenance be looked into which could include sealing some of the roads to prevent deterioration.

Councilman Lake expressed concerns about the pedestrian crossing at Alligator Alley. Improved safety measures at that location were discussed and will be revisited at a later date.

VI. **SOLID WASTE AUTHORITY**

Mr. Eslava indicated that the new baler is up and operating at this time.

VII. **MUSEUM COMMITTEE**

This committee did not meet last month.

VIII. **BEAUTIFICATION COMMITTEE**

A. Mr. Eslava indicated that the removal of property from the Eastern Star Building is near completion.

B. Mayor Small has requested Mr. Eslava investigate contracting the yearly maintenance of the Crepe Myrtles along Hwy 98. Councilman Lake would like to see the City work with Riviera Utilities on a long-range plan to encourage the burying of the power lines along Hwy 98 so that the canopies will not have to be cut back so severely. Mr. Eslava has discussed with Riviera Utilities the possibility of a mitigation fund for the burying of the lines. This may be revisited at a later date.

IX. **ENGINEER REPORT**

A. NRCS – Received funds to remediate a couple of projects including the gully on the end of Bay Drive.

B. The widening bids for County Road 13 will open August 3.

C. Councilman Barnette recommended Mr. Eslava check to determine if there is a way the City can assist in the watershed delineation study that will be conducted by NRCS once they receive the funds from ADEM.

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X. FUTURE BUSINESS

- A. Councilman Yelding requested that all meetings be moved to City Hall. Mayor Small, Councilwoman Barnette, and Mr. Eslava are in agreement.
- B. A discussion on impact fees was begun by Councilman Lake in order to alleviate the burden on City Services. Mayor Small indicated that, at this time, impact fees are not legal in Alabama. Mayor Small indicated that it would require the Council's approval to create a permit fee through the Building Department. Councilman Yelding and Councilwoman Barnette have requested that research be completed on the development of a permit fee. The information will be presented at a future work session.
- C. On July 26, 2005 at 3:30 am, there will be a meeting on storm water issues at the Fairhope Civic Center.
- D. Alabama Coastal Foundation and the Weeks' Bay Reserve will facilitate an Eastern Shore/Baldwin County matrix meeting on storm water with Daphne, Fairhope, and Spanish Fort. Tentative date is September 2, 2005.
- E. The next Public Works Committee meeting will be held August 26 at 8:00 am at the City Hall.

XI. ADJOURNMENT

The meeting adjourned at 9:20 a.m. Councilwoman Barnette motioned to adjourn; Councilman Lake seconded the motion.

**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:

**CITY COUNCIL MEETING
MAYOR'S REPORT**

NOTES:

CITY ATTORNEY'S REPORT

NOTES:

DEPARTMENT HEAD'S COMMENTS

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

NOTES:

RECOMMENDATIONS

COUNCIL COMMENTS:

**CITY OF DAPHNE
RESOLUTION NO.: 2005- 58**

**A RESOLUTION FOR THE INSTALLATION OF
A TRAFFIC CONTROL SIGNAL AT
U.S. HIGHWAY 181 AND EASTERN SHORE PARK
MAIN SITE ACCESS INTERSECTION**

WHEREAS, the Alabama Department of Transportation (“*ALDOT*”) has requested the City of Daphne, Alabama to execute a permit for the installation of a new traffic control signal at the Alabama Highway 181 and Eastern Shore Park Main Site Access intersection and for modifications to the traffic control signal at Alabama Highway 181 and U.S. Highway 90 intersection pursuant to the terms and conditions as setforth in Exhibit “A” attached hereto, and;

WHEREAS, the City Council of the City of Daphne, Alabama has considered the request of the *ALDOT* to authorize the Mayor to enter into such an agreement to permit the installation and modification of the traffic signals as identified herein above;

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

1. That the Mayor is hereby authorized to execute the necessary permits (Exhibit “A”) with the Alabama Department of Transportation to authorize the following:
 - a. Installation of a new traffic control signal at Alabama Highway 181 and Eastern Shore Park Main Site Access intersection;
 - b. Modifications to the traffic control signal at U.S. Highway 90 and Alabama Highway 181 intersection; and,
 - c. Operation and maintenance of the traffic control signals on Alabama Highway 181 at the intersections with the Eastern Shore Park Main Site Access and U.S. Highway 90; and,
2. That the Mayor and City Clerk are authorized to execute such documents as are necessary to permit the construction of the new traffic signal provided herein above as required by the Alabama

2. That if any part, section or subdivision of this Resolution shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Resolution, which shall continue in full force and effect, notwithstanding such holding.
2. That this resolution shall become effective immediately upon its adoption.

ADOPTED AND APPROVED THIS THE _____ DAY OF _____, 2005.

**THE CITY OF DAPHNE,
An Alabama Municipal Corporation**

GREG BURNHAM
City Council President
Date & Time Signed: _____

FRED SMALL
MAYOR
Date & Time Signed: _____

ATTEST:

DAVID L. COHEN, CITY CLERK, MMC

**CITY OF DAPHNE
RESOLUTION NO.: 2005 - 59**

**A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF
DAPHNE, ALABAMA TO ENTER INTO AN AGREEMENT FOR
THE COOPERATIVE MAINTENANCE OF PUBLIC RIGHT OF
WAY WITH THE ALABAMA DEPARTMENT OF
TRANSPORTATION**

WHEREAS, the Alabama Department of Transportation (“*ALDOT*”) has requested the City of Daphne, Alabama to execute a cooperative maintenance agreement for the cutting of trees and grounds maintenance of the right of way area located along the Eastern Shore Park Overlay District and I-10 between Highway 90 exit and Malbis exit pursuant to the terms and conditions as setforth in Exhibit “A” attached hereto, and;

WHEREAS, the City Council of the City of Daphne, Alabama has considered the request of the *ALDOT* to authorize the Mayor to enter into such an agreement to permit the cutting of trees and grounds maintenance as referenced herein above;

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

1. That the Mayor is hereby authorized to execute the necessary cooperative maintenance agreement with the Alabama Department of Transportation to authorize the following:
 - a. The cutting of trees and maintenance of grounds along the right of way area located along the Eastern Shore Park Overlay District and U.S. Highway I-10 between the Highway 90 exit and the Malbis exit in Daphne, Alabama.
2. That the Mayor and City Clerk are authorized to execute such documents as are necessary to permit the cutting of trees and grounds maintenance provided herein above as required by the Alabama Department of Transportation:

3. That if any part, section or subdivision of this Resolution shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Resolution, which shall continue in full force and effect, notwithstanding such holding.
4. That this resolution shall become effective immediately upon its adoption.

ADOPTED AND APPROVED THIS THE _____ DAY OF _____, 2005.

**THE CITY OF DAPHNE,
An Alabama Municipal Corporation**

GREG BURNHAM
CITY COUNCIL PRESIDENT
Date & Time Signed: _____

FRED SMALL
MAYOR
Date & Time Signed: _____

ATTEST:

DAVID L. COHEN, CITY CLERK, MMC



BOB RILEY
GOVERNOR

ALABAMA DEPARTMENT OF TRANSPORTATION

NINTH DIVISION
OFFICE OF DIVISION ENGINEER
1701 NORTH BELTLINE HWY.
MOBILE, ALABAMA 36618-1109

Telephone: (251) 470-8200

Fax: (251) [REDACTED]
479-7739



JOE MCINNES
TRANSPORTATION DIRECTOR

Fax Cover Sheet

Date: 7-11-05
No. of Pages: 5
(Including This Page)

TO: Name: Frank Johnston

Company: _____

Fax: 334-244-2555

RE: Arroy site in Daphne, AL

FROM: Daniel Driskell

Message: Mr. Johnston: Here is an example of a
Cooperative Maintenance Agreement between the City of
Spanish Fort and ALDOT. Also, include resolution
from meeting.

Note:

(1) Original: Mailed Held in division file

(2) If you have any problems with this facsimile, please call our office.

Exhibit A

MB-06A
Page 1 of 3

Form MB 06A
Revised January 2001

ALABAMA DEPARTMENT OF TRANSPORTATION
AGREEMENT FOR THE COOPERATIVE MAINTENANCE
OF PUBLIC RIGHT OF WAY

Permit No. 9-02-134L (05)

DIVISION 9th DISTRICT II

THIS AGREEMENT, entered into this the 13th day of June, 2005, by and between the Alabama Department of Transportation acting by and through its Transportation Director hereinafter referred to as the STATE and City of Spanish Fort, AL, in an effort to secure a more pleasing appearance on the road side between Frontage of I-10 in front of the Eastern Shore Centre

on Route I-10 E Malbis Exit (Hwy 181)

The City of Spanish Fort, AL

agrees to maintain the vegetative cover in the _____ by means of mowing with a flail or rotary mower and hand trimming such that a clean and attractive appearance is obtained. Mowing operations shall be conducted when the height of the vegetative cover reaches 6" inches. Reschedule mowing operations in accordance with the planned frequency. In the event that shrubs and/or trees are planted within the area, trimming around the plant materials shall be done in conjunction with mowing to obtain a clean and attractive appearance. Such plants (shrubs and/or trees) shall be maintained in an appropriate manner, which shall include but not be limited watering, fertilizing, pest control and pruning. Planting beds shall be kept mulched and maintained with a neat and attractive edge at all times. Clippings or other incidental debris (such as branches, trash, etc.) shall be removed if mounding of the clippings or other incidental debris occurs.

In accepting the above, the Department of Transportation and club, group, business, or municipality agree to do the following:

1. The Department of Transportation will see that adequate sight distances are maintained for maximum public safety; otherwise the Department of Transportation reserves the right to remedy this situation in the most expedient manner.

2. All traffic control will be in accordance with the MUTCD manual. The Department of Transportation is not responsible for safety of the individual involved or taking part in this work during maintenance operations. Signs indicating "MEN WORKING" shall be in place and can be obtained from the Department of Transportation prior to work and must be returned after completion of work.

3. If Department of Transportation construction (repair of drainage and traffic structures, crossovers and other minor construction) is done in the subject area, it will be the responsibility of the Department of Transportation to establish a stand of vegetative cover, if deemed necessary by the Department of Transportation, and then the groups', clubs', business', or municipalities' responsibility to maintain the vegetative cover as stipulated herein. In the event of major construction in the subject area, this Agreement shall be voided at a time designated by the Department of Transportation.

4. All work shall be subject to the inspection and approval of the Alabama Department of Transportation. Description of the proposed work must accompany this and any associated proposal. If the maintenance is not conducted as specified herein, the Department of Transportation shall assume maintenance and this Agreement will be invalid. All parties that sign the Agreement must keep a copy of this Agreement. The State of Alabama does not grant applicant any right, title, or claim on any highway right-of-way.

5. The club, group, business or municipality agrees to store no equipment, branches, mounds of clippings or plant debris of any kind or any other material on the shoulders of pavement and, in the case of multi-lane highways, in the median strips. The pavement will be kept free from waste (clippings, mud and other debris) and equipment.

6. The group, club, business or municipality shall be solely responsible for and hold harmless the Alabama Department of Transportation for any claim for damage done to existing private property, public utility, or the traveling public.

7. This Agreement is executed with the understanding that it is not valid until the club, group, business or municipality has complied with all existing ordinances, laws and zoning boards that have jurisdiction in the county, city or municipality.

8. Failure of the club, group, business or municipality to conform to the provisions of this Agreement will be cause to terminate this Agreement. Notification prior to termination will be made by the Department of Transportation.

The above conditions are agreed upon:

Name of Club, Group, Business or Municipality:

Joseph C. Bonner

By Joseph C. Bonner
Name and Title

June 7, 2005
Date

Mayor City of Spanish Fort

By _____
Name and Title

Date

By _____
Name and Title

Date

For the Alabama Department of
Transportation :

Jama S. Wathers
District Engineer

6/13/05
Date

Division Engineer

Date

Maintenance Engineer

Date

RESOLUTION NO. 347-2005

A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF SPANISH FORT TO ENTER INTO AN AGREEMENT FOR THE COOPERATIVE MAINTENANCE OF PUBLIC RIGHT OF WAY WITH THE ALABAMA DEPARTMENT OF TRANSPORTATION

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SPANISH FORT, ALABAMA, AS FOLLOWS:

SECTION 1. The City Council hereby authorizes the Mayor to enter into an agreement for the cooperative maintenance of public right of way with the Alabama Department of Transportation. A copy of the proposed Agreement for the cooperative maintenance of public right of way is attached hereto as Exhibit A and incorporated by reference as though set forth fully herein, subject to any changes approved by the Mayor and City Attorney.

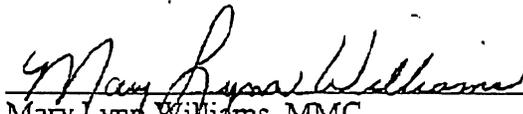
SECTION 2. If any part, section or subdivision of this Resolution shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Resolution, which shall continue in full force and effect notwithstanding such holding.

SECTION 3. This Resolution shall become effective immediately upon its adoption.

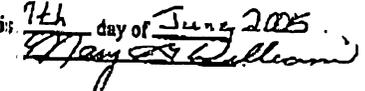
ADOPTED and APPROVED this 6th day of June, 2005.


Joseph C. Bonner
Mayor

ATTEST:


Mary Lynn Williams, MMC
City Clerk

I, Mary Lynn Williams, as City Clerk of the City of Spanish Fort, Alabama, do hereby certify the foregoing to be a true and exact copy of Resolution No. 347-2005 and that the original of same appears on record in this office.

Witness my hand and seal this: 7th day of June 2005.

City Clerk of
Spanish Fort, Alabama

ORDINANCE NO. 2005- 15

**FOR THE ANNEXATION OF CERTAIN PROPERTY TO THE CORPORATE
LIMITS
OF THE MUNICIPALITY OF THE CITY OF DAPHNE, ALABAMA
Crystal Springs, L.L.C.
(Property located at the Northwest Corner of Intersection U.S. 90 Hwy. and AL
Hwy. 181)**

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

WHEREAS, the owners of the property described in Section 2 of this Ordinance have signed and filed a written petition with the City Clerk of the City of Daphne, Alabama, requesting that such property be annexed to the corporate limits of the City of Daphne, Alabama; and,

WHEREAS, all of such property is located and contained within an area contiguous to the corporate limits of the City of Daphne, Alabama and does not lie within the corporate limits or police jurisdiction of any other municipality; and,

WHEREAS, said petition contains an accurate description of the property or territory proposed to be annexed together with a map of said property showing its relationship to the corporate limits of the City of Daphne; and,

WHEREAS, said petition has been presented to the Planning Commission of the City of Daphne on February 22, 2005 and a affirmative recommendation was **approved** for the City Council to consider said request for annexation and said property **shall be zoned B-2, General Business, zone**; and,

WHEREAS, after proper publication, a public hearing was held by the City Council on April 4, 2005 concerning the petition for annexation; and,

WHEREAS, the City Council of the City of Daphne, Alabama has determined that it is in the best interest of said City that the property described in Section 2 hereof be annexed to the corporate limits of the City of Daphne, and that all the requirements of Sections 11-42-21 through 11-42-24, Code of Alabama, 1975, as amended have been complied with by said Petitioner.

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

SECTION 1: CONSENT TO ANNEXATION. The City Council of the City of Daphne, Alabama does by this Ordinance assent to the annexation of the property described in Section 2 of this Ordinance to the corporate limits of the City of Daphne, Alabama, and does by the adoption of this Ordinance, extend and rearrange said corporate limits to embrace and include such property.

SECTION 2: THE PROPERTY. That property requested to be annexed into the City of Daphne is described in Exhibit "A", attached hereto and made a part of this Ordinance as if fully set out herein.

SECTION 3: MAP OF PROPERTY. The property hereby annexed to the City of Daphne, Alabama, is set forth and described in Exhibit "B" and attached hereto a map of the property showing its relationship to the corporate limits of the municipality of the City of Daphne and made a part of this Ordinance.

SECTION 4: PUBLICATION. This Ordinance shall be published as required by Section 11-42-21, Code of Alabama, 1975, as amended, and the property described herein shall be annexed to the corporate limits of the City of Daphne, Alabama, upon such publication.

SECTION 5: PROBATE COURT. A description of the property described in this Ordinance shall be filed in the Office of the Judge of Probate of Baldwin County, Alabama, as required by Section 11-42-21, Code of Alabama, 1975, as amended.

"EXHIBIT A"
LEGAL DESCRIPTION

COMMENCING AT THE NORTHEAST CORNER OF SECTION 34, T4S-R2E, BALDWIN COUNTY, ALABAMA, RUN N 89° 49' 05" W ALONG THE NORTH LINE OF SAID SECTION 34, T4S-R2E, A DISTANCE OF 533.77 FEET TO ITS INTERSECTION WITH THE SOUTH RIGHT OF WAY LINE OF INTERSTATE HIGHWAY NO. 10; SAID POINT BEING THE POINT OF BEGINNING OF THE PROPERTY HEREIN DESCRIBED; THENCE ALONG SAID SOUTH RIGHT OF WAY LINE OF INTERSTATE HIGHWAY NO. 10 RUN S 67° 58' 55" E 273.0 FEET TO A POINT; THENCE CONTINUING ALONG SAID SOUTH RIGHT OF WAY LINE OF INTERSTATE HIGHWAY NO. 10 RUN S 33° 51' 59" E 166.21 FEET TO ITS INTERSECTION WITH THE WEST RIGHT OF WAY LINE OF ALABAMA STATE HIGHWAY NO. 181; THENCE ALONG SAID WEST RIGHT OF WAY LINE OF ALABAMA STATE HIGHWAY NO. 181 RUN S 00° 12' 37" W 479.08 FEET TO A POINT; THENCE CONTINUING ALONG SAID WEST

RIGHT OF WAY LINE OF ALABAMA STATE HIGHWAY NO. 181 RUN S 29° 47' 24" E 63.54 FEET TO THE NORTHEAST CORNER OF THE PROPERTY NOW OR FORMERLY OF MIDSTREAM FUEL SERVICES, INC.; THENCE ALONG THE NORTH BOUNDARY OF SAID MIDSTREAM FUEL SERVICES, INC. PROPERTY RUN N 89° 47' 24" W 158.28 FEET TO THE NORTHWEST CORNER OF SAID MIDSTREAM FUEL SERVICES, INC. PROPERTY; THENCE ALONG THE WESTBOUNDARY OF SAID MIDSTREAM FUEL SERVICES, INC. PROPERTY RUN S 00° 07' 30" W 218.0 FEET TO THE SOUTHWEST CORNER OF SAID MIDSTREAM FUEL SERVICES, INC. PROPERTY; THENCE ALONG THE SOUTH BOUNDARY OF SAID MIDSTREAM FUEL SERVICES, INC. PROPERTY RUN S 89° 47' 24" E 211.19 FEET TO A POINT ON THE AFOREMENTIONED WEST RIGHT OF WAY LINE OF ALABAMA STATE HIGHWAY NO.181; THENCE ALONG SAID WEST RIGHT OF WAY LINE OF ALABAMA STATE HIGHWAY NO. 181 RUN S 00° 12' 36" W 1267.85 FEET TO ITS INTERSECTION WITH THE NORTH RIGHT OF WAY LINE OF U.S. HIGHWAY NO. 90; THENCE ALONG SAID NORTH RIGHT OF WAY LINE OF U.S. HIGHWAY NO. 90 RUN S 89°05' 23" W 554.70 FEET TO A POINT ON THE EAST LINE OF WEST HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E; THENCE ALONG SAID EAST LINE OF THE WEST HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E AND THE EAST LINE OF THE WEST HALF OF THE NORTHEAST QUARTER OF SAID NORTHEAST QUARTER OF SECTION 34, T4S-R2E RUN N 00° 13' 54" E 2269.84 FEET TO A POINT ON THE AFOREMENTIONED NORTH LINE OF SECTION 34, T4S-R2E; THENCE ALONG SAID NORTH LINE OF SECTION 34, T4S-R2E, RUN N 89° 49' 05" W 655.92 FEET TO THE NORTHWEST CORNER OF SAID WEST HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E; THENCE ALONG THE WEST LINE OF SAID WEST HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E AND THE WEST LINE OF SAID WEST HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E RUN S 00° 17' 52" W 2282.40 FEET TO A POINT ON THE AFOREMENTIONED NORTH RIGHT OF WAY LINE OF U.S. HIGHWAY NO. 90; THENCE ALONG SAID NORTH RIGHT OF WAY LINE OF U.S. HIGHWAY NO. 90 RUN S 89° 05' 23" W 1683.54 FEET TO A POINT; THENCE RUN N 00° 54' 37" W 2128.49 FEET TO A POINT OF THE AFOREMENTIONED SOUTH RIGHT OF WAY LINE OF INTERSTATE HIGHWAY NO. 10; THENCE ALONG SAID SOUTH RIGHT OF WAY LINE OF INTERSTATE NO. 10, RUN AS FOLLOWS: N 81° 47' 20" E 816.04 FEET, N 83° 28' 08" E 1158.93 FEET, S 85° 56' 57" E 455.77 FEET, S 67° 58' 55" E 100.7 FEET TO THE POINT OF BEGINNING. CONTAINING 113.9577 ACRES.

ORDINANCE 2005-15

CRYSTAL SPRINGS, L.L.C.

PAGE 4

THE WEST HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E, BALDWIN COUNTY, ALABAMA AND A PROTION OF THE WEST HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S- R2E, BALDWIN COUNTY, ALABAMA, BEING MORE PARTICULARLY DESCRIBED, AS FOLLOWS:

COMMENCING AT NORTHEAST CORNER OF SECTION 34, T4S-R2E, BALDWIN COUNTY, ALABAMA, RUN N 89° 49' 05" W ALONG THE NORTH LINE OF SAID SECTION 34, T4S-R2E, A DISTANCE OF 655.92 FEET TO THE NORTHEAST CORNER OF THE WEST HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 34, T4S-R2E; THENCE CONTINUING N 89° 49' 05" W ALONG SAID NORTH LINE OF SECTION 34, T4S-R2E RUN 655.92 FEET TO THE NORTHWEST CORNER OF SAID WEST HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E; THENCE ALONG THE WEST LINE OF SAID WEST HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E AND THE WEST LINE OF SAID WEST HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E RUN S 00° 17' 52" W 2282.40 FEET TO A POINT ON THE AFOREMENTIONED NORTH RIGHT OF WAY LINE OF U.S. HIGHWAY NO.90; THENCE ALONG SAID NORTH RIGHT OF WAY LINE OF U.S. HIGHWAY NO.90 RUN N 89° 05' 23" E 658.69 FEET TO A POINT ON THE EAST LINE OF THE WEST HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E; THENCE ALONG SAID EAST LINE OF THE WEST HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E AND THE EAST LINE OF THE AFOREMENTIONED WEST HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E RUN N 00° 13' 54" E 2269.84 FEET TO THE POINT OF BEGINNING. CONTAINING 34.3422 ACRES.

REFERENCE: EASTERN SHORE PARK

ORDINANCE 2005-15

CRYSTAL SPRINGS, L.L.C.

PAGE 5

ADOPTED AND APPROVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA on this _____ day of _____, 2005.

GREG BURNAM
COUNCIL PRESIDENT

Date & Time Signed:_____

FRED SMALL
MAYOR
Date & Time Signed: _____

ATTEST:

DAVID L. COHEN
CITY CLERK, MMC

ARONOV

June 27, 2005

Mayor Fred Small
City of Daphne
1705 Main Street
Daphne, Alabama 36526

Re: Eastern Shore Park
Daphne, Alabama

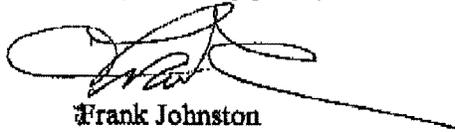
Dear Mayor:

Thank you again for your help with the Overlay District Agreement.

Enclosed please find Joinder of Malbis Properties, L.L.C. letter agreement. This outlines the new change in ownership for the referenced property. I trust that this will not create a problem for you.

Please call me to discuss the annexation which we anticipate will occur at the City Council meeting, July 5th, 6:30 p.m.

Very sincerely yours,



Frank Johnston

FJ/jn

Enclosure

Aronov Realty Management, Inc.
3500 Eastern Boulevard Montgomery, Alabama 36116-1781
Tel 334-277-1000 Fax 334-244-2555 www.aronov.com
Mailing Address Post Office Box 235000 Montgomery, Alabama 36123-5000

STATE OF ALABAMA
COUNTY OF BALDWIN

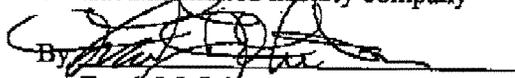
**JOINDER OF MALBIS PROPERTIES, L.L.C. IN
PETITION FOR ANNEXATION OF CERTAIN PROPERTY
INTO THE CORPORATE LIMITS OF THE MUNICIPALITY
OF THE CITY OF DAPHNE, ALABAMA**

1. On _____, 2005, Crystal Springs, L.L.C., Exchange Intermediary Services SPE #1, L.L.C., Malbis Plantation, Inc., Christine T. Marks, Constantine T. Tampary and Anthony T. Tampary filed a Petition for Annexation of Certain Property into the City of Daphne, Alabama (the "Petition").

2. Since the filing of the Petition, Crystal Springs, L.L.C. and Exchange Intermediary Services SPE#1, L.L.C. have conveyed to Malbis Properties, L.L.C. all their interests in any portion of the land to be annexed (and which is described in the Petition). The conveyances are under those deeds recorded in the Office of the Judge of Probate of Baldwin County, Alabama as Instrument No. 887502 and Instrument No. 887503.

3. As a present owner of a portion of the land to be annexed into the City of Daphne, Alabama, Malbis Properties, L.L.C., an Alabama limited liability company, hereby joins in the Petition.

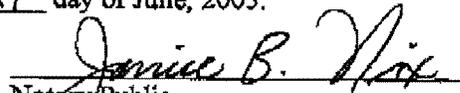
MALBIS PROPERTIES, L.L.C.,
an Alabama limited liability company

By 
Frank M. Johnston
Its: Member

STATE OF ALABAMA
COUNTY OF MONTGOMERY

I, the undersigned authority, a Notary Public in and for said State at Large, hereby certify that Frank M. Johnston, whose name as Member of Malbis Properties, L.L.C., an Alabama limited liability company, is signed to the foregoing document, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such Member and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 27th day of June, 2005.


Notary Public
(Print Name) JANICE B. NIX

1039134

My commission expires: 11-8-08

1039134

To: Office of the City Clerk
From: William H. Eady, Sr.,
Director of Community
Development
Subject: Proposed annexation into the
City of Daphne

MEMORANDUM

Date: February 23, 2005

At the regular meeting of the City of Daphne Planning Commission, February 22, 2005, eight members were present and one vacant. The vote was unanimous for the affirmative recommendation.

Upon receipt of said documentation, please set the public hearing, advertise, and place on the appropriate agenda for action by the City Council.

If you should have any questions, please do not hesitate to contact the undersigned.

Thank you,

WHE/hb

cc: Mayor Small
file

**PETITION FOR ANNEXATION OF CERTAIN PROPERTY
INTO THE CORPORATE LIMITS OF THE MUNICIPALITY
OF THE CITY OF DAPHNE, ALABAMA**

The undersigned, Crystal Springs, L.L.C., Exchange Intermediary Services SPE #1, L.L.C., Malbis Plantation, Inc., Christine T. Marks, Constantine T. Tampary and Anthony T. Tampary file this petition with the Clerk of the City of Daphne requesting the property hereafter described commonly referred to as Eastern Shore Park to be annexed into the City of Daphne, a municipal corporation incorporated under the laws of the State of Alabama, and submits the following in support of their petition:

1. **Description Of Property:** The description of the property which Petitioners request to be annexed into the City of Daphne is described in Exhibit "A" attached hereto and made a part of this Petition as if fully set out herein (the "Property").

2. **Map Of Property:** Attached hereto as Exhibit "B" and made a part of this Petition, is a map of the Property showing its relationship to the corporate limits of the municipality of the City of Daphne.

3. **Owners:** The Petitioners, Crystal Springs, L.L.C., Exchange Intermediary Services SPE #1, L.L.C., Malbis Plantation, Inc., Christine T. Marks, Constantine T. Tampary and Anthony T. Tampary, are the owners of the Property hereby sought to be annexed into the corporate limits of the City of Daphne.

4. **Specific Conditions:** This Petition is conditioned upon the adoption of an ordinance, which shall include specifically the conditions requested below in this Section 4 upon annexing the said Property into the corporate limits of the City of Daphne (the "Conditions"). The Conditions are as follows:

(a) The Property receives a B-2 (General Business District) zoning classification;

(b) The City of Daphne provides water, sewer and electrical utility service to the Property in quantities sufficient to service the commercial and retail development of the Property.

5. Code: This Petition is filed pursuant to the provisions of Article 21, Chapter 42, Title 11, Code of Alabama, 1975, as amended.

DATED this __ day of February, 2005.

Respectfully submitted,

[EXECUTION ON FOLLOWING PAGES]

CRYSTAL SPRINGS, L.L.C.,
an Alabama limited liability company

By: Crystal Springs Management, Inc.
Its: Manager

By: *Jake F. Aronov*
Its: *President*

STATE OF ALABAMA
COUNTY OF MONTGOMERY

I, the undersigned authority, a Notary Public in and for said State at Large, hereby certify that *JAKE F. ARONOV*, whose name as *President* of Crystal Springs Management, Inc., a corporation, acting in its capacity as the Manager of Crystal Springs, L.L.C., an Alabama limited liability company, is signed to the foregoing document, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation, acting in its capacity as Manager of the aforesaid limited liability company.

Given under my hand and official seal this *8th* day of February, 2005.

Janice B. Nix
Notary Public
(Print Name) *JANICE B. NIX*
My commission expires: *11-8-08*

**EXCHANGE INTERMEDIARY SERVICES SPE#1,
L.L.C.,**
an Alabama limited liability company

By: Exchange Intermediary Services, Inc.
Its: Sole Member

By: *Virginia Bear Mazyck*
Virginia Bear Mazyck
Its: Manager

STATE OF ALABAMA
COUNTY OF MONTGOMERY

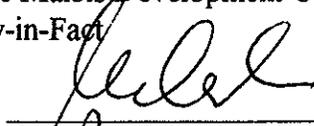
I, the undersigned authority, a Notary Public in and for said State at Large hereby certify that Virginia Bear Mazyck, whose name as Manager of Exchange Intermediary Services, L.L.C., an Alabama limited liability company, acting in its capacity as the Sole Member of Exchange Intermediary Services SPE #1, L.L.C., an Alabama limited liability company, is signed to the foregoing document, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, she, as such Manager and with full authority, executed the same voluntarily for and as the act of said limited liability company, acting in its capacity as the Sole Member of Exchange Intermediary Services SPE#1, L.L.C.

Given under my hand and official seal this 8th day of February, 2005.

James S. Bellamy
Notary Public
(Print Name) JAMES S. BELLAMY
My commission expires: JUNE 25, 2005

MALBIS PLANTATION, INC.

By: Historic Malbis Development Corporation,
Its Attorney-in-Fact

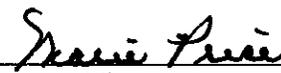
By: 
Its: Pres.

STATE OF ALABAMA
COUNTY OF BALDWIN

I, the undersigned, Notary Public in and for said County in said State, hereby certify that Neal Nash, whose name as President of Historic Malbis Development Corporation, an Alabama corporation acting in its capacity as attorney-in-fact for Malbis Plantation, Inc., an Alabama corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer, and with full authority, executed the same voluntarily for and as the act of said Historic Malbis Development Corporation, acting in the aforesaid capacity for Malbis Plantation, Inc.

Given under my hand and seal this 9th day of February, 2005.

MARIE PRICE
Notary Public, State of Florida
My Comm. Expires March 2, 2006
Comm. No. DD 680872


Notary Public
My commission expires: 3-8-06

CHRISTINE T. MARKS, CONSTANTINE T. TAMPARY, AND ANTHONY T. TAMPARY

By: Historic Malbis Development Corporation,
Their Attorney-in-Fact

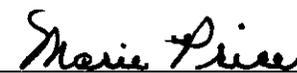
By: 
Its: Pres

STATE OF ALABAMA
COUNTY OF BALDWIN

I, the undersigned, Notary Public in and for said County in said State, hereby certify that Neal Nash, whose name as President of Historic Malbis Development Corporation, an Alabama corporation acting in its capacity as attorney-in-fact Christine T. Marks, Constantine T. Tampary and Anthony Tampary, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer, and with full authority, executed the same voluntarily for and as the act of said Historic Malbis Development Corporation, acting in the aforesaid capacity for Anthony Tampary.

Given under my hand and seal this 9th day of February, 2005.

MARIE PRICE
Notary Public, State of Florida
My Comm. Expires March 8, 2006
Comm. No. DD 080872


Notary Public
My commission expires: 3-8-06

CRYSTAL SPRINGS, L.L.C., EXCHANGE INTERMEDIARY SERVICES,
MALBIS PLANTATION, INC., CHRISTINE T. MARKS, CONSTANTICE T.
TAMPARY, AND ANTHONY T. TAMPARY
ANNEXATION

EXHIBIT "A"

COMMENCING AT THE NORTHEAST CORNER OF SECTION 34, T4S-R2E, BALDWIN COUNTY, ALABAMA, RUN N 89° 49' 05" W ALONG THE NORTH LINE OF SAID SECTION 34, T4S-R2E, A DISTANCE OF 533.77 FEET TO ITS INTERSECTION WITH THE SOUTH RIGHT OF WAY LINE OF INTERSTATE HIGHWAY NO. 10; SAID POINT BEING THE POINT OF BEGINNING OF THE PROPERTY HEREIN DESCRIBED; THENCE ALONG SAID SOUTH RIGHT OF WAY LINE OF INTERSTATE HIGHWAY NO. 10 RUN S 67° 58' 55" E 273.0 FEET TO A POINT; THENCE CONTINUING ALONG SAID SOUTH RIGHT OF WAY LINE OF INTERSTATE HIGHWAY NO. 10 RUN S 33° 51' 59" E 166.21 FEET TO ITS INTERSECTION WITH THE WEST RIGHT OF WAY LINE OF ALABAMA STATE HIGHWAY NO. 181; THENCE ALONG SAID WEST RIGHT OF WAY LINE OF ALABAMA STATE HIGHWAY NO. 181 RUN S 00° 12' 37" W 479.08 FEET TO A POINT; THENCE CONTINUING ALONG SAID WEST RIGHT OF WAY LINE OF ALABAMA STATE HIGHWAY NO. 181 RUN S 29° 47' 24" E 63.54 FEET TO THE NORTHEAST CORNER OF THE PROPERTY NOW OR FORMERLY OF MIDSTREAM FUEL SERVICES, INC.; THENCE ALONG THE NORTH BOUNDARY OF SAID MIDSTREAM FUEL SERVICES, INC. PROPERTY RUN N 89° 47' 24" W 158.28 FEET TO THE NORTHWEST CORNER OF SAID MIDSTREAM FUEL SERVICES, INC. PROPERTY; THENCE ALONG THE WEST BOUNDARY OF SAID MIDSTREAM FUEL SERVICES, INC. PROPERTY RUN S 00° 07' 30" W 218.0 FEET TO THE SOUTHWEST CORNER OF SAID MIDSTREAM FUEL SERVICES, INC. PROPERTY; THENCE ALONG THE SOUTH BOUNDARY OF SAID MIDSTREAM FUEL SERVICES, INC. PROPERTY RUN S 89° 47' 24" E 211.19 FEET TO A POINT ON THE AFOREMENTIONED WEST RIGHT OF WAY LINE OF ALABAMA STATE HIGHWAY NO.181; THENCE ALONG SAID WEST RIGHT OF WAY LINE OF ALABAMA STATE HIGHWAY NO. 181 RUN S 00° 12' 36" W 1267.85 FEET TO ITS INTERSECTION WITH THE NORTH RIGHT OF WAY LINE OF U.S. HIGHWAY NO. 90; THENCE ALONG SAID NORTH RIGHT OF WAY LINE OF U.S. HIGHWAY NO. 90 RUN S 89°05' 23" W 554.70 FEET TO A POINT ON THE EAST LINE OF WEST HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E; THENCE ALONG SAID EAST LINE OF THE WEST HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E AND THE EAST LINE OF THE WEST HALF OF THE NORTHEAST QUARTER OF SAID NORTHEAST QUARTER OF SECTION 34, T4S-R2E RUN N 00° 13' 54" E 2269.84 FEET TO A POINT ON THE AFOREMENTIONED NORTH LINE OF SECTION 34, T4S-R2E; THENCE ALONG SAID NORTH LINE OF SECTION 34, T4S-R2E, RUN N 89° 49' 05" W 655.92 FEET TO THE NORTHWEST CORNER OF SAID WEST HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E; THENCE ALONG THE WEST LINE OF SAID WEST HALF OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E AND THE WEST LINE OF SAID WEST HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E RUN S 00° 17' 52" W 2282.40 FEET TO A POINT ON THE AFOREMENTIONED NORTH RIGHT OF WAY LINE OF U.S. HIGHWAY NO. 90; THENCE ALONG SAID NORTH RIGHT OF WAY LINE OF U.S. HIGHWAY NO. 90 RUN S 89° 05' 23" W 1683.54 FEET TO A POINT; THENCE RUN N 00° 54' 37" W 2128.49 FEET TO A POINT OF THE AFOREMENTIONED SOUTH RIGHT OF WAY LINE OF INTERSTATE HIGHWAY NO. 10; THENCE ALONG SAID SOUTH RIGHT OF WAY LINE OF INTERSTATE NO. 10, RUN AS FOLLOWS: N 81° 47' 20" E 816.04 FEET, N 83° 28' 08" E 1158.93 FEET, S 85° 56' 57" E 455.77 FEET, S 67° 58' 55" E 100.7 FEET TO THE POINT OF BEGINNING. CONTAINING 113.9577 ACRES.

CRYSTAL SPRINGS, L.L.C., EXCHANGE INTERMEDIARY SERVICES,
MALBIS PLANTATION, INC., CHRISTINE T. MARKS,
CONSTANTICE T. TAMPARY, AND ANTHONY T. TAMPARY
ANNEXATION

EXHIBIT "A"

THE WEST HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E, BALDWIN COUNTY, ALABAMA AND A PROTION OF THE WEST HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S- R2E, BALDWIN COUNTY, ALABAMA, BEING MORE PARTICULARLY DESCRIBED, AS FOLLOWS: COMMENCING AT NORTHEAST CORNER OF SECTION 34, T4S-R2E, BALDWIN COUNTY, ALABAMA, RUN N 89' 49' 05" W ALONG THE NORTH LINE OF SAID SECTION 34, T4S-R2E, A DISTANCE OF 655.92 FEET TO THE NORTHEAST CORNER OF THE WEST HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 34, T4S-R2E; THENCE CONTINUING N 89' 49' 05" W ALONG SAID NORTH LINE OF SECTION 34, T4S-R2E RUN 655.92 FEET TO THE NORTHWEST CORNER OF SAID WEST HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E; THENCE ALONG THE WEST LINE OF SAID WEST HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E AND THE WEST LINE OF SAID WEST HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E RUN S 00' 17' 52" W 2282.40 FEET TO A POINT ON THE AFOREMENTIONED NORTH RIGHT OF WAY LINE OF U.S. HIGHWAY NO.90; THENCE ALONG SAID NORTH RIGHT OF WAY LINE OF U.S. HIGHWAY NO.90 RUN N 89' 05' 23" E 658.69 FEET TO A POINT ON THE EAST LINE OF THE WEST HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E; THENCE ALONG SAID EAST LINE OF THE WEST HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E AND THE EAST LINE OF THE AFOREMENTIONED WEST HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, T4S-R2E RUN N 00° 13' 54" E 2269.84 FEET TO THE POINT OF BEGINNING. CONTAINING 34.3422 ACRES.

REFERENCE: EASTERN SHORE PARK

CITY OF DAPHNE ORDINANCE NO.: 2005-30

AN ORDINANCE TO CORRECT CERTAIN SCRIVENER'S ERRORS IN ORDINANCE NUMBERS 2003-12 and 2003-32, AND TO AMEND ORDINANCE NUMBER 2004-43 TO INCLUDE REPEALER

WHEREAS, the City Council of the City of Daphne, Alabama desires to promote the health, welfare and safety of the citizens of the City; and,

WHEREAS, the City Council of the City of Daphne, Alabama has determined that Ordinances 2003-12 and 2003-32 include certain scrivener's errors within said Ordinances and that Ordinance 2004-43 did not contained a repealer section; and

WHEREAS, the City Council of the City of Daphne, Alabama desires to correct these scrivener's errors; and,

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

SECTION ONE:

A. That Ordinance 2003-32, commonly know as the "*Noise Ordinance*" upon its passage inaccurately repealed Ordinance 2002-03 entitled the (*Mardi Gras Ordinance*), although it was not the intention of the City of Council of the City of Daphne, Alabama to repeal 2002-03 (*Mardi Gras Ordinance*), but the passage was intended to repeal Ordinance 2002-07, the (*prior*) Noise Ordinance.

A. Now, therefore to correct the scrivener's errors contained in Ordinance 2003-32, said Ordinance is hereby amended to correctly repeal Ordinance Number 2002-07, and should state as follows:

SECTION III REPEALER. "Ordinance Numbers 1993-15, 1993-20, 1994-15, 1997-10, 1998-13 and 2002-07 are 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, be and are hereby repealed.

- B. That Ordinance Number 2002-03 is deemed not repealed and remains in full force and effect subject to any amendments or revisions that may have otherwise been made by the City Council subsequent to its enactment.

SECTION TWO:

- A. That Ordinance Number 2003-12 amended certain sections of 7.5 of the City's Personnel and Policies and Procedures passed by the City Council on April 21, 2003, but by scrivener's error, was incorrectly numbered 2002-12. Said Ordinance 2002-12 amended certain garbage fees for solid waste collection to be charged within the City of Daphne.
- B. That to correct the scrivener's errors contained in Ordinance 2002-12, said Ordinance is amended and is to be labeled as Ordinance 2003-12.
- C. That the City Clerk be and is hereby authorized to replace the first page of Ordinance Number 2002-12, as passed on April 12, 2003 with a corrected page properly numbered City of Daphne Ordinance Number 2003-12. All remaining provisions of Ordinance 2003-12, previously labeled as 2002-12, shall remain in full force and effect subject to any amendments or revisions that may have been otherwise effected subsequent to its enactment.

SECTION THREE:

- A. That Ordinance Number 2004-43 commonly known as the City of Daphne's (*Failure to Obey Police Officer*) Ordinance inadvertently did not include a repealer clause which was intended to repeal the City's prior *Failure to Obey Police Officer* Ordinance Number 1969-07.
- B. That Ordinance Number 2004-43 be and is hereby amended to include the following repealer clause:
- That Ordinance Number 1969-07 be and is hereby specifically repealed. All other Ordinances or parts of Ordinances in conflict with this Ordinance are, to the extent of such conflict repealed.

SECTION FOUR: EFFECTIVE DATE

That this Ordinance shall be in full force and effect upon its adoption by the City Council of the City of Daphne and publication as required by law.

APPROVED AND ADOPTED THIS THE _____ DAY OF _____, 2005.

GREG BURNAM
COUNCIL PRESIDENT
Date & Time Signed: _____

FRED SMALL
MAYOR
Date & Time Signed: _____

ATTEST:

DAVID L. COHEN, CITY CLERK, MMC

**CITY OF DAPHNE
ORDINANCE NO: 2005-**

**AN ORDINANCE TO CORRECT SCRIVENER’S ERRORS IN
EXISTING ORDINANCE NOS. 2003-32 and 2003-12; AMEND
ORDINANCE NO. 2004-43 TO INCLUDE “REPEALER” SECTION.**

WHEREAS, the City Council of the City of Daphne, Alabama desires to promote the health, welfare and safety of the citizens of the City; and,

WHEREAS, the City Council of the City of Daphne, Alabama has determined that prior ordinance nos. 2003-32 and 2003-12 enacted by the City contain scrivener’s errors within said ordinances and it is necessary to correct said errors and that Ordinance No. 2004-43 omitted a necessary repealer clause, and

WHEREAS, the City Council of the City of Daphne, Alabama desires to promote the health, welfare and safety of the citizens of the City by so ordering the correction of these errors in these ordinances as follows;

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

I. ORDINANCE NO. 2003-32, commonly known as the “Noise Ordinance”, Section III (Repealer) intends to repeal prior Noise Ordinance No. 2002-07, but instead, by scrivener’s error, inaccurately repeals Ordinance No. 2002-03 (Mardi Gras Ordinance). It is not the intention or desire of the City of Daphne to repeal Ordinance No. 2002-03 (Mardi Gras Ordinance).

Now therefore, in order to correct the scrivener’s error contained in Ordinance No. 2003-32, Section III (Repealer), said ordinance is hereby amended to correctly repeal Ordinance No. 2002-07, the prior Noise Ordinance, as follows:

SECTION III REPEALER. “Ordinance Nos. 1993-15, 1993-20, 1994-15, 1997-10, 1998-13 and 2002-07 are 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.”

Ordinance No. 2002-03 is deemed not repealed and remains in full force and effect subject to any amendments or revisions that may have been effected subsequent to its enactment.

II. ORDINANCE NO. 2003-12, which amends section 7.5 of the Personnel Policies and Procedures Manual and passed by the City Council on or about April 21, 2003, by

scrivener's error, is inaccurately numbered "2002-12." The correct ordinance labeled 2002-12 amends garbage fees to be charged within the City of Daphne.

Now therefore, in order to correct the scrivener's error contained therein, Ordinance No. 2002-10, as passed on or about April 12, 2003, is hereby amended to correctly read and be labeled or numbered as "**Ordinance No. 2003-12.**"

The City Clerk is hereby authorized to replace the first page of Ordinance No. 2002-12 as passed on April 12, 2003 with a corrected page properly numbered "2003-12." All remaining provisions of Ordinance No. 2003-12 remain in full force and effect, subject to any amendments or revisions that may have been effected subsequent to its enactment.

III. ORDINANCE NO. 2004-43 - Known as the "Failure to Obey Police Officer" ordinance inadvertently omitted a repealer clause repealing the prior Failure to Obey Police Officer ordinance (Ordinance No. 1969-07). Ordinance No. 2004-43 is hereby amended to include a repealer clause, as follows:

"SECTION IV. REPEALER. Ordinance number 1969-07 is hereby specifically repealed. All other Ordinances or parts of Ordinances in conflict with this Ordinance are, to the extent of such conflict, hereby repealed."

SECTION IV: EFFECTIVE DATE

This Ordinance shall be in full force and effect upon its adoption by the City Council of the City of Daphne and publication as required by law.

APPROVED AND ADOPTED this _____ day of _____, 2005.

GREG BURNAM
COUNCIL PRESIDENT
DATE/TIME SIGNED: _____

FRED SMALL, MAYOR
DATE/TIME SIGNED: _____

ATTEST:

DAVID COHEN, CITY CLERK, MMC

**CITY OF DAPHNE
ORDINANCE NO: 2005-31**

ABATEMENT ORDINANCE

**AN ORDINANCE ADOPTING THE STANDARD UNSAFE BUILDING
ABATEMENT CODE, 1985 EDITION WITH AMENDMENTS and
ADDITIONAL PROTECTIONS PROVIDED UNDER ALA. CODE
§§11-53b-5 thru 11-53B-16.**

WHEREAS, the City Council of the City of Daphne, Alabama desires to promote the health, welfare and safety of the citizens of the City; and,

WHEREAS, the City Council of the City of Daphne, Alabama has determined that a procedure for abatement of unsafe buildings and property is necessary to the preservation of the health, welfare and safety of the citizens of the City, and,

WHEREAS, the City Council of the City of Daphne, Alabama desires to adopt the Standard Unsafe Building Abatement Code, 1985 Edition with amendments along with additional procedures as set forth in Ala. Code, 1975 §§11-53B-5 thru and including 11-53B-16 as a comprehensive Ordinance for the abatement of unsafe buildings and property, and,

WHEREAS, the City Council of the City of Daphne, Alabama recognizes that the procedures set forth hereafter will protect both the City of Daphne and its citizens and the owners of unsafe properties coming under the jurisdiction of this ordinance and made the subject of these procedures:

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

SECTION I. ADOPTION OF STANDARD UNSAFE BUILDING ABATEMENT CODE, 1985 EDITION.

The City of Daphne hereby adopts in full the STANDARD UNSAFE BUILDING ABATEMENT CODE, 1985 edition as the procedures and policies to be followed for abatement of unsafe property and buildings within the City of Daphne.

In addition to the STANDARD UNSAFE BUILDING ABATEMENT CODE, 1985 edition, the City also enacts the following protections and procedures:

SECTION II. AMENDMENTS TO STANDARD UNSAFE BUILDING ABATEMENT CODE, 1985 EDITION.

1. **§302.1.3 Method of Service of Notice of Hearing** - §302.1.3 of the Standard Unsafe Building Abatement Code, 1985 edition is hereby amended to include the additional sentences as follows:

“In the event service by certified mail is refused, then service shall hereby be deemed effective, and the recipient thereof shall be deemed to have been notified of the contents of the Notice contained therein. In the event the notice is returned unclaimed, then the serving party may serve the recipient by publication of said notice in a local newspaper of general circulation 1 time no less than 10 days prior to the date of the hearing of the governing body.”

2. **Chapter 7, Standard Unsafe Building Abatement code, 1985 edition (Recovery of Cost of Repair or Demolition).** - Chapter 7 of the Standard Unsafe Building Abatement Code, 1985 edition is hereby amended and expanded to include the procedures and protection afforded in Alabama Code 1975, §§11-53B-5 thru and including 11-53B-16, which are included herein as follows:

A. (Ala. Code §11-53B-5). Fixing of costs.

Upon demolition or repair of the building or structure, the appropriate city official shall make a report to the governing body of the cost thereof, and the governing body shall adopt a resolution fixing the costs which it finds were reasonably incurred in the demolition or repair and assessing the same against the property; provided, however, the proceeds of any moneys received from the sale of salvaged materials from the building or structure shall be used or applied against the cost of the demolition; and provided further, that any person, firm, or corporation having an interest in the property may be heard at the meeting as to any objection he or she may have to the fixing of such costs or the amounts thereof. The clerk of the municipality shall give notice of the meeting at which the fixing of the costs is to be considered by first-class mail to all entities having an interest in the property whose address and interest is determined from the tax assessor's records on the property or as otherwise known to the clerk. The fixing of the costs by the governing body shall constitute an assessment against the lot or lots, parcel or parcels of land upon which the building or structure was located, and as made and confirmed shall constitute a lien on the property for the amount of the assessment ("the final assessment"). The lien shall be superior to all other liens on the property except liens for taxes, and except for mortgages recorded prior to the creation of the lien for the assessment, and shall continue in force until paid. A certified copy of the resolution fixing the final assessment shall also be recorded in the office of the judge of probate of the county in which the municipality is situated.

B. (Ala. Code §11-53B-6). Assessments against state purchased property.

The municipality shall have the power to assess the costs authorized herein against any lot or lots, parcel or parcels of land purchased by the State of Alabama at any sale for the nonpayment of taxes, and where such an assessment is made against the lot or lots, parcel or parcels of land, a subsequent redemption thereof by any person authorized to redeem, or sale thereof by the state, shall not operate or discharge, or in any manner affect

the lien of the city for the assessment, but any redemptioner or purchaser at any sale by the state of any lot or lots, parcel or parcels of land upon which an assessment has been levied, whether prior to or subsequent to a sale by the state for the nonpayment of taxes, shall take the same subject to the assessment.

C. (Ala. Code §11-53B-7). Payment of assessments

The municipality, in ordering any repair or demolition the cost of which or any part thereof is to be assessed against any property in accordance with the provisions of this chapter, may provide that the same shall be paid in cash within 30 days after the final assessment; provided, however, that if the assessed amount is greater than ten thousand dollars (\$ 10,000), the property owner may, at his or her election, to be expressed by notifying the municipal official charged with the duty of collecting the assessments in writing within 30 days after the final assessment is determined, pay the final assessment in 10 equal annual installments, which shall bear interest at a rate not exceeding 12 percent per annum. Interest shall begin to accrue upon the expiration of 30 days from the date on which the final assessment is set by the governing body and the interest shall be due and payable at the time and place the assessment is due and payable.

Any person who elects to make installment payments may pay the outstanding balance of the final assessment together with all accrued interest thereon at any time during the installment payment schedule. The first installment shall be payable within 30 days after the final assessment is determined, and all installments thereof shall be payable at the office of the clerk, finance office, or treasurer of the city or town as may be prescribed. Upon full payment of the final assessments and accrued interest thereon, the municipality shall record a satisfaction of the lien in the office of the judge of probate of the county in which the municipality is located.

D. (Ala. Code §11-53B-8). Default sale procedures

If the property owner fails to pay the assessment lien within 30 days, or having elected to make installment payments, fails to make any installment payment when due, the whole assessment lien shall immediately become due and payable, and the officer designated by the municipality to collect the assessment lien shall proceed to sell the property against which the assessment lien is made to the highest bidder for cash, but in no event less than the amount of the lien plus interest through the date of default. Prior to the sale, notice shall be given by publication once a week for three consecutive weeks in a newspaper published in the municipality or of general circulation therein, setting forth the date and time of the sale and the purpose for which the same is made, together with a description of the property to be sold. If the officer shall fail to advertise and sell any property on which the payments are past due, any taxpayer of the issuing municipality shall have the right to apply for a writ of mandamus requiring the official to take such action to any court of competent jurisdiction, and the court shall, on proof, issue and enforce the writ.

E. (Ala. Code §11-53B-9). Payment and sale procedures

(a) Any property owner, notwithstanding his or her default, may pay the assessment lien with interest and all costs if tendered before a sale of the property.

(b) The cost of any notice and sale resulting from a default on paying an assessment shall constitute a charge against the property to be sold and shall be retained out of the proceeds of the sale.

(c) The officer making the sale shall execute a deed to the purchaser, which shall convey all the rights, title, and interest which the party against whose property the assessment was made had or held in the property at the date of making the assessment or on the date of making the sale. Any surplus arising from the sale shall be paid to the city or municipal treasurer to be kept as a separate fund by the treasurer for the owner upon the responsibility of his or her official bond. The municipality may, by its agents, purchase real estate sold as provided under this article and, in the event of the purchase, the deed for the same shall be made to the municipality.

(d) No mistake in the notice of sale in the description of the property or in the name of the owner shall vitiate the assessment or the lien and if for any reason, the sale made by the municipality is ineffectual to pass title, it shall operate as an assignment of the lien, and, upon the request of the purchaser, supplementary proceedings of the same general character as required in this chapter may be had to correct the errors in the proceedings for his or her benefit or the lien so assigned to him or her may be enforced by civil action.

F. (Ala. Code §11-53B-10). Post sale redemption requirements

(a) Any real property heretofore or hereafter sold for the satisfaction of an assessment lien imposed thereon by the governing body of a municipality may be redeemed by the former owner, or his or her assigns, or other persons authorized to redeem property sold for taxes by the state, within two years from the date of the sale by depositing with the officer designated by the municipality to collect the assessments the amount of money for which the lands were sold, with interest thereon at the rate of 12 percent per annum from the date of the sale through the date of the payment.

(b) In addition to any other requirements set forth in this section, the proposed redemptioner must pay or tender to the purchaser or his transferee all insurance premiums paid or owed by the purchaser with accrued interest on the payments computed from the date the premiums were paid at 12 percent per annum through the date of payment.

(c) In addition to any other requirements set forth in this section, the proposed redemptioner must pay or tender to the purchaser or his transferee the value of all permanent improvements made on the property determined in accordance with this section. As used herein "permanent improvements" shall include, but not be limited to, all repairs, improvements and equipment attached to the property as fixtures. The proposed redemptioner shall make written demand upon the purchaser of a statement of the value of all permanent improvements made on the property since the assessment sale. In response to written demand made pursuant to this section, the purchaser shall within 10 days from the receipt of the demand, furnish the proposed redemptioner with the amount claimed as the value of the permanent improvements, and within 10 days after receipt of the response, the proposed redemptioner either shall accept the value so stated by the purchaser, or disagreeing therewith, shall appoint a referee to ascertain the value of the permanent

improvements. The proposed redemptioner shall in writing (i) notify the purchaser of his or her disagreement as to the value; and (ii) inform the purchaser of the name of the referee appointed by him or her. Within 10 days after the receipt of the notice, the purchaser shall appoint a referee to ascertain the value of the permanent improvements and advise the proposed redemptioner of the name of the appointee. The two referees shall, within 10 days after the purchaser has appointed his or her referee, meet and confer upon the award to be made by them. If they cannot agree, the referees shall at once appoint an umpire, and the award by a majority of the body shall be made within 10 days after the appointment of the umpire and shall be final between the parties.

(d) If the proposed redemptioner fails or refuses to nominate a referee as provided in subsection (c), he or she shall pay the value put upon the improvements by the purchaser. If the purchaser refuses or fails to appoint a referee, as provided in subsection (c), the purchaser shall forfeit his or her claim to compensation for the improvements. The failure of the referees or either of them to act or to appoint an umpire shall not operate to impair or forfeit the right of either the proposed redemptioner or the purchaser in the premises. In the event of failure without fault of the parties to affect an award, the appropriate court shall proceed to ascertain the true value of the permanent improvements and enforce the redemption accordingly.

(e) In addition to all other payments provided hereunder, the proposed redemptioner shall also pay interest to the purchaser on the value of all permanent improvements computed from the date the improvements were made at the rate of 12 percent per annum through the date of the payment.

G. (Ala. Code §11-53B-11). Time extension

The fixed two-year period of redemption allowed by Section 11-53B-10 for the redemption of any property heretofore or hereafter sold for the satisfaction of any assessment lien may be extended to a date 60 days after the date of the certificate of warning to redeem provided for in Section 11-53B-12, but in no event for a longer period than six years from the date of such sale.

H. (Ala. Code §11-53B-12). Certificate of warning

At any time after an assessment sale deed has been recorded in the office of the judge of probate of the county in which the property therein described lies and after expiration of the fixed two-year period of redemption allowed by Section 11-53B-10, any person may apply to the judge of probate for the certificate of warning to redeem, which references the recorded volume and page number of the deed to be recorded in the real estate records, in substantially the following form: "I hereby certify that on or prior to the date of this certificate, I mailed a certified copy of the deed here recorded, together with notice that the same is here recorded, and a warning to redeem to each of the one or more persons other than the grantee in said deed, to whom the property therein described was last finally assessed for ad valorem taxation at the address of each such person as shown by said ad valorem tax assessment records. This day of , 2 , Judge of Probate, County, Alabama."

I. (Ala. Code §11-53B-13). Certification procedures

At the time of application for entry of the certificate of warning to redeem, the applicant shall deliver to the judge of probate three certified copies of the recorded deed and shall pay to the judge of probate a fee of one dollar (\$ 1). Copies of the deed need not include any certificate of acknowledgment. The applicant shall also deliver to the judge of probate a certified copy of the ad valorem tax assessment records of the county containing the name of the person or persons other than the grantee in the deed to whom the property described in the deed was last finally assessed for ad valorem taxation, together with the address of each person as shown by the tax assessment records, or an affidavit that there is no one else. The judge of probate shall promptly mail to each person at such address one of the aforesaid certified copies of the deed, together with an attached warning to redeem in substantially the following form: "Take notice that there is recorded in my office in Deed Book at page a deed of which the attached is a correct copy. You are warned that unless you, or those claiming under you, take prompt steps to redeem from those claiming under the deed, all rights of redemption may be lost. This day of , 2 , Judge of Probate, County, Alabama."

Promptly upon or after mailing the notice or notices and certified copy or copies of the deed, it shall be the duty of the judge of probate to record in the real estate records the signed and dated certificate of warning substantially as prescribed by Section 11-53B-12. At the expiration of 60 days after the date of the certificate all rights to redeem from the sale shown by the deed shall cease and desist.

J. (Ala. Code §11-53B-14). Redemption procedures

Redemption may be effected after expiration of the fixed two-year period of redemption allowed or provided by Section 11-53B-10 and before the extended period of redemption has expired in the same manner and at the same redemption price as is provided in Section 11-53B-10; provided, that if the judge of probate has made the certificate of warning to redeem as provided in Section 11-53B-12, said redemption price shall be increased by one dollar (\$1).

K. (Ala. Code §11-53B-15). Emergency action

Notwithstanding any other provisions of this act, a municipality shall have authority to enact, and may by ordinance authorize, the appropriate city official to initiate immediate repair or demolition of a building structure when, in the opinion of the official so designated, such emergency action is required due to imminent danger of structural collapse endangering adjoining property, the public right of way or human life or health. The cost of the emergency action shall be fixed by the municipal governing body and shall be assessed as provided in the ordinance, or, if such ordinance does not provide a method of assessment, as provided by this chapter.

L. (Ala. Code §11-53B-16). Applicability

This act shall also apply to all assessment liens for demolition or renovation of record as of July 1, 2002.

SECTION III: REPEALER

Ordinance number 2004-15 is hereby specifically repealed. All other Ordinances or parts of Ordinances in conflict with this Ordinance are, to the extent of such conflict, hereby repealed.

SECTION IV: EFFECTIVE DATE

This Ordinance shall be in full force and effect upon its adoption by the City Council of the City of Daphne and publication as required by law.

APPROVED AND ADOPTED this _____ day of _____, 2005.

GREG BURNAM
COUNCIL PRESIDENT
DATE/TIME SIGNED: _____

FRED SMALL, MAYOR
THE CITY OF DAPHNE
DATE/TIME SIGNED: _____

ATTEST:

DAVID COHEN, CITY CLERK, MMC

ORDINANCE 2005-32

**An Ordinance Restricting the use of Funds:
\$ 1,000,000 De-Annexation Proceeds**

WHEREAS, the City of Daphne did heretofore enter into an Agreement dated April 18th, 2005 with Cypress/Spanish Fort LLC whereby certain property located near Interstate 10 was de-annexed from the City of Daphne into the City of Spanish Fort; and

WHEREAS, in consideration for the de-annexation, the City of Daphne did receive a sum of \$ 1,000,000 (One Million Dollars); and

WHEREAS, the City of Daphne has numerous recreational needs.

NOW, THEREFORE, BE IT ORDAINED that the City Council has determined that the sum of \$ 1,000,000 and all interest earned and accrued for such sum shall be restricted for recreational purposes as approved by the City Council.

APPROVED AND ADOPTED by the City Council of the City of Daphne, Alabama, this _____ day of _____, 2005.

Greg Burnam, Council President

Date & Time Signed:_____

Fred Small, Mayor

Date & Time Signed:_____

ATTEST:

David L. Cohen, City Clerk, MMC

ORDINANCE 2005-34

An Ordinance Appropriating Funds

Site Containment Inspector

WHEREAS, Ordinance 2004-31 approved and adopted the Fiscal Year 2005 Budget November 1, 2004; and

WHEREAS, subsequent to the adoption of the Fiscal Year 2005 budget, the City Council has from time to time determined that certain additional appropriations are required and should be approved and made a part of the Fiscal Year 2005 budget; and

WHEREAS, new construction of homes and businesses is continuing to increase within the City of Daphne; and

WHEREAS, such construction requires site monitoring in order to enforce compliance with local, state, and federal erosion control guidelines and thereby limit or eliminate the effects of flooding events in and around construction sites; and

WHEREAS, the City of Daphne recognizes the need to authorize a new position to perform such site monitoring duties.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Daphne, Alabama, that:

- The position of Site Containment Inspector is hereby created and established as a Grade 16 in the City of Daphne Job Classification Plan.
- The Fiscal Year 2005 Budget is hereby amended to include a General Fund appropriation for wages and benefits in the amount of \$ 7,829 for the remainder of Fiscal 2005. (Annual starting compensation & benefits \$ 40,712)

APPROVED AND ADOPTED by the City Council of the City of Daphne, Alabama, this _____ day of _____, 2005.

Greg Burnam, Council President
Date & Time Signed:_____

Fred Small, Mayor
Date & Time Signed:_____

ATTEST:

David L. Cohen, City Clerk, MMC

ORDINANCE 2005-35

An Ordinance Appropriating Funds

Community Action Agency

WHEREAS, Ordinance 2004-31 approved and adopted the Fiscal Year 2005 Budget November 1, 2004; and

WHEREAS, subsequent to the adoption of the Fiscal Year 2005 budget, the City Council has from time to time determined that certain additional appropriations are required and should be approved and made a part of the Fiscal Year 2005 budget; and

WHEREAS, the Community Action Agency of Baldwin, Escambia, Clarke, Monroe, and Conecuh Counties has the opportunity to receive three (3) AmeriCorps VISTA Volunteers for one (1) year of service; and

WHEREAS, the Community Action Agency was established to help low income individuals achieve self-sufficiency; and

WHEREAS, the City of Daphne supports the efforts of the Community Action Agency to meet the social, economic, and educational needs of low-income individuals residing in Daphne.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Daphne, Alabama, that:

- The Fiscal Year 2005 Budget is hereby amended to include a General Fund appropriation in the amount of \$ 1,000 to the Community Action Agency for the purpose of assisting with such costs as are necessary to secure 3 Americorps VISTA Volunteers for a period of one year.
- The Mayor is hereby authorized to execute the agreement as attached hereto for the purpose stated herein.

APPROVED AND ADOPTED by the City Council of the City of Daphne, Alabama, this _____ day of _____, 2005.

Greg Burnam, Council President
Date & Time Signed: _____

Fred Small, Mayor
Date & Time Signed: _____

ATTEST:

David L. Cohen, City Clerk, MMC

AGREEMENT

STATE OF ALABAMA)
COUNTY OF BALDWIN)

This Agreement made and entered into on this the _____ day of _____, 2005, by and between the City of Daphne, Alabama (hereinafter referred to as Daphne), and the Community Action Agency of Baldwin, Escambia, Clarke, Monroe, and Conecuh Counties (hereinafter referred to as the Community Action Agency).

KNOW ALL MEN BY THESE PRESENT THAT:

WHEREAS, the City Council of the City of Daphne, Alabama, believes it to be in the best interest of the health, safety, and welfare of its citizens to provide financial assistance to the Community Action Agency; and

WHEREAS, the Community Action Agency seeks to empower communities through results-oriented programs targeted at meeting the social, economic, and educational needs of low-income individuals residing in Daphne; and

WHEREAS, the City Council of the City of Daphne recognizes that a public purpose is served through such programs and that such programs improve the quality of life of the residents and citizens of the City of Daphne.

WITNESSETH, that Daphne, for and in consideration of the covenants and agreements hereinafter set forth to be kept and performed by the Community Action Agency, does hereby agree to pay the sum of One Thousand and no/100 Dollars (\$1,000) to the Community Action Agency to be used toward the funding of three (3) AmeriCorps VISTA Volunteers for a period of one (1) year. In consideration of the covenants and agreements made herein by Daphne, the Community Action Agency agrees that it shall be totally responsible for, and shall have exclusive control over the management and disbursement of all such monies received from Daphne.

Notwithstanding any of the provisions of this contract, it is agreed that Daphne has no financial interest in the business of the Community Action Agency and shall not be liable for any debts or obligations incurred by the Community Action Agency, nor may Daphne be deemed or construed to be a partner, joint venturer, or otherwise interested party in the assets of the Community Action Agency, or sums earned or derived by the Community Action Agency, nor shall the Community Action Agency at any time or times use the name or credit of Daphne in purchasing or attempting to purchase any equipment, supplies, or things whatsoever.

The Community Action Agency, in the performance of its operations and obligations hereunder, shall not be deemed to be the agent of Daphne, but shall be deemed to be an independent contractor in every respect and shall take all steps at its own expense, as

Daphne may request, to indicate that it is an independent contractor. Daphne does not and will not assume any responsibility for the means by which or manner in which services by the Community Action Agency, as provided for herein, are performed, but on the contrary, the Community Action Agency shall be wholly responsible therefore.

The Community Action Agency shall not transfer or assign this contract or any of the rights or privileges granted herein without the written consent of Daphne.

The Community Action Agency agrees that upon violation of any of the covenants and agreements herein contained, on account of any act or omission or commission of the Community Action Agency, Daphne may, at its option, terminate and cancel this contract.

The Community Action Agency agrees that it will comply with Title 6 of the Civil Rights Act of 1964 assuring that no person will be excluded from participation, be denied benefits of, or otherwise be subject to discrimination on the grounds of race, sex, color, national origin, or handicap.

IN WITNESS HEREOF, we have hereunto set our hands and seals on the day and year first written.

CITY OF DAPHNE

Fred Small, Mayor

ATTEST:

David L. Cohen, City Clerk

COMMUNITY ACTION AGENCY

Cassandra Boykin, Executive Director

ATTEST:

Title: _____

CITY OF DAPHNE
ORDINANCE NO. 2005-37

**AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE
TO SOUTHERN LIGHT, LLC, FOR THE PURPOSE OF CONSTRUCTING
AND MAINTAINING A FIBER-OPTIC TRANSMISSION LINE
WITHIN CERTAIN PUBLIC RIGHTS-OF-WAY WITHIN THE
CITY OF DAPHNE, ALABAMA**

WHEREAS, SOUTHERN LIGHT, LLC (hereinafter referred to as the “Franchisee”) desires to construct a fiber-optic transmission line within certain public rights-of-way within the City of Daphne, Alabama; and

WHEREAS, the Franchisee agrees and recognizes that it is required to obtain consent in the form of a franchise from the City of Daphne in order to construct the proposed fiber-optic transmission line within the corporate limits of the City of Daphne; and

WHEREAS, the City Council wishes to grant a franchise for the construction of the proposed fiber-optic transmission line in accordance with the terms and conditions contained herein.

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

The City Council of the City of Daphne does hereby grant to SOUTHERN LIGHT, LLC a non-exclusive franchise granting the limited authority to construct a fiber optic transmission line in the City of Daphne in and along its rights-of-ways subject to the terms and conditions set forth below. Further, that said terms and conditions shall be set forth in a separate contract to be executed by the City of Daphne and Southern Light, L.L.C.

Further, the Mayor of the City of Daphne, on the City’s behalf, is authorized to negotiate and enter into a contract (by way of a separate document) with SOUTHERN LIGHT, LLC, upon the terms and conditions set forth below.

The City does hereby grant to Southern Light, L.L.C., an Alabama Limited Liability Company, a non-exclusive franchise as set out below to operate and construct a fiber-optic transmission line:

CONTRACT TERMS

SECTION 1. Defined Terms. For purposes of this Franchise, the following terms, words and phrases shall have the meanings set forth below. When not inconsistent with the context, words used in the singular number shall include the plural number, and words in the plural number shall include the singular.

1.1 “City” means the City of Daphne, Alabama.

1.2 “Governing Body” or “City Council” means the City Council of the City of Daphne, Alabama.

1.3 “Person” means any natural or corporate person, business association or other business entity including, but not limited to, a partnership, sole proprietorship, political subdivision, public or private agency of any kind, utility, successor or assign of any of the foregoing, or any other legal entity.

1.4 “Rights-of-way” means the surface and space above and below any public street, boulevard, road, highway, freeway, lane, alley, sidewalk, parkway, driveway, public ways, or other public rights of way, including, public utility easements, dedicated utility strips or rights of way dedicated for compatible uses held by the City or located within the City which shall entitle the City and other Franchisees and the Franchisee to use the same for the purpose of installing, operating, repairing and maintaining the System so long as such use does not interfere with other previously placed facilities by the city or any other Franchisee.

1.5 “System” shall mean a system of pipes, transmission lines, meters, equipment and all other facilities associated with the operation of a fiber-optic transmission line by the Franchisee in accordance with the terms and conditions contained herein.

SECTION 2. Grant of Authority. The City hereby grants to the Franchisee the non-exclusive and limited authority to construct, install and maintain a fiber-optic transmission line in and along the rights-of-way in the City of Daphne from time to time approved. The Franchisee shall not expand or extend the System installed or constructed within the City pursuant to this Franchise without approval from the Building Department of the City of Daphne.

SECTION 3. Compensation.

3.1 The Grantee shall pay to the City as a franchise fee of Five percent (5%) of its Gross Revenues during each calendar year of operation under this franchise. Such payments shall be made quarterly during each calendar year, within fifteen (15) days of the close of each quarter. An annual financial statement shall be furnished to the City by the

Grantee on or before April 1st of each year, or at any time upon request of the City after thirty (30) days written notice, such report to show Gross Revenues received by the Grantee from its operations with the City for the previous year. HOWEVER, at any time, upon request by the City and after sixty (60) days written notice, an annual certified audit report shall be furnished to the City by the Grantee, showing Gross Revenues received by the Grantee from its operations within the City for the previous year.

3.2 Acceptance of any fee payment shall not be deemed a waiver or release of any claims the City may have for additional sums, nor construed as an accord or Franchise that the amount paid is correct.

SECTION 4. Duration and Term. The franchise granted hereunder shall be for an initial term of fifteen (15) years (the “Initial Term”) commencing on the effective date of this Ordinance and Franchise, unless otherwise lawfully renewed, revoked or terminated as herein provided. Upon the expiration of the Initial Term, the Franchisee or the City shall have the option to renew this Franchise for one additional term of fifteen (15) years, subject to the terms and conditions contained herein, by giving written notice, sixty (60) days before the expiration of the Initial Term, to the other party of that party’s intent to renew this Franchise for the additional term.

SECTION 5. Grant of Non-Exclusive Authority. The right to use and occupy the rights-of-way for the purposes herein set forth shall not be exclusive, and the City reserves the right to grant the use of said rights-of-way to any person, firm or corporation at any time and for any lawful purpose. This Franchise shall not be construed to create any rights beyond the terms, conditions and periods set forth, except as provided herein. The City does not warrant any of the rights granted by this Franchise.

SECTION 6. Reservation of Regulatory and Police Powers. The City, by the granting of this franchise does not surrender or to any extent lose, waive, impair or lessen the lawful powers and rights now, or which may be hereafter, vested in the City under the Constitution and the statutes of the State of Alabama to regulate the use of its rights-of-way by the Franchisee or any person or to charge reasonable compensation for such use, and the Franchisee, by its acceptance of this franchise, agrees that all lawful powers and rights, regulatory power, police power or otherwise, that may be from time to time vested in or reserved to the City, shall be in full force and effect and subject to the exercise thereof by the City at any time. The Franchisee is deemed to acknowledge that its rights are subject to the regulatory and police powers of the City to adopt and enforce ordinances necessary for the safety and welfare of the public and agrees to comply with all applicable laws and ordinances enacted by the City pursuant to such powers.

Any conflict between the provisions of this Franchise and any other present or future

lawful exercise of the City's police powers shall be resolved in favor of the latter.

SECTION 7. Standards of Service.

7.1. Conditions of Street Occupancy. All portions of the System and all associated equipment installed or erected by the Franchisee pursuant to this Franchise shall be located so as to cause minimum interference with the proper use of the rights-of-way and with the rights and reasonable convenience of property owners who own property that adjoins any of such rights-of-way.

7.2 Restoration of Rights-of-way. If during the course of the Franchisee's construction, operation or maintenance of the System there occurs a disturbance of any rights-of-way by the Franchisee, it shall, at its expense, replace and restore such rights-of-way to a condition comparable to the condition of the rights-of-way existing immediately prior to such disturbance to the satisfaction of the City. The work to be done under this Franchise, and the restoration of rights-of-way as required herein, must be completed within the dates specified in any permits authorizing the work. The Franchisee shall perform the work according to the standards and with the materials specified or approved by the City, or in the case of state or federal highways within the City in accordance with the implicated Department of Transportation standards.

7.3 Relocation at Request of the City. Upon its receipt of reasonable notice, not to be less than forty-five (45) days, except where emergency conditions require shorter notice, the Franchisee shall, at its own expense, protect, support, temporarily disconnect, relocate in the rights-of-way, or remove from the rights-of-way, any property of the Franchisee when lawfully required by the City by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, electrical or telecommunications lines, when such installation or construction is being done directly by or for the City, the state or federal government. Should the Franchisee refuse or fail to remove its equipment or plant as provided for herein within forty-five (45) days after written notification, the City shall have the right to do such work or cause it to be done, and the reasonable cost thereof shall be chargeable to the Franchisee.

7.4 Trimming of Trees and Shrubbery. The Franchisee shall reasonably compensate the City for any damages, in such amounts as determined by the City, caused by trimming, cutting or removing trees or shrubbery, or shall, at its own expense, replace all trees or shrubs damaged as a result of any construction, installation, repair or maintenance of the System undertaken by the Franchisee to the satisfaction of the City.

7.5. Safety and Permit Requirements. Construction, installation, repair and

maintenance of the System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial compliance with applicable federal, state, and local laws, rules and regulations, including all permit requirements and ordinances adopted by the City which are now in effect or are hereafter adopted. The System or parts thereof shall not unreasonably endanger or interfere with the safety of persons or property in the area.

7.6. Minimum Standards. All of the construction by the Franchisee shall conform, at a minimum, to the minimum standards of the Franchisee. In the event there is a conflict between the standards adopted by the Franchisee and any applicable federal, state or local standards, including ordinances adopted by the City, the stricter standard shall apply.

7.7. Obstructions of Rights-of-Way. Except in the case of an emergency, or with the approval of the City Public Works Department with the consent of the Orange Beach Police Department, which consent shall not be unreasonably withheld, no rights-of-way obstruction or excavation may be performed when seasonally prohibited or when conditions are unreasonable for such work.

The Franchisee shall not so obstruct the rights-of-way so as to interfere with the natural, free and clear passage of water through the gutters, drains, ditches or other waterways.

7.8. Safety Requirements.

A. The Franchisee shall at all times employ the highest degree of care as is commensurate with the practical operation of its business and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.

B. The Franchisee shall install and maintain the System in accordance with the requirements of all applicable regulations of the City, which may be amended from time to time, and in such manner that its operations will not interfere with any installations of the City or of a public utility serving the City.

C. All structures and all lines, equipment and connections in, over, under and upon the rights-of-way, wherever situated or located, shall at all times be kept and maintained in a safe and suitable condition and in good order and repair.

D. The Franchisee shall maintain a force of employees at all times sufficient to provide safe, adequate and prompt service for the System.

7.9. Least Disruptive Technology. The Franchisee is encouraged to perform construction and maintenance of the System in a manner resulting in the least amount of damage and disruption to the rights-of-ways. The Franchisee will be required to use trenchless technology for any portion of construction or maintenance projects which lie beneath the paved or improved portion of any roadway to which this Franchise applies, unless otherwise approved by the City Council. The City Public Works Department may require trenchless technology in other locations, where circumstances prevent or make open-cut methods impractical. The Franchisee may use either the open-cut method or trenchless technology for construction outside the paved or improved portion of any roadway to which this Franchise applies.

SECTION 8. Enforcement and Termination of Franchise.

8.1. Notice of Violation. In the event the Franchisee has not complied with the terms of this Franchise, the City shall notify the Franchisee in writing of the nature of the alleged noncompliance.

8.2. Right to Cure or Respond. The Franchisee shall have 30 days from receipt of the notice described in Section 8.1: (a) to respond to the City by contesting the assertion of noncompliance, (b) to cure such default, or (c) in the event that, by the nature of default, such default cannot, for reasons beyond the control of the Franchisee, be cured within the 30-day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed.

8.3. Public Hearing. In the event the Franchisee fails to respond to the notice described in Section 8.1 or contests the assertion of noncompliance pursuant to the procedures set forth in Section 8.2, or in the event the alleged default is not remedied within 30 days or by the date projected pursuant to 8.2(c) above, the City shall schedule a public hearing to investigate the default. Such public hearing shall be held at the next regularly scheduled meeting of the City which is scheduled at a time not less than five business days therefrom. The City shall notify the Franchisee in writing of the time and place of such meeting and provide the Franchisee with an opportunity to be heard.

8.4. Enforcement. In the event the City, after such meeting, determines that the Franchisee is in default of any provision of this Franchise, the City may pursue any or all of the following remedies:

- A. Seek specific performance of any provision which reasonably lends itself to such a remedy;
- B. Make a claim against any surety or performance bond

which may be required to be posted;

- C. Restrain by injunction the default or reasonably anticipated default by the Franchisee of any provision of this Franchise;
- D. Seek any other available remedy permitted at law or equity;
- E. In the case of a material default of this Franchise, declare the Franchise to be revoked in accordance with the following:

(1) The City shall give written notice to the Franchisee of its intent to revoke the Franchise on the basis of noncompliance by the Franchisee. The notice shall set forth the exact nature of the noncompliance. The Franchisee shall have 30 days from such notice to object in writing and to state its reasons for such objection. In the event the City has not received a satisfactory response from the Franchisee, it may then seek termination of this Franchise at a public meeting. The City shall cause to be mailed to the Franchisee, by regular mail, at least 10 days prior to such public meeting, a written notice specifying the time and place of such meeting and stating its intent to seek such termination.

(2) At the designated meeting, the City shall give the Franchisee an opportunity to state its position on the matter, after which it shall determine whether or not this Franchise shall be terminated. The Franchisee may appeal such determination to the Circuit Court of Baldwin County, which shall have the power to review the decision of the City and to modify or reverse such decision as justice may require. Such appeal must be taken within 30 days of the issuance of the determination by the City.

(3) The City may, in its sole discretion, take any lawful action which it deems appropriate to enforce the City's rights under this Franchise in lieu of revocation of the Franchise.

8.5. Impossibility of Performance. The Franchisee shall not be held in default or noncompliance with the provisions of this Franchise, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages or other events reasonably beyond its ability to control, but not the payment of fees or damages as a result of its business or operations practices.

SECTION 9. Default. Each of the following shall constitute a material default by the Franchisee:

- (1) Failure to make any payments to the City required to be made as set forth in this Franchise;
- (2) Failure to maintain a liability insurance policy, cash or other bond that is not cured within thirty (30) days following written notice to the Franchisee;
- (3) Failure to provide or furnish any information required under this Franchise to the City that is not cured within thirty (30) days following written notice to the Franchisee;
- (4) Any breach or violation of any ordinance, rule or regulation or any applicable safety or construction requirements or regulations that present a threat to health or safety that has not been cured within thirty (30) days written notice;
- (5) The occurrence of any event relating to the financial status of the Franchisee which may reasonably lead to the foreclosure or other judicial or non-judicial sale of all or any material part of the System or the assets of the Franchisee;
- (6) The condemnation by a public authority, other than the City, or sale or dedication under threat or in lieu of condemnation, of all or substantially all of the facilities; or
- (7) If (a) the Franchisee shall make an assignment for the benefit of creditors, shall become and be adjudicated

insolvent, shall petition or apply to any tribunal for, or consent to, the appointment of, or taking possession by, a receiver, custodian, liquidator or trustee or similar official pursuant to state or local laws, ordinances or regulations of any substantial part of its property or assets, including all or any part of the System; (b) a writ of attachment, execution, distraint, levy, possession or any similar process shall be issued by any tribunal against all or any material part of the Franchisee's property or assets; (c) any creditor of the Franchisee petitions or applies to any tribunal for the appointment of, or taking possession by, a trustee, receiver, custodian, liquidator or similar official for the Franchisee or for any material parts of the property or assets of the Franchisee under the law of any jurisdiction, whether now or hereafter in effect, and a final order, judgment or decree is entered appointing any such trustee, receiver, custodian, liquidator or similar official, or approving the petition in any such proceeding; or (d) any final order, judgment or decree is entered in any proceedings against the Franchisee decreeing the voluntary or involuntary dissolution of the Franchisee.

SECTION 10. Prior to any excavation within the rights-of-way, the Franchisee shall obtain a permit from the City pursuant to this Franchise, and the work shall be performed in accordance with all applicable ordinances and codes and any subsequent ordinances or regulations that may be adopted by the City. Repair and replacement of the rights-of-ways due to the Franchisee's installation, removal, relocation, maintenance and repair of its System or facilities shall be accomplished to the satisfaction of the City.

SECTION 11. Insurance and Bonds. The Franchisee shall maintain in full force and effect, at its own cost and expense, a comprehensive general liability insurance policy in the amount of \$1,000,000.00 for bodily injury and property damage per person and \$3,000,000.00 as to each occurrence, satisfactory to the City. In addition, the Franchisee shall obtain worker's compensation coverage as required by the laws of the State of Alabama. The City shall be named as an additional insured on all insurance policies, and the Franchisee shall provide the City with a certificate of insurance designating the City as an additional insured on each policy and extension or renewal thereof. An endorsement shall be included with the policy that states that the policy shall not be cancelled without giving thirty (30) days written notice of such cancellation to the City. Additionally, upon application for a permit to construct or repair any portion of the system the City may require the posting of a cash or corporate bond in an amount in the Building Department's

discretion is necessary to insure the prompt payment for any damage that may be caused by Franchisee or for the prosecution of the work in the event it is not completed or completion is substandard.

SECTION 12. Indemnity and Hold Harmless. The Franchisee agrees to indemnify, defend, and hold harmless the City, its elected officers, employees, agents, and representatives, against all claims, costs, losses, expenses, demands, actions, or causes of action, including reasonable attorney's fees and other costs and expenses of litigation, which may be asserted against or incurred by the City or for which the City may be liable, which arise from the negligence or willful misconduct, of the Franchisee, its employees, agents, or subcontractors arising out of the construction, operation, maintenance, upgrade, repair or removal of Facilities except for those claims, costs, losses, expenses, demands, actions, or causes of action which arise solely from the negligence, willful misconduct, or other fault of the City. The City does not and shall not waive any rights against the Franchisee which it may have by reason of this indemnification, or because of the acceptance by, or the Franchisee's deposit with the City of any of the insurance policies, cash or bond described in this Franchise. The indemnification by the Franchisee shall apply to all damages, penalties and claims of any kind, regardless of whether any insurance policy shall have been determined to be applicable to any such damages or claims for damages.

SECTION 13. Disclaimer of Warranties. The City makes no representation or warranty regarding its rights to authorize the installation or operation of the System on any particular right-of-way, and the burden and responsibility for making such determination in advance of the installation shall be upon the Franchisee. This Franchise shall not be construed to deprive the City of any rights or privileges which it now has, or may hereafter have, to regulate the use and control of its streets.

SECTION 14. Warranties and Representations. The Franchisee hereby agrees, represents and warrants that it is legally authorized to accept this Franchise in accordance with all applicable laws, rules and regulations. Furthermore, the Franchisee further agrees, represents and warrants that this Franchise is legal, valid and binding, and that it is required to obtain authorization and consent from the City prior to the construction, installation, operation or maintenance of the System.

SECTION 15. Other Obligations. Obtaining a franchise does not relieve the Franchisee of its duty to obtain all other necessary permits, licenses, authority and the payment of fees required by any other City, county, state or federal rules, laws or regulations, and the Franchisee is responsible for all work done in the rights-of-way pursuant to this Franchise, regardless of who performs the work.

SECTION 16. Payment of Costs. The Franchisee shall be responsible for all costs

associated with the installation, repair and maintenance of the System and all associated equipment including, but not limited to (1) the costs to repair the rights-of-way due to the installation, repair and maintenance of the System, and (2) the costs incurred in removing or relocating any portion of the System or facilities constructed when required by the City. Additionally, the Franchisee agrees to be solely responsible for any and all damages to other users of the rights-of-way within the City caused by Franchisee's use of said rights-of-way.

SECTION 17. Priority of Use. This Franchise does not establish any priority for the use of the rights-of-way by the Franchisee or any present or future franchisees or permit holders. In the event of any dispute as to the priority of use of the rights-of-way, the first priority shall be to the public generally, the second priority to the City, the third priority to the State of Alabama and its political subdivisions in the performance of their various functions, and thereafter, as between franchisees and other permit holders, as determined by the City in the exercise of its powers, including the police powers and other powers reserved to and conferred on it by the State of Alabama.

SECTION 18. Notice. Every notice or response required by this Franchise to be served upon the City or the Franchisee shall be in writing and shall be deemed to have been duly given to the required party three (3) business days after having been posted in a properly sealed and correctly addressed envelope when hand delivered or sent by certified or registered mail, postage prepaid as follows:

The notices or responses to the City shall be addressed as follows:

**City of Daphne, Alabama
Post Office Box 400
Daphne, Alabama 36526**

The notices or responses to the Franchisee shall be addressed as follows:

**Southern Light, LLC
P.O. Box 91127
Mobile, AL 36691**

SECTION 19. The City and The Franchisee may designate such other address or addresses from time to time by giving written notice to the other party as set forth in this section.

SECTION 20. Application. The terms and conditions contained in this Franchise shall apply to all areas within the corporate limits of the City and those areas annexed by the City after the passage and approval of this Ordinance.

SECTION 21. Acceptance. The Franchisee's acceptance of this Franchise shall be in writing in a form approved by the City attorney and shall be accompanied by delivery of all payments, insurance certificates, applications, acceptance fees and performance bonds or other requirements relating to commencement of construction as set forth in this Franchise.

SECTION 22. Assignment. The Franchisee's interest in this Franchise shall not be sold, transferred, assigned or otherwise encumbered or disposed of, either by forced or voluntary sale or otherwise, without the prior written consent of the City Council. The City reserves the right to be reimbursed by the Franchisee for costs incurred by it in reviewing the request for transfer of ownership.

SECTION 23. Miscellaneous. Words of any gender used in this Franchise shall be held and construed to include any other gender, and words in singular number shall be held to include the plural and vice versa, unless context requires otherwise. The captions used in connection with the sections of this Franchise are for convenience only and shall not be deemed to construe or limit the meaning of the language contained in this Franchise, or be used in interpreting the meanings and provisions of this Franchise.

SECTION 24. Rules of Construction. The parties hereto acknowledge that each party and its counsel have had the opportunity to review and revise this Franchise, and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Franchise or any amendments or exhibits thereto.

SECTION 25. Governing Law. This Franchise shall be deemed to have been made in the State of Alabama and the validity of the same, its construction, interpretation, enforcement and the rights of the parties hereunder, shall be determined under, governed by and construed in accordance with the substantive laws of the State of Alabama, without giving effect to any choice of law provisions arising thereunder.

SECTION 26. Severability Clause. If any part, section or subdivision of this Ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Ordinance, which shall continue in full force and effect notwithstanding such holding.

SECTION 27. Repealer Clause. Any Ordinance heretofore adopted by the City Council of the City of Daphne, Alabama, which is in conflict with this Ordinance is hereby repealed to the extent of such conflict.

SECTION 28. Effective Date. This Ordinance shall become effective only upon

receipt of a written unconditional acceptance by the Franchisee of the terms and conditions contained herein within thirty (30) days of the passage of this Ordinance.

ADOPTED AND APPROVED this _____ day of _____, 2005.

GREG BURNAM
COUNCIL PRESIDENT
DATE/TIME SIGNED: _____

FRED SMALL, MAYOR
THE CITY OF DAPHNE
DATE/TIME SIGNED: _____

ATTEST:

DAVID COHEN, CITY CLERK, MMC

NON-EXCLUSIVE FRANCHISE AGREEMENT

This agreement entered into this date by and between The City of Daphne, Alabama, a municipal corporation and Southern Light, L.L.C., an Alabama Limited Liability Corporation, for and in consideration of the consideration expressed below and the mutual promises set forth herein in the terms of this agreement, The City Council of the City of Daphne does hereby grant to SOUTHERN LIGHT, L.L.C. a non-exclusive franchise granting the limited authority to construct a fiber optic transmission line in the City of Daphne in and along its rights-of-ways subject to the terms and conditions set forth below.

The City does hereby grant to Southern Light, L.L.C., an Alabama Limited Liability Company, a non-exclusive franchise to operate and construct a fiber-optic transmission line as set out below:

SECTION 1. Defined Terms. For purposes of this Franchise, the following terms, words and phrases shall have the meanings set forth below. When not inconsistent with the context, words used in the singular number shall include the plural number, and words in the plural number shall include the singular.

1.1 “City” means the City of Daphne, Alabama.

1.2 “Governing Body” or “City Council” means the City Council of the City of Daphne, Alabama.

1.3 “Person” means any natural or corporate person, business association or other business entity including, but not limited to, a partnership, sole proprietorship, political subdivision, public or private agency of any kind, utility, successor or assign of any of the foregoing, or any other legal entity.

1.4 “Rights-of-way” means the surface and space above and below any public street, boulevard, road, highway, freeway, lane, alley, sidewalk, parkway, driveway, public ways, or other public rights of way, including, public utility easements, dedicated utility strips or rights of way dedicated for compatible uses held by the City or located within the City which shall entitle the City and other Franchisees and the Franchisee to use the same for the purpose of installing, operating, repairing and maintaining the System so long as such use does not interfere with other previously placed facilities by the city or any other Franchisee.

1.5 “System” shall mean a system of pipes, transmission lines, meters, equipment

and all other facilities associated with the operation of a fiber-optic transmission line by the Franchisee in accordance with the terms and conditions contained herein.

SECTION 2. Grant of Authority. The City hereby grants to the Franchisee the non-exclusive and limited authority to construct, install and maintain a fiber-optic transmission line in and along the rights-of-way in the City of Daphne from time to time approved. The Franchisee shall not expand or extend the System installed or constructed within the City pursuant to this Franchise without approval from the Building Department of the City of Daphne.

SECTION 3. Compensation.

3.1 The Grantee shall pay to the City as a franchise fee of Five percent (5%) of its Gross Revenues during each calendar year of operation under this franchise. Such payments shall be made quarterly during each calendar year, within fifteen (15) days of the close of each quarter. An annual financial statement shall be furnished to the City by the Grantee on or before April 1st of each year, or at any time upon request of the City after thirty (30) days written notice, such report to show Gross Revenues received by the Grantee from its operations with the City for the previous year. HOWEVER, at any time, upon request by the City and after sixty (60) days written notice, an annual certified audit report shall be furnished to the City by the Grantee, showing Gross Revenues received by the Grantee from its operations within the City for the previous year.

B. Acceptance of any fee payment shall not be deemed a waiver or release of any claims the City may have for additional sums, nor construed as an accord or Franchise that the amount paid is correct.

SECTION 4. Duration and Term. The franchise granted hereunder shall be for an initial term of fifteen (15) years (the “Initial Term”) commencing on the effective date of this Ordinance and Franchise, unless otherwise lawfully renewed, revoked or terminated as herein provided. Upon the expiration of the Initial Term, the Franchisee or the City shall have the option to renew this Franchise for one additional term of fifteen (15) years, subject to the terms and conditions contained herein, by giving written notice, sixty (60) days before the expiration of the Initial Term, to the other party of that party’s intent to renew this Franchise for the additional term.

SECTION 5. Grant of Non-Exclusive Authority. The right to use and occupy the rights-of-way for the purposes herein set forth shall not be exclusive, and the City reserves the right to grant the use of said rights-of-way to any person, firm or corporation at any time and for any lawful purpose. This Franchise shall not be construed to create any rights beyond the terms, conditions and periods set forth, except as provided herein. The City

does not warrant any of the rights granted by this Franchise.

SECTION 6. Reservation of Regulatory and Police Powers. The City, by the granting of this franchise does not surrender or to any extent lose, waive, impair or lessen the lawful powers and rights now, or which may be hereafter, vested in the City under the Constitution and the statutes of the State of Alabama to regulate the use of its rights-of-way by the Franchisee or any person or to charge reasonable compensation for such use, and the Franchisee, by its acceptance of this franchise, agrees that all lawful powers and rights, regulatory power, police power or otherwise, that may be from time to time vested in or reserved to the City, shall be in full force and effect and subject to the exercise thereof by the City at any time. The Franchisee is deemed to acknowledge that its rights are subject to the regulatory and police powers of the City to adopt and enforce ordinances necessary for the safety and welfare of the public and agrees to comply with all applicable laws and ordinances enacted by the City pursuant to such powers.

Any conflict between the provisions of this Franchise and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter.

SECTION 7. Standards of Service.

7.1. Conditions of Street Occupancy. All portions of the System and all associated equipment installed or erected by the Franchisee pursuant to this Franchise shall be located so as to cause minimum interference with the proper use of the rights-of-way and with the rights and reasonable convenience of property owners who own property that adjoins any of such rights-of-way.

7.2 Restoration of Rights-of-way. If during the course of the Franchisee's construction, operation or maintenance of the System there occurs a disturbance of any rights-of-way by the Franchisee, it shall, at its expense, replace and restore such rights-of-way to a condition comparable to the condition of the rights-of-way existing immediately prior to such disturbance to the satisfaction of the City. The work to be done under this Franchise, and the restoration of rights-of-way as required herein, must be completed within the dates specified in any permits authorizing the work. The Franchisee shall perform the work according to the standards and with the materials specified or approved by the City, or in the case of state or federal highways within the City in accordance with the implicated Department of Transportation standards.

7.3 Relocation at Request of the City. Upon its receipt of reasonable notice, not to be less than forty-five (45) days, except where emergency conditions require shorter notice, the Franchisee shall, at its own expense, protect, support, temporarily disconnect, relocate in the rights-of-way, or remove from the rights-of-way, any property of the Franchisee

when lawfully required by the City by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, electrical or telecommunications lines, when such installation or construction is being done directly by or for the City, the state or federal government. Should the Franchisee refuse or fail to remove its equipment or plant as provided for herein within forty-five (45) days after written notification, the City shall have the right to do such work or cause it to be done, and the reasonable cost thereof shall be chargeable to the Franchisee.

7.4 Trimming of Trees and Shrubbery. The Franchisee shall reasonably compensate the City for any damages, in such amounts as determined by the City, caused by trimming, cutting or removing trees or shrubbery, or shall, at its own expense, replace all trees or shrubs damaged as a result of any construction, installation, repair or maintenance of the System undertaken by the Franchisee to the satisfaction of the City.

7.5. Safety and Permit Requirements. Construction, installation, repair and maintenance of the System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial compliance with applicable federal, state, and local laws, rules and regulations, including all permit requirements and ordinances adopted by the City which are now in effect or are hereafter adopted. The System or parts thereof shall not unreasonably endanger or interfere with the safety of persons or property in the area.

7.6. Minimum Standards. All of the construction by the Franchisee shall conform, at a minimum, to the minimum standards of the Franchisee. In the event there is a conflict between the standards adopted by the Franchisee and any applicable federal, state or local standards, including ordinances adopted by the City, the stricter standard shall apply.

7.7. Obstructions of Rights-of-Way. Except in the case of an emergency, or with the approval of the City Public Works Department with the consent of the Orange Beach Police Department, which consent shall not be unreasonably withheld, no rights-of-way obstruction or excavation may be performed when seasonally prohibited or when conditions are unreasonable for such work.

The Franchisee shall not so obstruct the rights-of-way so as to interfere with the natural, free and clear passage of water through the gutters, drains, ditches or other waterways.

7.8. Safety Requirements.

A. The Franchisee shall at all times employ the highest degree of care as is

commensurate with the practical operation of its business and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.

B. The Franchisee shall install and maintain the System in accordance with the requirements of all applicable regulations of the City, which may be amended from time to time, and in such manner that its operations will not interfere with any installations of the City or of a public utility serving the City.

C. All structures and all lines, equipment and connections in, over, under and upon the rights-of-way, wherever situated or located, shall at all times be kept and maintained in a safe and suitable condition and in good order and repair.

D. The Franchisee shall maintain a force of employees at all times sufficient to provide safe, adequate and prompt service for the System.

7.9. Least Disruptive Technology. The Franchisee is encouraged to perform construction and maintenance of the System in a manner resulting in the least amount of damage and disruption to the rights-of-ways. The Franchisee will be required to use trenchless technology for any portion of construction or maintenance projects which lie beneath the paved or improved portion of any roadway to which this Franchise applies, unless otherwise approved by the City Council. The City Public Works Department may require trenchless technology in other locations, where circumstances prevent or make open-cut methods impractical. The Franchisee may use either the open-cut method or trenchless technology for construction outside the paved or improved portion of any roadway to which this Franchise applies.

SECTION 8. Enforcement and Termination of Franchise.

8.1. Notice of Violation. In the event the Franchisee has not complied with the terms of this Franchise, the City shall notify the Franchisee in writing of the nature of the alleged noncompliance.

8.2. Right to Cure or Respond. The Franchisee shall have 30 days from receipt of the notice described in Section 8.1: (a) to respond to the City by contesting the assertion of noncompliance, (b) to cure such default, or (c) in the event that, by the nature of default, such default cannot, for reasons beyond the control of the Franchisee, be cured within the 30-day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed.

8.3. Public Hearing. In the event the Franchisee fails to respond to the notice

described in Section 8.1 or contests the assertion of noncompliance pursuant to the procedures set forth in Section 8.2, or in the event the alleged default is not remedied within 30 days or by the date projected pursuant to 8.2(c) above, the City shall schedule a public hearing to investigate the default. Such public hearing shall be held at the next regularly scheduled meeting of the City which is scheduled at a time not less than five business days therefrom. The City shall notify the Franchisee in writing of the time and place of such meeting and provide the Franchisee with an opportunity to be heard.

8.4. Enforcement. In the event the City, after such meeting, determines that the Franchisee is in default of any provision of this Franchise, the City may pursue any or all of the following remedies:

- A. Seek specific performance of any provision which reasonably lends itself to such a remedy;
- B. Make a claim against any surety or performance bond which may be required to be posted;
- C. Restrain by injunction the default or reasonably anticipated default by the Franchisee of any provision of this Franchise;
- D. Seek any other available remedy permitted at law or equity;
- E. In the case of a material default of this Franchise, declare the Franchise to be revoked in accordance with the following:
 - (1) The City shall give written notice to the Franchisee of its intent to revoke the Franchise on the basis of noncompliance by the Franchisee. The notice shall set forth the exact nature of the noncompliance. The Franchisee shall have 30 days from such notice to object in writing and to state its reasons for such objection. In the event the City has not received a satisfactory response from the Franchisee, it may then seek termination of this Franchise at a public meeting. The City shall cause to be mailed to the Franchisee, by regular mail, at least 10 days prior to such public meeting, a written notice specifying the time and place of such meeting and stating its intent to

seek such termination.

(2) At the designated meeting, the City shall give the Franchisee an opportunity to state its position on the matter, after which it shall determine whether or not this Franchise shall be terminated. The Franchisee may appeal such determination to the Circuit Court of Baldwin County, which shall have the power to review the decision of the City and to modify or reverse such decision as justice may require. Such appeal must be taken within 30 days of the issuance of the determination by the City.

(3) The City may, in its sole discretion, take any lawful action which it deems appropriate to enforce the City's rights under this Franchise in lieu of revocation of the Franchise.

8.5. Impossibility of Performance. The Franchisee shall not be held in default or noncompliance with the provisions of this Franchise, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages or other events reasonably beyond its ability to control, but not the payment of fees or damages as a result of its business or operations practices.

SECTION 9. SECTION 9. Default. Each of the following shall constitute a material default by the Franchisee:

- (1) Failure to make any payments to the City required to be made as set forth in this Franchise;
- (2) Failure to maintain a liability insurance policy, cash or other bond that is not cured within thirty (30) days following written notice to the Franchisee;
- (3) Failure to provide or furnish any information required under this Franchise to the City that is not cured within thirty (30) days following written notice to the Franchisee;
- (4) Any breach or violation of any ordinance, rule or regulation or any applicable safety or construction

requirements or regulations that present a threat to health or safety that has not been cured within thirty (30) days written notice;

(5) The occurrence of any event relating to the financial status of the Franchisee which may reasonably lead to the foreclosure or other judicial or non-judicial sale of all or any material part of the System or the assets of the Franchisee;

(6) The condemnation by a public authority, other than the City, or sale or dedication under threat or in lieu of condemnation, of all or substantially all of the facilities; or

(7) If (a) the Franchisee shall make an assignment for the benefit of creditors, shall become and be adjudicated insolvent, shall petition or apply to any tribunal for, or consent to, the appointment of, or taking possession by, a receiver, custodian, liquidator or trustee or similar official pursuant to state or local laws, ordinances or regulations of any substantial part of its property or assets, including all or any part of the System; (b) a writ of attachment, execution, distraint, levy, possession or any similar process shall be issued by any tribunal against all or any material part of the Franchisee's property or assets; (c) any creditor of the Franchisee petitions or applies to any tribunal for the appointment of, or taking possession by, a trustee, receiver, custodian, liquidator or similar official for the Franchisee or for any material parts of the property or assets of the Franchisee under the law of any jurisdiction, whether now or hereafter in effect, and a final order, judgment or decree is entered appointing any such trustee, receiver, custodian, liquidator or similar official, or approving the petition in any such proceeding; or (d) any final order, judgment or decree is entered in any proceedings against the Franchisee decreeing the voluntary or involuntary dissolution of the Franchisee.

SECTION 10. Prior to any excavation within the rights-of-way, the Franchisee shall obtain a permit from the City pursuant to this Franchise, and the work shall be performed in accordance with all applicable ordinances and codes and any subsequent ordinances or

regulations that may be adopted by the City. Repair and replacement of the rights-of-ways due to the Franchisee's installation, removal, relocation, maintenance and repair of its System or facilities shall be accomplished to the satisfaction of the City.

SECTION 11. Insurance and Bonds. The Franchisee shall maintain in full force and effect, at its own cost and expense, a comprehensive general liability insurance policy in the amount of \$1,000,000.00 for bodily injury and property damage per person and \$3,000,000.00 as to each occurrence, satisfactory to the City. In addition, the Franchisee shall obtain worker's compensation coverage as required by the laws of the State of Alabama. The City shall be named as an additional insured on all insurance policies, and the Franchisee shall provide the City with a certificate of insurance designating the City as an additional insured on each policy and extension or renewal thereof. An endorsement shall be included with the policy that states that the policy shall not be cancelled without giving thirty (30) days written notice of such cancellation to the City. Additionally, upon application for a permit to construct or repair any portion of the system the City may require the posting of a cash or corporate bond in an amount in the Building Department's discretion is necessary to insure the prompt payment for any damage that may be caused by Franchisee or for the prosecution of the work in the event it is not completed or completion is substandard.

SECTION 12. Indemnity and Hold Harmless. The Franchisee agrees to indemnify, defend, and hold harmless the City, its elected officers, employees, agents, and representatives, against all claims, costs, losses, expenses, demands, actions, or causes of action, including reasonable attorney's fees and other costs and expenses of litigation, which may be asserted against or incurred by the City or for which the City may be liable, which arise from the negligence or willful misconduct, of the Franchisee, its employees, agents, or subcontractors arising out of the construction, operation, maintenance, upgrade, repair or removal of Facilities except for those claims, costs, losses, expenses, demands, actions, or causes of action which arise solely from the negligence, willful misconduct, or other fault of the City. The City does not and shall not waive any rights against the Franchisee which it may have by reason of this indemnification, or because of the acceptance by, or the Franchisee's deposit with the City of any of the insurance policies, cash or bond described in this Franchise. The indemnification by the Franchisee shall apply to all damages, penalties and claims of any kind, regardless of whether any insurance policy shall have been determined to be applicable to any such damages or claims for damages.

SECTION 13. Disclaimer of Warranties. The City makes no representation or warranty regarding its rights to authorize the installation or operation of the System on any particular right-of-way, and the burden and responsibility for making such determination in advance of the installation shall be upon the Franchisee. This Franchise shall not be construed to deprive the City of any rights or privileges which it now has, or may hereafter

have, to regulate the use and control of its streets.

SECTION 14. Warranties and Representations. The Franchisee hereby agrees, represents and warrants that it is legally authorized to accept this Franchise in accordance with all applicable laws, rules and regulations. Furthermore, the Franchisee further agrees, represents and warrants that this Franchise is legal, valid and binding, and that it is required to obtain authorization and consent from the City prior to the construction, installation, operation or maintenance of the System.

SECTION 15. Other Obligations. Obtaining a franchise does not relieve the Franchisee of its duty to obtain all other necessary permits, licenses, authority and the payment of fees required by any other City, county, state or federal rules, laws or regulations, and the Franchisee is responsible for all work done in the rights-of-way pursuant to this Franchise, regardless of who performs the work.

SECTION 16. Payment of Costs. The Franchisee shall be responsible for all costs associated with the installation, repair and maintenance of the System and all associated equipment including, but not limited to (1) the costs to repair the rights-of-way due to the installation, repair and maintenance of the System, and (2) the costs incurred in removing or relocating any portion of the System or facilities constructed when required by the City. Additionally, the Franchisee agrees to be solely responsible for any and all damages to other users of the rights-of-way within the City caused by Franchisee's use of said rights-of-way.

SECTION 17. Priority of Use. This Franchise does not establish any priority for the use of the rights-of-way by the Franchisee or any present or future franchisees or permit holders. In the event of any dispute as to the priority of use of the rights-of-way, the first priority shall be to the public generally, the second priority to the City, the third priority to the State of Alabama and its political subdivisions in the performance of their various functions, and thereafter, as between franchisees and other permit holders, as determined by the City in the exercise of its powers, including the police powers and other powers reserved to and conferred on it by the State of Alabama.

SECTION 18. Notice. Every notice or response required by this Franchise to be served upon the City or the Franchisee shall be in writing and shall be deemed to have been duly given to the required party three (3) business days after having been posted in a properly sealed and correctly addressed envelope when hand delivered or sent by certified or registered mail, postage prepaid as follows:

The notices or responses to the City shall be addressed as follows:

**City of Daphne, Alabama
Post Office Box 400
Daphne, Alabama 36526**

The notices or responses to the Franchisee shall be addressed as follows:

**Southern Light, LLC
P.O. Box 91127
Mobile, AL 36691**

SECTION 19. The City and The Franchisee may designate such other address or addresses from time to time by giving written notice to the other party as set forth in this section.

SECTION 20. Application. The terms and conditions contained in this Franchise shall apply to all areas within the corporate limits of the City and those areas annexed by the City after the passage and approval of this Ordinance.

SECTION 21. Acceptance. The Franchisee's acceptance of this Franchise shall be in writing in a form approved by the City attorney and shall be accompanied by delivery of all payments, insurance certificates, applications, acceptance fees and performance bonds or other requirements relating to commencement of construction as set forth in this Franchise.

SECTION 22. Assignment. The Franchisee's interest in this Franchise shall not be sold, transferred, assigned or otherwise encumbered or disposed of, either by forced or voluntary sale or otherwise, without the prior written consent of the City Council. The City reserves the right to be reimbursed by the Franchisee for costs incurred by it in reviewing the request for transfer of ownership.

SECTION 23. Miscellaneous. Words of any gender used in this Franchise shall be held and construed to include any other gender, and words in singular number shall be held to include the plural and vice versa, unless context requires otherwise. The captions used in connection with the sections of this Franchise are for convenience only and shall not be deemed to construe or limit the meaning of the language contained in this Franchise, or be used in interpreting the meanings and provisions of this Franchise.

SECTION 24. Rules of Construction. The parties hereto acknowledge that each party and its counsel have had the opportunity to review and revise this Franchise, and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Franchise or any amendments or exhibits thereto.

SECTION 25. Governing Law. This Franchise shall be deemed to have been made in the State of Alabama and the validity of the same, its construction, interpretation, enforcement and the rights of the parties hereunder, shall be determined under, governed by and construed in accordance with the substantive laws of the State of Alabama, without giving effect to any choice of law provisions arising thereunder.

SECTION 26. Severability Clause. If any part, section or subdivision of this Ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Ordinance, which shall continue in full force and effect notwithstanding such holding.

SECTION 27. Repealer Clause. Any Ordinance heretofore adopted by the City Council of the City of Daphne, Alabama, which is in conflict with this Ordinance is hereby repealed to the extent of such conflict.

SECTION 28. Effective Date. This Ordinance shall become effective only upon receipt of a written unconditional acceptance by the Franchisee of the terms and conditions contained herein within thirty (30) days of the passage of this Ordinance.

ADOPTED AND APPROVED this ____ day of _____, 2005.

CITY OF DAPHNE, ALABAMA

BY: _____
FRED SMALL, MAYOR

ATTEST: _____
DAVID COHEN, CITY CLERK

STATE OF ALABAMA
COUNTY OF BALDWIN

I, _____, a Notary Public, in and for said County in said State, hereby certify that FRED SMALL and DAVID COHEN whose names as Mayor and City Clerk of the City of Daphne, Alabama, a municipal corporation, are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of said municipal corporation.

Given under my hand and seal this _____ day of _____, 2005.

Notary Public, Baldwin County, Alabama
My Commission Expires:

SOUTHERN LIGHT, LLC

BY: _____

It's: _____

STATE OF ALABAMA
COUNTY OF BALDWIN

I, _____, a Notary Public in and for said County and State, do hereby certify that _____, whose name as _____ of SOUTHERN LIGHT, LLC, an Alabama Limited Liability Corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said SOUTHERN LIGHT, LLC.

Given under my hand and seal this _____ day of _____, 2005.

NOTARY PUBLIC
My Commission Expires:

ORDINANCE NO. 2005 - 39
Ordinance to Amend the City of Daphne
Land Use and Development Ordinance 2002-22

AN ORDINANCE ADDING/AMENDING THE CITY OF DAPHNE LAND USE AND DEVELOPMENT ORDINANCE NO. 2002-22, ADOPTED SEPTEMBER 3, 2002.

WHEREAS, the Planning Commission of the City of Daphne at their regular meeting held on June 23, 2005, considered certain amendments to the City of Daphne Land Use and Development Ordinance and set forth **an affirmative recommendation** to the City Council of the City of Daphne that said amendments should be affirmed; and,

WHEREAS, due notice of the said amendment has been presented 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 in regard to said amendment to the City of Daphne Land Use and Development Ordinance was held on August 2, 2005; and,

WHEREAS, the Mayor and City Council of the City of Daphne, after due consideration, deemed that the amendments requested are proper and believe it to be in the best interest of the City that said amendments be affirmed.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA that said amendments described below are hereby adopted as follows:

SECTION I: EASTERN SHORE PARK OVERLAY DISTRICT

ARTICLE XXXVII

GENERAL PROVISIONS

37-1. CREATION OF OVERLAY DISTRICT

The City of Daphne, Alabama, a municipal corporation (the "City") hereby adopts the following provisions for the establishment of the Eastern Shore Park Overlay District (the "District"), said provisions to constitute Article XXXVII (the "District Regulations") of the Land Use and Development Ordinance of the City (the "Land Use Ordinance"). No building, other improvements or land shall hereafter be used or occupied, and no building or other improvements shall be erected, constructed, moved, or altered in the District, except in conformity with the District Regulations as the same may be amended from time to time.

The land constituting the District is described in Schedule A attached hereto. In the event Malbis Properties, L.L.C. (the "owner/developer") acquires any portion of that land

adjacent to the District and described in Exhibit B attached hereto, on or before January 1, 2006, then any such additional acquired land described in Exhibit B shall become part of the District and subject to the District Regulations without further action by the City or the owner/developer.

37-2. MINIMUM STREET REQUIREMENTS

<u>Major Street</u>	<u>Collector Street</u>	<u>Local Street</u>	<u>Cul-de-Sac (Turnaround)</u>	<u>Alley</u>
<u>Minimum Right-of-Way:</u>				
100'	60'	50'	50' (100' diam.)	30'
<u>Minimum Pavement:</u>				
As Req'd	36'	27'	28' (80' diam.)	20'
<u>Maximum Grade:</u>				
3%	5%	5%	5%	5%
<u>Major Street</u>	<u>Collector Street</u>	<u>Local Street</u>	<u>Cul-de-Sac (Turnaround)</u>	<u>Alley</u>
<u>Minimum Angle of Intersection:</u>				
80°	60°	60°	60°	60°
<u>Minimum Curb Radius at Intersection:</u>				
40'	30'	15'	15'	15'
<u>Minimum Horizontal Curve Radius:</u>				
300'	250'	100'	100'	100'
<u>Minimum Reverse Curve Tangent:</u>				

100'

100'

100'

100'

100'

Cul-de-sacs shall not be longer than 600 feet measured from the centerline of the intersecting street to the center of the turnaround. Minimum pavement width is measured from outside edge to outside edge of curb and gutter. Maximum grade may vary with topography subject to Planning Commission approval based on recommendation of Director of Planning/Zoning.

37-3. IMPROVEMENT STANDARDS

All streets in the District, whether private or dedicated for public use, shall be paved and adequately drained.

The full width of any public road improvements in the District shall be graded, including the subgrade of the areas to be paved. This requirement may be modified for the purpose of preserving the natural beauty of an area. A base course consisting of at least eight (8) inches of a sand-clay mixture with one hundred percent (100%) standard compaction shall be laid on a soundly prepared subgrade. A prime coat shall be sprayed uniformly over the base course. An approved type wearing surface in conformance with State Highway Standard 416-A one and one-half (1-1/2) inches thick compacted shall be laid over the prime coat. If curbs and gutters are required, they must be in conformity with approved State and County Highway Department standards.

All grading in the subdivision shall be related to the topography and environmental features of the surrounding area. Unpaved areas within a dedicated street right-of-way shall also be graded and shall be seeded in a manner that enhances the appearance of the environment.

All water mains, sanitary sewers and laterals, and storm sewers shall be installed as necessary to prevent the future cutting of the pavement of any street, sidewalk, or other required pavement.

37-4. ISSUANCE OF SITE DISTURBANCE PERMIT

Each person, firm, corporation, utility, entity, or agent thereof engaged in any site preparation and/or construction activities shall acquire a Site Disturbance Permit from the Planning Department prior to commencement of such activities pursuant to the provisions of this Article and no such activity shall commence prior to the approval of a preliminary plat by the Planning Commission. Fees for said permit shall be as more specifically enumerated in Article XXXIV of the Land Use, entitled "Schedule of Fees."

37-5. INSPECTION OF IMPROVEMENTS

When all required improvements are installed, the developer/owner shall call for a final inspection. The Public Work Director or his duly authorized representative shall inspect the site to determine if the required improvements are satisfactorily installed according to the plans and specifications.

To determine if the streets are installed to minimum design standards, the City shall select an independent testing laboratory to make the necessary tests. These tests shall be conducted at the expense of the developer/owner.

37-6. SIDEWALKS

It is the intent of this section to require sidewalks be installed on both sides as a part of the improvement of all streets prior to the issuance of Certificate of Occupancy.

Construction of sidewalks shall comply with the following standard:

Sidewalk width 5 feet

37-7. WATER AND SEWER CONNECTIONS

Developments, individual lots, or parcels shall be properly connected to a public community water and public sanitary sewer system.

37-8. SPECIAL PROVISIONS

(a). UTILITY PLACEMENT

Water, sewer, gas, electric power, telephone, cable television, and other utility lines shall be installed underground by the developer and/or owner in all new commercial, or industrial developments, expansions and/or renovations of existing development. Said developments shall be connected to a central distribution system, unless for good reasons other than cost, the Planning Commission approved a modification or waiver of this requirement in part or in whole, or if a special condition requires otherwise.

(b). LOCATION OF ROADWAY FIRE HYDRANTS

Roadway fire hydrants shall be installed along each street at the center of each block and at one corner of each roadway intersection, provided, however, that in no event shall fire hydrants be spaced so that any fire hydrant is located more than 600 feet from another fire hydrant. The water supply and pressure shall be sufficient to provide adequate fire protection and the future needs of the intended land use. Additional fire hydrant placement may be required on the interior of developed lots pursuant to local ordinance and fire regulations as adopted by the City.

(c). LOCATION OF STREET LIGHTING

Lighting shall be installed at all intersections, curves, and cul-de-sacs. If additional lighting is consistent with safety and other community needs is deemed necessary, the Director of Planning/Zoning shall require the developer to present a street lighting plan developed in conjunction with the appropriate utility company having jurisdiction within the area.

(d). PLACEMENT OF STREET SIGNS

Appropriate permanent type street name signs shall be placed at all intersections within the subdivision. The developer may select signs which will be in keeping with the theme of the development, subject to approval of the Director of Planning/Zoning.

37-9. DISTRICT REQUIREMENTS

The following limitations and requirements are hereby placed on uses in the District.

(a). TABLE OF PERMITTED USES, COMPLIANCE WITH DISTRICT REQUIREMENTS AND SETBACKS

The permitted uses in the District are as provided in Section 13-2, 13-3, and 13-6 of Article XIII of the Land Use Ordinance. Furthermore, the outdoor display of merchandise is permitted by the operator of a store, provided that the outdoor areas for such activities are limited to off-street parking areas and sidewalks in the District. Any outdoors sales for special events shall require a special permit issued by the City.

(b). MAXIMUM BUILDING HEIGHT

Structures of more than five stories or sixty-five (65) feet are not permitted.

(c). PERFORMANCE STANDARDS FOR THE DISTRICT

All lots in the District, and improvements thereon, shall comply with the following minimum standards:

- (1) Lots shall be of sufficient size to be used for the purpose intended, provide adequate parking and loading facilities in addition to space required for conduct of other operation of the business, and otherwise comply with the provisions provided herein.
- (2) No entrances or exits shall direct traffic into adjacent residential districts.

- (3) Noise, air pollutants including dust emissions, and surface runoff shall not exceed background levels by more than ten percent (10%).
- (4) Uses in all business districts must comply with all applicable health and safety standards, including sanitary facilities, paved and landscaped parking areas, and other requirements of this Ordinance, as well as, State and Federal regulations.
- (5) Non-permanent structures such as trailers, sheds, and other such buildings used for business purposes may be permitted in business districts, provided, however, that such structures may only be located at the rear and side of permanent structures and must be adequately screened by landscaped buffers or opaque fencing.

37-10. PROCEDURES FOR SITE PLAN REVIEW

(a). USE AND APPLICABILITY

The District Regulations shall be complied with for all development in the District, regardless of whether such development involves the construction of business and commercial structures, additions thereto, construction of a park, public rights-of-way, open space, public building or structure, or public utility, whether publicly or privately owned, and other uses as required by the Planning Commission.

(b). SPECIAL PROVISIONS

The following shall apply:

- (1) A site plan review shall be accomplished by the recommendation of the Director of Planning/Zoning and approval of the Planning Commission to assure compliance with the provisions of these District Regulations, as well as applicable building and fire codes.
- (2) Said approval shall be authorization to begin work, subject to the issuance of a Site Disturbance Permit. Such approval shall become void upon one (1) year from the date of approval if a site disturbance permit has been acquired and no building or construction activities have occurred on the permitted site.
- (3) When all required improvements are installed, the developer/owner shall call for a final inspection. The Director of Planning/Zoning or his duly authorized representative shall inspect the site to determine if the required improvements are satisfactorily installed according to the plans and specifications.

(c). PLAN CONTENT

The plan shall contain all information as reflected on the current departmental checklist for a site plan which may be modified at the discretion of the Director of Planning/Zoning when applicable.

(d). WAIVER

The Director of Planning/Zoning may waive certain requirements contained in this Article if, in his opinion, the requirements are not essential to a proper decision on the proposed development; or, he may supplement the list with other requirements deemed necessary to clarify the nature of the proposed development.

(e). ISSUANCE OF SITE DISTURBANCE PERMIT

Each person, firm, corporation, utility, entity or agent thereof engaged in any site preparation and/or construction activities shall acquire a Site Disturbance Permit from the Planning Department prior to commencement of such activities as established pursuant to the provisions of this Article and no such activity shall commence prior to the approval of a site plan by the Planning Commission. Fees for said permit shall be as more specifically enumerated in Article XXXIV of the Land Use Ordinance, entitled the Schedule of Fees.

(f). REQUIREMENT OF BOND

Whenever a person, firm, corporation, developer or other entity proposes to develop a commercial site that, in the opinion of the Director of Planning/Zoning, constitutes a land disturbing activity which may pose a risk of drainage and/or siltation damage outside the boundaries of the project, such person, firm, corporation, developer or other entity conducting the land disturbing activity shall be required to submit a performance bond to the City prior to the issuance of a site disturbance permit.

At the time of approval of the site plan by the Planning Commission, the bond shall become effective and shall extend for a period of at least two (2) years following the issuance of the Certificate of Occupancy by the City. The bond shall be in the amount of ten percent (10%) of the total cost for the performance of all site work on the said location with bond to cover such drainage, erosion and siltation damage, if any.

The Director of Planning/Zoning or other administrative official as designated by the City Council shall determine the prescribed bond, as well as the adequacy and the security thereon.

(g). RELEASE OF BOND

At the expiration of two (2) years from the issuance of the Certificate of Occupancy, the Director of Planning/Zoning shall determine if the drainage design implementation of the project has:

- (1) Been performed in accordance and functions within the parameters of the design standards as set forth by the project engineer;
- (2) Received from the project engineer a Certificate of Performance which states the drainage functions have been constructed in substantial accordance with the plans, specifications, and engineering guidelines;
- (3) Had any material adverse impact on any streams, waterways or third parties; and,
- (4) Complied with all ADEM regulations in effect at the time of said completion.

Upon the Director of Planning/Zoning's receipt and evaluation thereof of the criteria as enumerated in this Section 10G above of these District Regulations and upon recommendation of the Planning Commission, the City shall release the developer and/or the bondholder from further obligations under said bond.

If it is determined that the requirements of this Section 10F have not been met then the bond may be extended for one six (6) month interval to allow the developer and/or bondholder additional time to correct the deficiencies which prohibited the release of bond. If a site contractor is unable and/or unwilling to satisfy the deficiencies as enumerated by the Director of Planning/Zoning, the bond shall be forfeited with the bond being payable to the City for the direction of such work and/or activities necessary for the completion of the improvements. The developer and/or bondholder of the property thereof shall be liable for any additional cost incurred.

(h). ISSUANCE OF BUILDING PERMIT

Upon approval of the site plan, either as submitted or with changes and/or special conditions required by the Planning Commission, the Building Official may issue a building permit for a portion or all of the proposed development provided the application is in compliance with all applicable City, County, as well as State and Federal requirements.

37-11. PARKING REQUIREMENTS FOR OVERLAY DISTRICTS

(a). GENERAL

Off-street automobile storage or parking space shall be provided with vehicular access to a street or alley. Parking shall comply with the minimum requirements noted.

(b). PARKING SCHEDULE

(1) Dwellings:

<u>Land Use on Lot:</u>	<u>Parking Requirements</u>
(a) <u>Hotels/Motels:</u> (Without restaurants, lounges, and banquet facilities):	One (1) space for each bedroom
(With in-house restaurants, banquet facilities, or convention/meeting capabilities):	One and one-half (1.5) spaces for each guest bedroom
(b) <u>Public Assembly:</u>	
(i) Theaters, Auditoriums, Coliseums, Stadiums, and Similar Places of Assembly:	One (1) space for each four (4) seats
(c) <u>Health Facilities:</u>	
(i) Hospitals, Sanitariums,	One (1) space for each four
(4) Nursing Homes, Homes For the Aged and Similar Institutional Uses:	beds, plus one (1) space for each employee on the maximum shift.
(ii) Kennels and Animal Hospitals:	A parking area equal to thirty (30) percent of the total enclosed or covered area.
(iii) Medical, Dental and Health Offices and Clinics:	One (1) space for each 200 square feet of floor area used for offices and similar purposes.
(iv) Mortuaries and Funeral Parlors:	Ten (10) spaces per parlor chapel unit, or one (1) space per two (2) seats, whichever is greater.
(d) <u>Business:</u> Restaurants (including bars, grills, diners, cafes, taverns, night clubs, lunch counters,	10 parking spaces for each

and all similar dining and/or drinking establishments): 1,000 square feet of floor area

- (e) Commercial and Shopping Centers: One (1) space per two hundred fifty (250) square feet of floor area.
- (f) Uses Not Listed Above 4.5 parking spaces per 1,000 square feet of floor area
- (g) Calculation of floor area:
In the calculation of floor area to determine parking ratios, the term “floor area” shall mean enclosed areas which are heated and cooled. Expressly excluded from this term are garden center floor areas and outdoor storage areas or outdoor sales areas.

(c). DESIGN STANDARDS

(1) Definition:

An off-street parking space is an all-weather surfaced area not in a street or alley, permanently reserved for the temporary storage of one automobile and connected with a street or alley by an all-weather surfaced driveway which affords unobstructed ingress and egress to each space.

(2) Parking Area Dimensions:

- (a) The design and dimensions of the standard parking area shall have a minimum nominal dimension of 18 feet in depth and 9 feet in width.
- (b) The design and dimension of handicap parking areas shall be in accordance with the Americans with Disabilities Act.

(3) Width of Two-Way Access Driveways:

The minimum width of two-way access driveways within parking areas shall be twenty-four (24) feet.

(4) Paving Standards:

Parking spaces and driveways shall be paved to the standards established by the City.

(5) Drainage:

Off-street parking facilities shall be drained to prevent damage to abutting property and streets and to prevent pollutants from draining onto such streets and the adjacent lots. Landscape and perimeter areas shall be so graded as to direct runoff to the storm drainage system. The storm drainage system shall be designed to include water quality measures for the first one inch of rainfall.

(6) Off-Street Loading and Unloading Space:

Off-street loading/unloading spaces shall be provided as hereinafter required by these District Regulations.

(a) Size of Spaces:

Each off-street loading/unloading space shall have minimum dimensions of fourteen (14) feet in height, twelve (12) feet in width, and fifty-five (55) feet in length.

However, upon sufficient demonstration a particular loading space will be used exclusively by shorter trucks, the Planning Commission may reduce the minimum length accordingly to as much as thirty-five (35) feet.

(b) Connection to Street or Alley:

Each required off-street loading and unloading space shall have direct access to a street or alley or have a driveway which offers satisfactory ingress and egress for trucks.

(c) Floor Area More Than 10,000 Square Feet:

There shall be provided for each commercial building, or similar use requiring the receipt of distribution of materials or merchandise and having a floor area of more than ten thousand (10,000) square feet, at least one (1) off-street loading and unloading space. Such space shall be so located as not to hinder the free movement of pedestrians and vehicles over a sidewalk, street, or alley.

(d) Location:

All required off-street loading and unloading spaces shall be located on the same lot as the building which they are intended to serve or on an adjacent lot when shared with the user occupying said adjacent lot.

37-12. SUBDIVISION REGULATIONS

Article XVII of the Land Use Ordinance is incorporated herein by reference.

37-13. DRAINAGE AND EROSION CONTROL REQUIREMENTS

Article XVIII of the Land Use Ordinance is incorporated herein by reference.

37-14. LANDSCAPE AND TREE PROTECTION

(a). PURPOSE

The intent of this Section is to establish minimum standards for the provision, installation, and maintenance of landscape plantings and trees in order to achieve a healthy, beautiful, and safe community.

(b). DEFINITIONS

(1) Caliper: Diameter of a tree trunk. Caliper determines the minimum size of trees planted to comply with these District Regulations. Trees less than four (4) inches in diameter are measured six (6) inches above the ground. Trees from four (4) to twelve (12) inches in diameter are measured twelve (12) inches above the ground.

(2) Landscape Plan A component of a development plan on which depicts or otherwise contains the following: proposed landscape species, such as number, spacing, size at time of planting, and planting details; proposed treatment of hard and soft surfaces; proposed decorative features; grade changes; buffers and screening devices; and any other information that can reasonably be required in order for an informed decision to be made by the approving authority.

(3) Site Plan The development plan for one or more lots on which the following is shown: the existing and proposed conditions of the lot including topography, drainage, flood plains, wetlands, and waterways; walkways; means of ingress and egress; circulation; utility services; structures and buildings; signs and lighting; berms and buffers; surrounding development; and any other

information that reasonably may be required in order that an informed decision can be made by the approving authority.

(c). APPLICABILITY AND USE

(1) Applicability:

The provisions of this Article apply to all projects within the District involving the construction of business and commercial structures, all existing structures which increases the gross floor area by thirty (30) percent or more, and other projects as required by the Planning Commission.

(2) Use or Ownership Provision:

In the event of a change in: (a) use of property, (b) occupancy, or (c) ownership regardless of name change to any business, commercial, or industrial development, it shall be the responsibility of the owner to comply with the provisions of this Article within one hundred and eighty (180) days from the date in which the change occurs.

(d). LANDSCAPE STANDARDS

(1) Site Plan Review:

A site plan shall not be approved by the Planning Commission without an acceptable landscape and irrigation plan.

(2) Subdivision Review:

A subdivision shall not be approved by the Planning Commission without an acceptable landscape and irrigation plan, as the same is defined pursuant to the provisions of this Section 14 of the District Regulations.

All subdivisions shall require a landscape plan for the common areas of the subdivision: the entrance, detention pond, and other areas which are deemed appropriate by the Planning Commission.

(3) Interstate I-10 North Landscaping

To the extent the City has authority to do so, it authorizes the developer/owner to remove all trees in that portion of Interstate I-10 which is north of the northern boundary of the District. Such removal is conditioned upon the following: (i) the prior submission to, and approval by, the Planning Commission of a landscaping plan prepared by the developer/owner; (ii) the obtaining of any necessary permits from the Alabama Department of Transportation for the installation of landscaping

improvements within the area from which trees are removed; and (iii) developer/owner's installation of the landscaping improvements according to the approved landscaping plan. Upon developer/owner's installation of the landscaping improvements according to the approved landscaping plan, the City shall assume the maintenance of said landscaping improvements in accordance with the approved landscaping plan and in compliance with any maintenance requirements of the Alabama Department of Transportation and any other applicable governmental entity. Each owner of real property, its successors and or assigns in the district abutting any portion of Interstate 10 having landscaping installed pursuant to this Section, shall be obligated to reimburse the City on a semi-annual basis for the City's Public Works Department cost of maintaining that portion of the owner's real property fronting the Interstate. The City shall remit invoice to each such owner with payment due within forty five (45) days of invoice. Should each owner not pay said invoice within the time frame herein, the City shall have the right to charge interest at the State of Alabama statutory post judgment interest rate and the City shall further have the right to initiate appropriate civil action in such Court having competent jurisdiction to recover said costs, plus reimbursement of reasonable attorney fees and cost associated herewith. The obtaining of any necessary permits from the Alabama Department of Transportation for the installation of landscaping improvements shall be the responsibility of the developer/owner.

(4) Revisions to Landscape Plan:

If proposed construction shall cause changes in the landscape or irrigation plan, a revised plan shall be submitted to the Director of Planning/Zoning for re-evaluation.

(5) Issuance of Site Disturbance Permit:

A landscape and irrigation plan shall be submitted for review by and the recommendation or other comments of the Director of Planning/Zoning and shall be subject to the approval of the Planning Commission prior to the issuance of a Site Disturbance Permit.

(6) Compliance with Landscape Provisions:

All subject properties, as well as those owned by the City, shall comply with the provisions of this Article.

(7) Certification and Plan Requirements:

Landscape plans shall be drawn and stamped by a licensed landscape architect. The landscape plan shall be of professional quality and include the following:

- (a) Date, scale, north arrow, title, and names and contact information for property owner(s), developer, and the landscape architect.
 - (b) Location of existing boundary line dimensions of the building site, existing water sources, significant drainage features, existing and proposed streets or alleys, existing or proposed utility easements on or adjacent to the building site, rights-of-way, setbacks, locations of proposed parking spaces, and location of existing and/or proposed sidewalks.
 - (c) The location(s) and dimension(s) of the proposed landscaped areas within the parking area(s) including a description of new trees and plant materials to be placed within landscaped area(s). Both common and botanical names shall be included.
 - (d) Locations, type, and design of the proposed irrigation system.
 - (e) Location and species of buffer zone vegetation.
- (8) Certification by Local Landscape Architect

Any and all landscape plans as required in this Section 15 shall, in addition to any other requirements, be reviewed and approved by a local landscape architect to be designated by the Planning Commission with the professional costs for such services to be reimbursed to the City by the party submitting the plans for approval. Such local landscape architect's review shall include the design, irrigation, location and type of planting, and any and all other criteria necessary so as to ensure that the planting and design is consistent with local standards. If the local landscape architect's review fee is known at the time of the plans' submission, the submitting party shall pay the fee upon submission. Otherwise, the fee shall be paid by the submitting party within ten (10) days of receipt of a statement of the amount of the fee.

(e). BUFFER ZONE REQUIREMENTS

Where a business district in the District abuts, without any intervening public road right-of-way, any part of an adjoining residential area, a buffer zone twenty (20) feet wide shall be required.

The buffer shall run the entire length of the abutting lot line(s). Under no circumstances shall this buffer impair vehicular flow and shall be part of the yard requirements. Said protection buffer shall be maintained in such a manner to accomplish its purpose continuously. This District shall comply with the following minimum standards and said buffer zone shall be constructed of at least one of the following three (3) designs or a combination thereof as determined by the Director of Planning/Zoning and approved by the Planning Commission:

(1) Wall or Fence:

If a wall or fence of solid appearance is provided as a protection buffer, it shall be at least six (6) feet in height and of a construction and a design approved by the Planning Commission.

(2) Screen Planting Strip:

A staggered double row of evergreen plantings at least ten (10) feet in width which will grow to at least ten (10) feet in height and spaced in a manner in which after three years it will provide an impervious visual barrier.

(3) Natural Forest:

Natural, undisturbed forest which provides a nearly impervious visual barrier due to the dense nature of the plants and/or trees. If this option is chosen, the width of the buffer zone shall be twenty-five (25) feet and shall be shown on the landscape plan. The Director of Planning/Zoning shall determine whether the barrier is satisfactory via site inspection prior to approval.

(f). OFF-STREET PARKING FACILITIES

The design and appearance of parking areas are intended to be compatible with the character of the community. Toward this objective, the following landscaping standards shall be observed in the construction of off-street parking areas which accommodate six (6) or more parking spaces:

- (1) At least fifteen percent (15%) of the total lot area intended for off-street parking shall be suitably landscaped.
- (2) Interior portions of the parking area at intervals of twelve (12) parking spaces shall be broken by provision of landscaped islands. Such landscape islands shall include the placement of shade or flowering trees at least two and one-half (2 ½) inches or greater in caliper and ten (10) feet in height at planting.
- (3) Each separate landscaped area must be a minimum of two hundred eighty (280) square feet if it is to be counted toward the minimum landscaped area requirements.
- (4) Landscaped areas shall be protected from vehicular encroachment by the use of curbing or wheel stops.
- (5) The owner, tenant and/or agent, if any, shall be jointly and severally responsible for watering and maintaining all landscaping in a healthy, neat

and orderly condition, replacing it when necessary, and keeping it free of refuse and debris.

- (6) A minimum of five (5) feet side and rear landscaping may be required in the landscape plan depending on the topography and arrangement of parking facilities.

If required, such areas shall be planted with a combination of trees, shrubs, and grass or other ground cover adequate to break the expanse of contiguous parking areas and to present an attractive appearance as determined by the Director of Planning/Zoning.

- (7) Innovative landscape designs using “natural cluster of trees” rather than the required one (1) tree at intervals of twelve (12) parking spaces may be used if approved by the Planning Commission.

37-15. SIGN PROVISIONS

(a). SIGNS PROHIBITED IN THIS DISTRICT

The following signs are prohibited:

- (1) Prohibited Placement:

Any sign erected or painted upon a sloped roof, fence, tree, stand pipe, fire escape, or utility pole is prohibited, except that a manufacturer’s or installer’s ID plate shall be permitted, provided that such plate does not exceed 5 x 8 inches in size.

- (2) Prohibited Wording:

Any sign which is not a traffic control sign and uses the word “Stop” or “Danger” prominently displayed and/or which is a copy or imitation of official traffic control signs is prohibited.

- (3) Flashing Signs Prohibited:

- (a) General Prohibition:

Except as otherwise provided in Section 15(a)(3)(b) below, flashing signs, signs which contain intermittent illuminations and digital LED signs/reader boards are prohibited.

- (b) Exceptions:

This subsection does not prohibit the following:

- (i) Signs required for traffic control; and,
- (iii) (ii) Signs which exhibit time, date, temperature, and other customary public information.

(4) Prohibited Sign Types:

Portable signs, bench signs, snipe signs, sandwich signs, except as allowed in Section 33-5, Subsection (d)(e) of Article XXXIII of the Land Use Ordinance, ladder-type signs, billboard signs or off-premises signs. “*Billboard*” is defined as “An off-premises or off-site sign advertising an establishment, merchandise, product, service, or entertainment which is not sold, provided, manufactured, or furnished on the property on which said sign is located.” “*Off-premises sign*” is defined as “A billboard or other sign on which any portion thereof relates to a premises (or activities thereon) other than the property on which said sign is located.”

(5) Prohibited Sign Effects:

Signs which produce sound, noise, cause interference with radio, telephone, television or other communication transmission, produce or reflect motion pictures; emit visible smoke, vapor, particles, odor, are animated, or produce any rotation, motion, or movement.

(6) Illuminated Tubing:

(a) General Prohibition:

Illuminated tubing or strings of lights that outline property lines, sales area, roof lines, doors, windows, wall edges, similar areas or other architectural features of a building are prohibited.

(b) Exception:

This prohibition shall not apply to temporary displays erected in connection with holiday decorations and community decorations.

(b). PERMITTED SIGNS

The following signs are permitted, subject to review by the Planning Commission to determine compliance with the sign criteria provided below in this Section 15(B) and further subject to the requirement that permitted signs shall have internal illumination only.

(1) Monument and Pylon Signs:

Except as otherwise provided in these District Regulations, the following monument and pylon signs are permitted in the District:

(i) District Interstate Pylon Sign: The developer/owner is permitted to install and maintain one (1) pylon sign at or near the northeastern boundary of the District. This sign is permitted to have panels for multiple businesses in the District, provided that the panel space on each side of the District Interstate Pylon Sign shall not exceed 1,200 square feet in the aggregate and no individual panel shall have more than 350 square feet or less than 150 square feet per side. The height of the Interstate Pylon Sign shall not exceed 120 feet and shall be determined based on a sight line study obtained by the developer/owner and approved by the Planning Commission. The sight line study shall consider the topographical elevation of the location of the District Interstate Pylon Sign, the obstruction to the sign panels by trees and the Interstate 10 overpass at the northeast corner of the District, so as to insure that the top panel on the sign is visible traveling in both directions on Interstate 10.

(ii) Each lot in the District which borders Interstate 10 and either (A) has at least 500 front feet on Interstate 10, or (B) is located at the intersection of Interstate 10 and Alabama Highway 181, shall be permitted one (1) pylon sign at or near said lot's common boundary with Interstate 10. Permitted individual lot interstate signs are not to exceed 15 feet in width, or 45 feet in height, and shall have a maximum area of 300 square feet per face. Lots in the District which border Interstate 10, other than those described immediately above, may not have such an individual lot pylon sign without a variance from the Board of Zoning Adjustments.

(iii) Development Signs: One (1) sign is permitted on Alabama Highway 181 and one (1) sign on U.S. Highway 90 identifying the development. Each side may also have panels beneath the development identification not exceeding 150 square feet each for multiple businesses within the District. Each sign shall not exceed 30 feet in height.

(iv) Monument Signs: Each lot having frontage on Alabama Highway 181 and U.S. Highway 90 or any other public road or right-of-way within or abutting the District shall be permitted to have one (1) monument sign for each public road right of way which the lot abuts. The sign shall be placed perpendicular to the such highways and/or boulevards. The permitted sign shall not exceed 50 square feet per face if the lot's frontage on the public road right of way is 300 feet or less, and shall not exceed 100 square foot per face if the lot's frontage on the public road right of way the sign exceeds 300 feet. All monument signs shall have a pedestal and shall not exceed 21 feet in height (including the pedestal).

(v) Directional Signs: Directional Signs shall be permitted at the intersection of all roads in the District. Directional Signs shall not exceed 16 square feet per face.

(2) Wall-Mounted Signs:

Each establishment in a shopping center or each business premises in B-1, Local Business, B-2, General Business, B-3, Professional, and C/I, Commercial/Industrial districts may acquire an additional permit for a wall-mounted sign of a size not to exceed the lesser of three hundred fifty (350) square feet or thirty (30) percent of the surface frontal area of the building. Signs mounted on mansards, marquees, and awnings are deemed to be wall signs.

A business establishment with over 40,000 square feet of building area may have on (1) additional wall-mounted sign of a size not to exceed one hundred (100) square feet for the purpose of advertising an accessory use. A business with over 100,000 square feet of building area may have two (2) additional wall-mounted signs of a size not to exceed one hundred (100) square feet each for the purpose of advertising accessory uses. No business establishment can have more than three (3) wall-mounted signs.

(3) Menu Type Signs:

One menu type sign per drive-thru window service not to exceed forty (40) square feet in area or eight (8) feet in height.

(4) Automobile Dealerships:

Automobile dealerships in the sale of the new vehicles shall be subject to the following:

(a) Numeric Limitation:

Each lot on which an automobile dealership operates shall be permitted the following:

(i) One (1) monument sign for each new automobile manufacturer line of cars offered on the lot, together with one (1) monument sign for used cars, if the same are for sale on the lot; and,

(ii) Lots operated as automobile dealerships and have a common boundary with Interstate 10 are permitted to have one (1) pylon sign as provided in Section 15B(1) (ii) above of these District Regulations.

(b) Height Limitation:

(i) The monument signs shall not exceed twenty-one (21) feet in height; and,

(ii) Any pylon sign for lots adjoining Interstate 10 North shall not exceed 45 feet in height.

(5) Gasoline and Fuel Signs:

Gasoline or other motor vehicle fuel pricing signs, in addition to permitted name or identification signs, are permitted in any business or industrial district. Such signs shall not exceed twelve (12) square feet in area and must comply with the other applicable sign requirements for the District.

(6) New Construction Signs:

(a) General Provision:

Temporary non-illuminated signs not more than thirty-two (32) square feet in area, erected in connection with new construction work and displayed on the premises during such time as the actual construction work is in progress. One (1) such sign, which shall not exceed ten (10) feet in height, is allowed for each street frontage. Such signs shall be removed upon completion of the project.

(b) Temporary Advertising Sign:

A temporary advertising sign will be permitted to the owner for the development for each individual business premises, shopping center premises, commercial/industrial business, subdivision, planned unit development, mobile home park and mobile home subdivision, provided the area of each sign shall not exceed thirty-two (32) square feet, is non-illuminated, and is within the confines of the development.

These signs shall be the height no greater than ten (10) feet mounted from the ground, for no more than one (1) sign, either single or double faced, per street frontage.

(7) Temporary Promotional Banners:

Two (2) temporary signs or banners not exceeding fifty (50) square feet each in area and temporary decorative flags, bunting, pennants and streamers for recognizing grand openings are permitted. Said temporary banners shall be kept in good condition and shall be permitted no more than fourteen (14) days. Furthermore, decorative seasonal banners are permitted on light standards at all times, provided that the same are maintained in good condition.

SECTION 2: DISTRICT MAP

The Eastern Shore Park Overlay District Map, Exhibit C, is hereby adopted and as a part of this Ordinance. (See Appendix K, Table of Contents).

SECTION 3: REPEALER.

All other City Ordinances or parts thereof in conflict with the provisions of this Ordinance, in so far as they conflict, are hereby repealed.

SECTION 4: 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 said 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 5: EFFECTIVE DATE.

This Ordinance shall be in full force and effect upon its adoption and publication as required by law.

APPROVED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA, THIS _____ day of _____, 2005.

THE CITY OF DAPHNE,

AN ALABAMA MUNICIPAL CORPORATION

**GREG BURNAM
COUNCIL PRESIDENT**

Date & Time Signed: _____

**FRED SMALL
MAYOR**

Date & Time Signed: _____

ATTEST:

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

EXHIBIT A

Parcel 1

Commence at the northeast corner of Section 34, Township 4 South, Range 2 East, St. Stephen's Meridian and run thence south 00 degrees 25 minutes 38 seconds west, 865.30 feet; thence run north 89 degrees 49 minutes 14 seconds west, 98.85 feet to an iron pin marker on the west right-of-way of Alabama Highway No. 181; thence run north 29 degrees 47 minutes 28 seconds west, along said right-of-way, 106.64 feet to an iron pin marker at the northeast corner of lands heretofore conveyed to Hoven Oil Company, as described by that Statutory Warranty Deed recorded at Instrument 714451, Probate Records, Baldwin County, Alabama, for a point of beginning: thence run north 89 degrees 49 minutes 34 seconds west, 158.19 feet to an iron pin marker at the northwest corner of the heretofore said lands of Hoven Oil Company; thence run south 00 degrees 03 minutes 16 seconds west, 217.92 feet to an iron pin marker at the southwest corner of the said lands of Hoven Oil Company; thence run south 89 degrees 45 minutes 26 seconds east, 210.99 feet to an iron pin marker at the southeast corner of the said lands of Hoven Oil Company and on the west right-of-way of Alabama Highway No. 181; thence run south 00 degrees 12 minutes 57 seconds west, along said highway, 1267.87 feet to a P&K nail marker on the north right-of-way of U.S. Highway No. 90; thence run south 89 degrees 05 minutes 17 seconds west, along said right-of-way, 988.00 feet to an iron pin marker; thence run north 00 degrees 13 minutes 54 seconds east, 1528.42 feet to an iron pin marker; thence run south 89 degrees 49 minutes 34 seconds east, 920.31 feet to an iron pin marker on the west right-of-way of Alabama Highway No. 181; thence run south 29 degrees 47 minutes 28 seconds east, along said right-of-way, 27.30 feet to the point of beginning. Tract contains 33.35 acres, more or less and lies in the Northeast Quarter of Section 34, Township 4 South, Range 2 East, St. Stephen's Meridian, Baldwin County, Alabama.

Parcel 2

A parcel of land situated in the NE 1/4 of Section 34 and the SE 1/4 of Section 27, all in Township 4 South, Range 2 East, Baldwin County, Alabama, more particularly described as follows:

Commence at the northeast corner of said Section 34, said point being reproduced from a survey by Rester and Coleman Engineers, Inc., dated April 10, 1997; thence, run South 89°56'56" West along the north boundary of the NE 1/4 of said Section 34, as calculated from said survey, a calculated distance of 533.77 feet to a point on the south right-of-way of U.S. Interstate Highway 10 (variable right-of-way), said point being the POINT OF BEGINNING; thence, run South 67°57'44" East along said right-of-way a distance of 273.02 feet to a concrete right-of-way monument found; thence, run South 33°51'04" East along said right-of-way distance of 165.52 feet to a concrete right-of-way monument found at the intersection of said Interstate right-of-way and the west right-of-way of Alabama Highway No. 181 (said right-of-way being 320 feet in width at this point); thence, run South 00°10'57" West along the west right-of-way of said Alabama Highway No. 181 a distance of 479.73 feet to a 1/2" rebar and cap set at a point of right-of-way change; thence, run South 29°50'31" East along the west right-of-way of said

Alabama Highway No. 181, and along said right-of-way change, a distance of 36.15 feet to a rebar found; thence, depart said right-of-way and run North $89^{\circ}48'42''$ West a distance of 920.02 feet to a rebar found; thence, run South $00^{\circ}14'19''$ West a distance of 1528.36 feet to a rebar found on the north right-of-way of U.S. Highway 90 (80-foot right-of-way); thence, run South $89^{\circ}05'34''$ West along said right-of-way a distance of 225.48 feet to a rebar found on the west boundary of the East 1/2 of the NE 1/4 of said Section 34; thence, depart said right-of-way and run North $00^{\circ}17'08''$ East along the west boundary of the East 1/2 of the NE 1/4 of said Section 34 a distance of 1532.68 feet to a 1/2" rebar and cap set; thence, run North $89^{\circ}48'42''$ West a distance of 314.90 feet to a 1/2" rebar and cap set; thence, run North $00^{\circ}14'19''$ East a distance of 754.02 feet to a 1/2" rebar and cap set on the south right-of-way of said U.S. Interstate Highway 10; thence, run North $83^{\circ}29'29''$ East along said right-of-way a distance of 549.89 feet to a concrete right-of-way monument; thence, run South $85^{\circ}55'34''$ East along said right-of-way a distance of 455.68 feet to a concrete right-of-way monument; thence, run South $67^{\circ}57'44''$ East along said right-of-way a distance of 100.70 feet (as shown on the above-referenced survey) to the POINT OF BEGINNING.

Said parcel contains 1,441,524 square feet (33.093 acres), more or less.

EXHIBIT B

A parcel of land situated in the W 1/2 of the NE 1/4 and the E 1/2 of the NW 1/4 of Section 34 and the SW 1/4 of the SE 1/4 of Section 27, all in Township 4 South, Range 2 East, Baldwin County, Alabama, more particularly described as follows:

Commence at the northeast corner of said Section 34, said point being reproduced from a survey by Rester and Coleman Engineers, Inc., dated April 10, 1997; thence, run South 89°56'56" West along the north boundary of the NE 1/4 of said Section 34, as calculated from said survey, a calculated distance of 533.77 feet to a point on the south right-of-way of U.S. Interstate Highway 10 (variable right-of-way); thence, run North 67°57'44" West along the south right-of-way of said Interstate Highway 10 a distance of 100.70 feet to a concrete right-of-way monument; thence, run North 85°55'34" West along the south right-of-way of said Interstate Highway a distance of 455.68 feet to a concrete right-of-way monument; thence, run South 83°29'29" West along the south right-of-way of said Interstate Highway a distance of 549.89 feet to a 1/2" rebar and cap set at the POINT OF BEGINNING; thence, depart said right-of-way and run South 00°14'19" West a distance of 754.02 feet to a 1/2" rebar and cap set; thence, run South 89°48'42" East a distance of 314.90 feet to a 1/2" rebar and cap set on the accepted east boundary of the W 1/2 of the NE 1/4 of said Section 34; thence, run South 00°17'08" West along the accepted east boundary of the W 1/2 of the NE 1/4 of said Section 34 a distance of 1532.68 feet to a rebar found on the north right-of-way of U.S. Highway 90 (80-foot right-of-way); thence, run South 89°05'34" West along the north right-of-way of said U.S. Highway 90 a distance of 1683.42 feet to a rebar found; thence, depart said right-of-way and run North 00°54'18" West a distance of 2129.42 feet to a rebar found on the south right-of-way of said U.S. Interstate Highway 10; thence, run North 81°48'54" East along the south right-of-way of said Interstate Highway a distance of 815.98 feet to a concrete right-of-way monument; thence, run North 83°29'29" East along the south right-of-way of said Interstate Highway a distance of 608.98 feet to the POINT OF BEGINNING.

Said parcel contains 3,566,796 square feet (81.882 acres), more or less.