

**ORDINANCE NUMBER 2167**

**AN ORDINANCE TO FURTHER AMEND THE ZONING ORDINANCE AND THE ZONING MAP OF THE CITY OF VESTAVIA HILLS, ALABAMA, ADOPTED SEPTEMBER 16, 1985, AND AS LAST AMENDED SO AS TO CHANGE THE CLASS OF DISTRICT ZONING OF A PARCEL OF PROPERTY FROM VESTAVIA HILLS R-2 TO VESTAVIA HILLS O-1.**

**BE IT ORDAINED** by the City Council of the City of Vestavia Hills, Alabama, as follows: That the Zoning Ordinance and Zoning Map of the City of Vestavia Hills, Alabama, adopted September 16, 1985, and as last amended so as to change the class of district zoning of the following described property from Vestavia Hills R-2 to Vestavia Hills O-1;

1101 Montgomery Highway  
Devin Enterprises, LLC, Owner(s)

More particularly described as follows:

Beginning at the SE corner of the NE  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of Section 30, Township 18 South, Range 2 West, Jefferson County, Alabama, thence run Northerly along the East line of said quarter-quarter section for a distance of 226.50 feet to the point of beginning; thence continuing northerly, along the last described course, for a distance of 175.10 feet to the southerly right of way of Vesthaven Way; thence turn an angle to the left of 85 degrees 40 minutes 50 seconds and run Westerly along the southerly right of way of Vesthaven Way for a distance of 190.56 feet to the easterly right of way of US Highway 31; thence turn an angle to the left of 104 degrees 06 minutes 46 seconds and run southeasterly along the chord of a curved right of way to the right of said highway having a chord distance of 185.88 feet, a radius of 3374.03 feet and an arc distance of 185.91 feet; thence turn an angle to the left of 77 degrees 56 minutes 15 seconds and run easterly, leaving the right of way of said highway for a distance of 158.53 feet to the point of beginning; containing 0.709 acres, more or less.

**APPROVED and ADOPTED** this the 6<sup>th</sup> day of November, 2006.



David Carrington  
Council President

ATTESTED BY:



Rebecca Leavings  
Acting City Clerk

APPROVED BY:



Charles A. McCallum  
Mayor

**CERTIFICATION:**

I, Rebecca Leavings, as Acting City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2167 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 6<sup>th</sup> day of November 2006 as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills Richard M. Scrushy Public Library, Vestavia Hills City Center and Vestavia Hills Recreational Center this the 21<sup>st</sup> day of Nov, 2006.



Rebecca Leavings  
Acting City Clerk



RESTRICTIVE COVENANTS

  
20061222001790900 1/4  
Bk: LR200620 Pg: 19679  
Jefferson County, Alabama  
I certify this instrument filed on:  
12/22/2006 01:49:12 PM REST  
Judge of Probate- Mark Gaines

THE STATE OF ALABAMA )

COUNTY OF JEFFERSON )

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, Devin Enterprises, LLC, is the owner of the following-described real property, located and situated in the City of Vestavia Hills, Jefferson County, Alabama to-wit:

For a Point of Reference, beginning at the Southeast corner of the Northeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 30, Township 18 South, Range 2 West, Jefferson County, Alabama, thence run Northerly along the East line of said quarter-quarter section for a distance of 226.50 feet to the Point of Beginning; thence continuing Northerly, along the last described course, for a distance of 175.10 feet to the southerly right-of-way of Vesthaven Way; thence turn an angle to the left of 85 degrees 40 minutes 50 seconds and run Westerly along the Southerly right-of-way of Vesthaven Way, for a distance of 190.56 feet to the Easterly right-of-way of U. S. Highway 31; thence turn an angle to the left of 104 degrees 06 minutes 46 seconds and run Southeasterly along the chord of a curved right-of-way, to the right, of said highway having a chord distance of 185.88 feet, a radius of 3374.03 feet and an arc distance of 185.91 feet; thence turn an angle to the left of 77 degrees 56 minutes 15 seconds and run Easterly, leaving the right-of-way of said highway, for a distance of 158.53 feet to the Point of Beginning, containing 0.709 acres, more or less.

WHEREAS, Devin Enterprises, LLC desires to impose and engraft certain restrictive covenants on the hereinabove described real property so as to comply with Ordinance No. 2167 of the Vestavia Hills City Council wherein the said real property was rezoned from R-2 (Residential) to O-I (Office) conditioned on Devin Enterprises, LLC imposing and engrafting the restrictive covenants hereinafter set forth herein.

NOW, THEREFORE, in consideration of the premises and the sum of One and No/100 (\$1.00) Dollar and other good and valuable consideration in hand paid to Devin Enterprises, LLC, the receipt, adequacy and sufficiency whereof are hereby acknowledged, Devin Enterprises, LLC does hereby impose and engraft on the hereinabove described real property the following restrictions, limitations and covenants which shall inure to the benefit of said real property and run with said real property until the zoning is changed from O-1 (Office) to another zoning classification:

1. The said real property shall be zoned and developed as provided in the O-1 (Office) zoning district with no variances.
2. Buffers shall be provided as substantially detailed in the landscaping plans heretofore provided to the Vestavia City Council with a 5' berm.
3. Vesthaven Way shall be widened by Devin Enterprises, LLC at its sole cost and expense to three lanes as defined in the report provided by Skipper Consulting to be approved by the City of Vestavia's City Engineer.
4. The City Engineer shall review and approve all plans relating to storm water drainage.
5. The City Engineer shall review and approve all plans relating to an underground spring located on the real property as well as the storm water drainage plans.
6. Devin Enterprises, LLC shall provide a landscape plan to be approved by the Landscape and Architectural Control Committee as substantially

detailed in the plans heretofore submitted to the Vestavia Hills City Council with a 5' berm.

7. All signage and lighting be presented to and approved by the Landscape and Architectural Control Committee.

8. The architectural style of the building be residential in nature with said styling, exterior, color, etc., to be presented and approved by the Landscape and Architectural Control Committee.

9. The covenants, restrictions and limitations created hereby and set out hereinabove shall inure to the benefit of the hereinabove described land and shall run with the Land.


The covenants, restrictions, and limitations created hereby on said real property shall be enforceable at law and in equity by way of damages and injunctive relief.

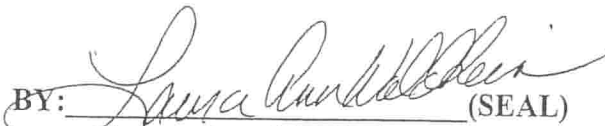
The covenants, restrictions, and limitations contained herein shall remain in full force and effect so long as the subject property is zoned O-1 (Office).

IN WITNESS WHEREOF, Devin Enterprises, LLC, has caused this instrument to be executed under seal by its Member who is thereunto duly authorized on this the 22<sup>nd</sup> day of December, 2006.

ATTEST:

DEVIN ENTERPRISES, LLC

BY:   
Michael Waldheim, Member

BY:  (SEAL)  
Laura Ann Waldheim, Member

THE STATE OF ALABAMA  
JEFFERSON COUNTY

I, a Notary Public, in and for said County in said State, hereby certify that Laura Ann Waldheim, whose name as Member of Devin Enterprises, LLC is signed to the foregoing Restrictive Covenants, and who is known to me, acknowledged before me on this day that, being informed of the contents of same, she, 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 seal this the 22<sup>nd</sup> day of December, 2006.

Mary B. Vise  
NOTARY PUBLIC  
My Commission Expires: Nov 9, 2008

20061222001790900 4/4  
Bk: LR200620 Pg: 19679  
Jefferson County, Alabama  
12/22/2006 01:49:12 PM REST  
Fee - \$12.00

Total of Fees and Taxes-\$12.00  
AMY6

CORRETTI, NEWSOM & HAWKINS

ATTORNEYS AT LAW

1804 7TH AVENUE NORTH

BIRMINGHAM, ALABAMA 35203-2280

DOUGLAS CORRETTI  
MARY DOUGLAS HAWKINS

VINCENT G. NELAN

December 26, 2006

DONALD L. NEWSOM  
(1922 - 1992)  
JAMES ROBERT SCALCO  
(1960 - 1993)

TELEPHONE 205 251-1164  
FAX #205-322-4962

Ms. Rebecca Leavings  
City Clerk, City of Vestavia Hills  
Vestavia Hills City Hall  
513 Montgomery Highway  
Vestavia Hills, Alabama 35216

RE: Devin Enterprises, LLC v. The City of Vestavia Hills, etc.  
In the Circuit Court of Jefferson County, Alabama  
Case No. CV-05-6306

Dear Ms. Leavings:

We are enclosing herewith a copy of Restrictive Covenants dated December 22, 2006, executed by Devin Enterprises, LLC, which were recorded in the Office of the Judge of Probate of Jefferson County, Alabama, on December 22, 2006, in Instrument No. 20061222001790900, Book LR200620, Page 19679.


The real property which is the subject of this action is now being conditionally rezoned O-I (Office), subject to the restrictive covenants enclosed herewith.

It is respectfully requested that you amend your map to show that the subject property has been conditionally rezoned O-I (Office).

We wish to thank you for your assistance in this matter.

Very truly yours,

CORRETTI, NEWSOM & HAWKINS

  
Douglas Corretti

DC/rtn

Enclosure

cc: Phillip G. Piggott, Esquire  
Patrick H. Boone, Esquire