

RESOLUTION NO. 13-010

BE IT RESOLVED by the City Council of the City of Decatur, Alabama that the Amendment to Conditions, Protective Covenants, Etc. regarding the Church Street-Eighth Avenue Urban Renewal Project UR Ala. 11-1as outlined in the attached document is hereby approved and the Mayor is authorized on behalf of the City and City Council to execute the necessary document to make sure the amendment is effective.

ADOPTED this 7th day of January 2013

COPY

STATE OF ALABAMA)
)
COUNTY OF MORGAN)

AMENDMENT TO “CONDITIONS, PROTECTIVE COVENANTS, ETC.”

WHEREAS, pursuant to an instrument entitled “**Conditions, Protective Covenants, Etc.,**” herein referred to as “Covenants,” recorded in **Book 687 at Page 115** of the Probate Records of Morgan County, Alabama, The Housing Authority of the City of Decatur, Alabama, a corporation, herein referred to as “Authority,” in connection with the City of Decatur, Alabama, a municipal corporation, herein referred to as “City,” placed certain restrictions and covenants controlling the use and development of certain land included in an Urban Renewal Plan known as the Church Street-Eighth Avenue Urban Renewal Project UR Ala.11-1, herein referred to as “Project” or “Project Area;” and

WHEREAS, Covenants provides that the covenants and restrictions contained in said instrument “shall be an integral part of each Contract for Sale of Land between the Housing Authority of the City of Decatur, Alabama and any purchaser of land in the Church Street-Eighth Avenue Urban Renewal Project UR Ala.11-1;” and

WHEREAS, in provisions of Covenants located in Book 687 at Page 118 of said records relating to “**Light Industrial District,**” Covenants provides for the following use of the land in the Project:

- “1. Land Use. Any lot, parcel or tract may be used for any of the following purposes, except as stated in c. below:
 ...
 b. Any light industrial use which in the opinion of the Authority is not objectionable to nearby property by reason of odor, dust, smoke, fumes, gas, noise or vibration, or is not hazardous to the health and property of the district of the which the Project Area is a part, due to danger of fire or explosion.

- c. The following uses will be specifically prohibited in the Project Area...**forge plant or metal fabrication**, ... or other uses which in the opinion of the Authority are similarly objectionable;” and

WHEREAS, in provisions located in Book 687 at Page 119 of said records relating to **“General Industrial District,”** Covenants provides the following use of the land in the Project:

- “1. Land Use. Any industrial, service or commercial use, except those in the opinion of the Building Inspector would cause noise, smoke, gas, vibration, fumes, dust or other objectionable conditions which would affect a considerable portion of the city, and/or those prohibited in Light Industrial District, Section 2.c. above;” and

WHEREAS, Covenants provides that the “Redevelopment Plan may be modified, changed or amended at any time by the Authority with the consent and approval of the City Commission provided, that any such modification, change or amendment of the Redevelopment Plan after sale or lease of any land in the Project Area must be consented to in writing by the then owners or lessees of land in the Project Area, whose land is adversely affected by such modification, change or amendment;” and

WHEREAS, David Duke and Karen Duke are the owners of the following described property, to wit:

Lot 19 of Church Street-Eighth Avenue Area Project UR Ala. 11-1, Housing Authority of City of Decatur and the City of Decatur, Alabama Subdivision, as shown by map or plat of said subdivision on file and of record in the Office of the Judge of Probate of Morgan County, Alabama in Map Book 4 at Page 4, having been filed December 14, 1961,

which is a part of the Project and is subject to Covenants, and the restrictions referred to hereinabove are adversely affecting their ability to sell the property to a business suitable for the area in which said property is situated, and they are desirous of removing any restriction relating to the prohibition of “forging and metal fabrication,” with the stipulation that any planned use of the property by a purchaser shall be regulated and restricted by existing zoning and use restrictions as established by the City of Decatur Zoning Regulations and other municipal ordinances; and

WHEREAS, Covenants were executed in 1961 and any references to “forging and metal

fabrication” related to techniques which are over 50 years old, and modern forging and fabrication processes and techniques and assembly plants and facilities no longer produce objectionable odors, dust, smoke, fumes, gas, noise or vibrations, or other objectionable conditions or hazardous conditions to the health and property of the district of which the Project is a part, as were contemplated and prohibited in 1961, and are not an unreasonable, objectionable, or offensive use of the property as were contemplated and prohibited in 1961; and

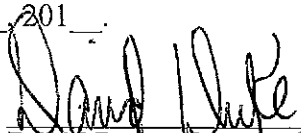
WHEREAS, the undersigned, being the owners of all lots which could be negatively impacted by the use of the property made a basis of this Amendment and the Authority, desire to amend said Covenants.

NOW THEREFORE, the undersigned, desiring to amend and modify the “Conditions, Protective Covenants, Etc.” recorded in Book 687 at Page 115 of said records, do hereby, and to the extent hereinafter set out, amend and modify said Covenants as follows:

“As to Lot 19 of Project, any references herein to the prohibition of “forge plants or metal fabrication” are hereby deleted. Any use, however, shall comply with the Zoning and Use Regulations and all other municipal ordinances of the City of Decatur, Alabama, now in existence.”

Except as specifically modified and amended herein, the Covenants recorded in Book 687 at Page 115 of the Probate Records of Morgan County, Alabama, shall remain in full force and effect and are incorporated herein by reference.

IN WITNESS WHEREOF, the undersigned, being the owners of all of the lots in the Project who might be adversely affected by this Amendment, the Housing Authority of the City of Decatur, Alabama, and the City of Decatur, Alabama, have hereunto set our hands and seals, with full authority, on this the ___ day of _____, 201__.


David Duke, Owner of Lot 19 (DB 2011, Page 6127) (SEAL)


Karen Duke, Owner of Lot 19 (DB 2011, Page 6127) (SEAL)

Farrell Properties, LLC, Owner of Lot 18 and a part of Lot 17 (DB 2011, Page 1290)

By: *Peter Full* (SEAL)
President, its Member or Manager
(Select)

James Qualls (SEAL)
James Gregory Qualls, Owner of a part of Lot 17 (DB 2005, Page 4724)

Fite Investments, LLC, Owner of a part of Lot 17 (DB 2004, Page 6613)

By: *[Signature]* (SEAL)
Member, its Member or Manager
(Select)

(SEAL)
Johanna Littlejohn, Owner of Lot B (DB 2005, Page 2596)-Not a part of Project

Pat Hennessy Properties, LLC, Owner of Lots 24&26 (DB 2011 at 1424)

By: *[Signature]* (SEAL)
Manager, its Member or Manager (Select)

The Spencer Companies, Inc., owner of Lots 34&35 (DB694, Page 317)

By: _____ (SEAL)
_____, its _____
(Office)

The Housing Authority of the City of Decatur, Alabama, a corporation

By: *Walter Hill* (SEAL)
Chief Operations Officer, its _____
(office)

RATIFIED, APPROVED, CONSENTED, AND AGREED:
City of Decatur, Alabama City Council

By: _____
_____, its _____

STATE OF ALABAMA §
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COUNTY OF MORGAN §

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that **David Duke and wife, Karen Duke**, whose names are signed to the foregoing and who are known to me, acknowledged before me on this day that, being informed of the contents, they executed the same voluntarily on the day the same bears date.

GIVEN under my hand and official seal, this the 17th day of December, 2012

(NOTARY SEAL)

Stephan C. Havest
NOTARY PUBLIC

My Commission Expires:

MY COMMISSION EXPIRES 6-15-2015

STATE OF ALABAMA §
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COUNTY OF MORGAN §

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Peter Farrell, whose name as **Member or Manager** (select) of **Farrell Properties, LLC**, an Alabama Limited Liability Company, is signed to the foregoing and who is known to me, acknowledged before me on this day that, being informed of the contents, he/she, in his/her capacity as such Member/Manager (select) and with full authority, executed the same voluntarily on the day the same bears date as the act of said company.

GIVEN under my hand and official seal, this the 26 day of December 2012

(NOTARY SEAL)

Heather Dutton
NOTARY PUBLIC

My Commission Expires:

Heather Dutton
Notary Public
State of Alabama
My Commission Exp. 07-14-13

STATE OF ALABAMA §
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COUNTY OF MORGAN §

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

GIVEN under my hand and official seal, this the 19th day of December, 2012.

(NOTARY SEAL)

Donna D. Puckett
Alabama State At Large
NOTARY PUBLIC
Donna D. Puckett
Notary Public
My Commission Expires 3/25/2013

My Commission Expires

My Comm Expires : 3-25-2013

STATE OF ALABAMA §
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COUNTY OF MORGAN §

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Fite Investments LLC, whose name as **Member or Manager** (select) of **Fite Investments, LLC**, an Alabama Limited Liability Company, is signed to the foregoing and who is known to me, acknowledged before me on this day that, being informed of the contents, he/she, in his/her capacity as such Member/Manager (select) and with full authority, executed the same voluntarily on the day the same bears date as the act of said company.

GIVEN under my hand and official seal, this the 18 day of December, 2012.

(NOTARY SEAL)

Janya Leigh Nelson
NOTARY PUBLIC

My Commission Expires:
My Commission Expires 01-27-2016

STATE OF ALABAMA §
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COUNTY OF MORGAN §

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

GIVEN under my hand and official seal, this the ____ day of _____, 201__.

(NOTARY SEAL)

NOTARY PUBLIC

My Commission Expires:

STATE OF ALABAMA §
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COUNTY OF MORGAN §

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Pat Hennessy, whose name as **Member or Manager** (select) of **Pat Hennessy Properties, LLC**, an Alabama Limited Liability Company, is signed to the foregoing and who is known to me, acknowledged before me on this day that, being informed of the contents, he/she, in his/her capacity as such Member/Manager (select) and with full authority, executed the same voluntarily on the day the same bears date as the act of said company.

GIVEN under my hand and official seal, this the 18 day of December, 2012.

(NOTARY SEAL)

Heather Dutton
NOTARY PUBLIC

My Commission Expires:

Heather Dutton
Notary Public
State of Alabama
My Commission Exp. 07-14-13

STATE OF ALABAMA §
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COUNTY OF MORGAN §

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that _____, whose name as _____ (office) of **The Spencer Companies, Inc.**, a(n) _____ Corporation, is signed to the foregoing and who is known to me, acknowledged before me on this day that, being informed of the contents, he/she, in his/her capacity as such officer and with full authority, executed the same voluntarily on the day the same bears date as the act of said corporation.

GIVEN under my hand and official seal, this the ____ day of _____, 201__.

(NOTARY SEAL)

NOTARY PUBLIC

My Commission Expires:

STATE OF ALABAMA §
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COUNTY OF MORGAN §

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that William A. Holloway, whose name as Chief Op. (office) of **The Housing Authority of the City of Decatur, Alabama**, an Alabama Corporation, is signed to the foregoing and who is known to me, acknowledged before me on this day that, being informed of the contents, he/she, in his/her capacity as such officer and with full authority, executed the same voluntarily on the day the same bears date as the act of said corporation.

GIVEN under my hand and official seal, this the 20 day of Dec., 2012.

(NOTARY SEAL)

Brenda S. Page
NOTARY PUBLIC

My Commission Expires:

10/20/13

This Instrument Prepared By:
J. Calvin McBride & Associates, P.C.
J. Calvin McBride, Attorney at Law
225 Grant Street S.E.
Decatur, Alabama 35601
256-350-4100

File No.: (Duke, David) 2012-_____
REALESTA\Amendpc.DavidDuke