

ORDINANCE NO. 2007-1

BE IT ORDAINED by the City Council of the City of Hamilton, Alabama, as follows:

Section 1. Findings. The City Council (herein called the "Council"), which is the governing body of the City of Hamilton, Alabama (herein called the "City"). Has found and ascertained and docs hereby declare as follows:

A. The City believes that the development of additional retail facilities (herein called the "Project") on a parcel or parcels of land (herein called the "Project Land") in the City located at 225 Bexar Avenue East, Hamilton, Alabama (currently known as the Town & Country Shopping Center) will promote the economic development of the City by inducing commercial enterprises to locate new facilities in the City, promote trade and commerce in the City, increase tax revenues for the City, result in additional jobs for the City's citizens, and result in the renewal and development of portions of the City within the vicinity of the Project;

B. Pursuant to the terms of a Grant Agreement (herein called the "Grant Agreement") between the City and Southeast Capital Investments, Inc., Tony Struyk and/or Hamilton Center, LLC (said individual and business entities, together or separately, being herein called the "Company"), the City is willing to provide financial incentives for the Project and to take certain other actions to encourage the Company to participate in the development of the Project in the City by providing funding in the form of a grant (herein called the "Economic Development Grant") to enable the Company to renovate, improve and/or construct a building or buildings suitable for use as one or more retail facilities (together, the "Improvements") on the Project Land (no part of the Improvements to be on "public property," as that term is defined in Section 39-2-1(4), Ala. Code 1975);

C. It is in the best interests of the City and its inhabitants for the City to provide a grant to the Company to finance the costs of the renovation, improvement, and/or construction of the Improvements and for other related purposes;

D. It is therefore necessary and desirable, and in the best interest of the City and its inhabitants, for the City to borrow the principal sum of \$560,000, and in evidence of that borrowing, to issue the Warrant hereinafter authorized and to enter into the Grant Agreement hereinafter described, with such changes as may be approved by the Mayor in order to effectuate the purposes of this ordinance;

E. The Council heretofore, at a public meeting of the Council on March 5, 2007, satisfied the requirements of paragraph C. Of Amendment No 772 (herein called the "Economic Development Amendment") to the Constitution of Alabama of 1901 with respect to the Warrant and approved the proposed issuance of the Warrant by the City and the proposed Economic Development Grant to the Company, all in accordance with the applicable provisions of the Economic Development Grant to the Company, all in accordance with the applicable provisions of the Economic Development Amendment; and

F. The Council has been advised by counsel that although a legal basis exists for its determination that the aforesaid issuance of the Warrant (including the sources for the payment of said Warrant) and the use of the proceeds thereof for the Economic Development Grant (including the execution and delivery of the grant Agreement) are authorized under existing law, in light of certain prior decisions of Alabama courts, the City cannot safely issue the Warrant and use the proceeds for such purposes until a determination is made by a court of competent jurisdiction in a suit brought by the City for the validation of the Warrant, the sources for the payment of said Warrant and the use of proceeds of said Warrant for the aforesaid purposes.

Section 2. Authorization of the Warrant. Pursuant to the provisions of the constitution and laws of the State of Alabama, including particularly Section 11-47-2 of Code of Alabama 1975, as amended, and Amendment No 772 to the Constitution of Alabama of 1901, and in order to provide funds with which to make the Economic Development Grant and to provide for the payment of the expenses of issuance, the City is hereby authorized to borrow the principal sum of \$560,000 and in evidence of that borrowing to issue its Limited Obligation Sales Tax Warrant, Series 2007 (herein called the "Warrant"). The Warrant shall be dated the date of its issuance, shall be in the principal amount of \$560,000, and shall mature and be payable six years after the date of its issuance (herein called the "Maturity Date"). The Warrant shall not bear any interest. All unpaid principal shall become due on the Maturity Date, but principal shall be prepaid as herein provided.

Section 3. Limited Obligation and Source of Payment. The indebtedness evidenced and ordered paid by the Warrant is and shall be limited obligation of the City payable solely from fifty percent (50%) of the revenue produced and received by the City from the levy of sales and use taxes with respect to businesses conducted or located on the Project Land (said 50% of said tax revenue being herein called the "Project Sales Tax Revenues") during the five-year period beginning one year after the date of the issuance of the Warrant and ending six years after the date of said issuance. The Project Sales Tax Revenues received by the City shall be used for the creation and maintenance of the Warrant Fund created in Section 5 hereof, in order to provide for payment of the principal of the Warrant when due.

Section 4. General Faith and Credit Not Pledged. The general faith and credit of the City are not pledged for payment of the Warrant. The Warrant shall not be a general obligation of the City but shall be payable solely out of moneys on deposit in the Warrant Fund. Neither this ordinance nor the Warrant issued hereunder shall be deemed to impose upon the City any obligation to pay the principal of the Warrant, or any other sum, except with the moneys herein described to be paid into the Warrant Fund. The Warrant and any payments required by this ordinance shall never constitute an indebtedness of the City within the meaning of any constitutional provision or statutory limitation whatsoever, except as may be provided in Amendment No. 772 to the Constitution of Alabama of 1901. None of the agreements, representations or warranties made or implied in this ordinance, or in the issuance of the Warrant, shall ever impose any pecuniary liability upon the City, except with respect to the moneys herein directed to be paid into the Warrant Fund. Nothing herein contained, however, shall be construed to relieve the City from the performance of any of its agreements herein contained or to relieve any of the officials of the City of any of their official duties.

Section 5. Warrant Fund. There is hereby created a special fund designated the "City of Hamilton - Project Sales Tax Warrant Fund" (herein called the "Warrant Fund"), which shall be held by the City and maintained until the principal of the Warrant shall have been paid in full or until the Maturity Date, whichever is the first to occur. The City will deposit or cause to be deposited into the Warrant Fund the Project Sales Tax revenues when and as received by the City. The City shall withdraw funds from the Warrant Fund to pay the principal of the Warrant as the same shall become due and payable. Money in the Warrant Fund may be invested by the City as permitted by law.

Section 6. Mandatory Redemption and Prepayment. The Warrant will be subject to mandatory redemption and prepayment on July 1, 2008 and on each January 1, April 1, July 1, and October 1 thereafter, to the extent of any moneys accumulated as of the last business day prior to each such January 1, April 1, July 1, and October 1 in the Warrant Fund at a redemption price equal to the principal amount of the Warrant called for redemption and prepayment. On the last business day of each March, June September and December until the principal of the Warrant shall have been paid in full or until the Maturity Date, whichever is the first to occur, the Treasurer of the City will determine the amount in the Warrant Fund, and if such amount is sufficient to effect the redemption of at least \$1.00 in principal amount of the Warrant, the treasurer of the City will so notify the Company, whereupon the Treasurer of the City will take such action as may be necessary under the provisions hereof to exhaust, as nearly as may be practicable, the moneys held in the Warrant Fund to redeem principal amounts. The Treasurer of the City shall call for redemption an amount of principal under the Warrant equal to the amount available in the Warrant Fund for redemption on the next succeeding January 1, April 1, July 1, or October 1. The moneys in the Warrant Fund shall be used solely for payment of the principal of the Warrant. When the Warrant has been retired and no principal shall be outstanding with respect thereto, any moneys then remaining on deposit in the Warrant Fund shall be returned to the City. Any moneys remaining in the Warrant Fund on the Maturity Date shall be applied to retire any outstanding principal. After such application of all funds in the Warrant Fund on the Maturity Date, the Warrant shall be deemed paid, and the City's indebtedness to the Company (and to any assignee of the Company) evidenced by the Warrant will be released and extinguished.

Section 7. Prepayment Privilege. The City reserves and shall have the privilege of prepaying all of any part of the principal of the Warrant at any time and from time to time, without penalty or premium and without any prior notice.

Section 8. Payment of the Warrant. The principal of the Warrant shall be payable at the office of the Treasurer of the City, City Hall, Hamilton, Alabama, upon presentation and surrender of the Warrant as the same becomes due. In case the Warrant is called for partial redemption, the redemption price of the principal thereof so called for redemption shall be payable at the office of the Treasurer of the City (a) upon presentation and surrender of the Warrant in exchange for a new Warrant of the same series and tenor and having an aggregate principal amount equal to the unredeemed portion of the principal of the Warrant so surrendered, or (b) upon presentation of the Warrant for an appropriate endorsement by the Treasurer of the City of such partial redemption on the Warrant or on any record of partial redemptions appertaining thereto and constituting a part thereof. The preceding two sentences of this paragraph notwithstanding, the redemption price of any partial redemption of the principal of the Warrant may be paid to the person, corporation, limited liability company, partnership, trust or other legal entity in whose name the Warrant is registered on the registry books of the Treasurer of the City pertaining to the Warrant (herein called the "Holder") pursuant to a Home Office Payment Agreement. Any provision hereof to the contrary notwithstanding, the Treasurer of the City will, at the request of the Holder of the Warrant, enter into a Home Office Payment Agreement with such Holder providing for the payment of the redemption price of any partial redemption of the

principal of the Warrant at a place and in a manner other than as otherwise provided in this section or in the Warrant, but any such agreement shall be subject to the following conditions:

- a. The terms and conditions of such agreement shall be satisfactory to the Treasurer of the City and the Holder of the Warrant;
- b. the final payment of the principal of the Warrant shall be made only upon the surrender thereof to the Treasurer of the City;
- c. If such agreement provides for the partial redemption of the principal of the Warrant without the surrender thereof in exchange for a new Warrant in a principal amount equal to the unredeemed portion of the Warrant, then such agreement
- i. Shall provide that the Holder of the Warrant will not sell, pledge, transfer or otherwise dispose of the same unless prior to the delivery thereof it shall surrender the same to the Treasurer of the City in exchange for a new Warrant in a principal amount equal to the unpaid principal of the Warrant, and
- ii. Shall provide (A) that, to the extent of the payment to the Holder of the Warrant of the redemption price of any portion thereof called for redemption, the City shall be released from liability with respect to the Warrant, and (B) that such Holder will indemnify and hold harmless THE City against any liability arising from the failure of such Holder to surrender the Warrant to the Treasurer of the City as required by the preceding clause (I).

Section 9. Execution of the Warrant. The Warrant shall be executed on behalf of the City by its Mayor, who shall affix the official seal of the City to the Warrant and the Warrant shall be attested by the City Clerk of the City. Said officers are hereby authorized and directed so to execute, seal and attest the Warrant, all in accordance with the provisions of Section 11 hereof.

Section 10. Form of the Warrant. The Warrant shall be in substantially the following form, with the appropriate insertions, omissions and other changes to comply with the provisions hereof and to reflect the appropriate date and principal amount:

\$560,000

\$560,000

UNITED STATES OF AMERICA

STATE OF ALABAMA

CITY OF HAMILTON, ALABAMA

LIMITED OBLIGATION SALES TAX WARRANT
SERIES 2007

The CITY OF HAMILTON, a municipal corporation in the State of Alabama (herein called the

"City"), for value received, hereby acknowledges itself indebted to and orders and directs the City Treasurer of the City to pay to (SOUTHEAST CAPITAL INVESTMENTS, INC., TONY STRUYK and/or HAMILTON CENTER, LLC), or registered assigns, upon presentation and surrender hereof, the principal sum of

FIVE HUNDRED SIXTY THOUSAND DOLLARS

(Or such lesser portion thereof then unpaid) on the ___ day of _____ 20__ (date six years after date of issuance of warrant) (unless the principal of this warrant shall have been duly called for previous redemption and payment duly provided for). The principal of and interest on this warrant shall be payable in lawful money of the United States of America. This warrant shall not bear any interest.

This warrant is authorized to be issued pursuant to the applicable provisions of the constitution and laws of the State of Alabama, including particularly Amendment No. 772 to the Constitution of Alabama of 1901 and Section 11-47-2 of the Code of Alabama 1975, as amended, as well as an ordinance duly adopted by the governing body of the City on March 5, 2007 (the "Ordinance"), for purposes for which the City is authorized by law to borrow money and to issue warrants. All capitalized terms not otherwise defined herein shall have the meaning assigned to such terms in the Ordinance.

The indebtedness evidenced and ordered paid by this warrant is a limited obligation of the City payable solely from fifty percent (50%) of the revenue produced and received by the City from the levy of sales and use taxes with respect to businesses conducted or located on the Project Land (said 50% of said tax revenue being herein called the "Project Sales Tax Revenues").

The City created a special fund (the "Warrant Fund"), into which the City will deposit Project Sales Tax Revenues when and as received by the City. The City shall withdraw funds from the Warrant Fund to pay the principal of this warrant as the same shall become due and payable.

The City reserves the privilege of prepaying all or any part of the principal of this warrant at any time and from time to time, without premium or penalty, and without notice.

This warrant is subject to mandatory redemption and prepayment on July 1, 2008 and on each January 1, April 1, July 1, and October 1 thereafter, to the extent of any moneys accumulated as of the last business day prior to each such January 1, April 1, July 1, and October 1 in the Warrant Fund, at a redemption price equal to the principal amount of the Warrant called for redemption and prepayment.

The principal of and interest on this warrant will be paid only to the named payee hereof or its registered assigns at the address of the said payee as shown on the books of the City maintained for that purpose by its undersigned registrar.

It is hereby certified that all conditions, actions and things required by the constitution and laws of Alabama to exist, be performed or happen precedent to or in the issuance of this warrant do exist, have been performed and have happened in due and legal form.

IN WITNESS WHEREOF, the City has caused this warrant to be executed in its name and behalf by its Mayor, who has caused its official seal to ne hereunto affixed, has caused this warrant to be attested by its City Clerk, both of said officers being hereunto duly authorized, and has caused this warrant to be dated _____, 2007.

CITY OF HAMILTON, ALABAMA

By *Kay Davis*
Mayor

Attest:

Sue Page
City Clerk

This warrant was registered in the name of the above-registered owner this _____ day of _____, 2007.

By _____
Registrar

For value received _____ hereby sell(s), assign(s) and transfer(s) unto _____ the within warrant and power of substitution in the premises, to transfer this warrant on the books of the City of Hamilton, Alabama.

Dated this _____ day of _____, _____.

NOTE: The signature on this assignment must correspond with the name of the registered owner as it appears on the face of the within warrant in every particular, without alteration, enlargement or change whatsoever.

Section 11. Mayor and City Clerk to Effect Borrowing. The Mayor of the City and its City Clerk-City Treasurer are hereby authorized to effect the borrowing authorized in this ordinance at any time, for the purpose for which such borrowing is herein authorized and, at the time of such borrowing, to deliver to the purchaser or purchasers thereof the Warrant in the principal amount of such loan, when the Warrant is executed, sealed and attested as herein specified.

Section 12. Registration of Warrant. A registration certificate, in substantially the form herein above recited, duly executed by the manual signature of the City Clerk as registrar, shall be endorsed on the Warrant and shall be essential to its validity. The Warrant shall be registered as to principal, and shall be transferable only on the registry books of the City. The City Clerk