AlaFile E-Notice

01-CV-2026-902889.00

To: KENNETH MARK PARNELL
parnell@ptlawllc.com

# NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

ROBERT SANSOME ET AL V. HOAR CONSTRUCTION, LLC ET AL
01-CV-2026-902889.00

The following complaint was FILED on 6/29/2026 4:47:17 AM

Notice Date: 6/29/2026 4:47:17 AM

JACQUELINE ANDERSON SMITH
CIRCUIT COURT CLERK
JEFFERSON COUNTY, ALABAMA
716 RICHARD ARRINGTON, JR BLVD
BIRMINGHAM, AL, 35203

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jackie.smith@alacourt.gov

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CIRCUIT COURT OF
JEFFERSON COUNTY, ALABAMA
JACQUELINE ANDERSON SMITH, CLERK

State of Alabama
Unified Judicial System

Form ARCiv-93 Rev. 9/25

# COVER SHEET
# CIRCUIT COURT - CIVIL CASE
(Not For Domestic Relations Cases)

Cas
01
Date of Filing: 06/29/2026
Judge Code:

## GENERAL INFORMATION

**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA**
**ROBERT SANSOME ET AL v. HOAR CONSTRUCTION, LLC ET AL**

**First Plaintiff:** ☐ Business ☑ Individual ☐ Government ☐ Other

**First Defendant:** ☑ Business ☐ Individual ☐ Government ☐ Other

**NATURE OF SUIT:** Select primary cause of action, by checking box (check only one) that best characterizes your action:

**TORTS: PERSONAL INJURY**
- ☐ WDEA - Wrongful Death
- ☐ TONG - Negligence: General
- ☐ TOMV - Negligence: Motor Vehicle
- ☐ TOWA - Wantonness
- ☐ TOPL - Product Liability/AEMLD
- ☐ TOMM - Malpractice-Medical
- ☐ TOLM - Malpractice-Legal
- ☐ TOOM - Malpractice-Other
- ☐ TBFM - Fraud/Bad Faith/Misrepresentation
- ☑ TOXX - Other: _____

**TORTS: PERSONAL INJURY**
- ☐ TOPE - Personal Property
- ☐ TORE - Real Properly

**OTHER CIVIL FILINGS**
- ☐ ABAN - Abandoned Automobile
- ☐ ACCT - Account & Nonmortgage
- ☐ APAA - Administrative Agency Appeal
- ☐ ADPA - Administrative Procedure Act
- ☐ ANPS - Adults in Need of Protective Service

**OTHER CIVIL FILINGS (cont'd)**
- ☐ MSXX - Birth/Death Certificate Modification/Bond Forfeiture Appeal/ Enforcement of Agency Subpoena/Petition to Preserve
- ☐ CVRT - Civil Rights
- ☐ COND - Condemnation/Eminent Domain/Right-of-Way
- ☐ CTMP - Contempt of Court
- ☐ CONT - Contract/Ejectment/Writ of Seizure
- ☐ TOCN - Conversion
- ☐ EQND - Equity Non-Damages Actions/Declaratory Judgment/ Injunction Election Contest/Quiet Title/Sale For Division
- ☐ CVUD - Eviction Appeal/Unlawful Detainer
- ☐ FORJ - Foreign Judgment
- ☐ FORF - Fruits of Crime Forfeiture
- ☐ MSHC - Habeas Corpus/Extraordinary Writ/Mandamus/Prohibition
- ☐ PFAB - Protection From Abuse
- ☐ EPFA - Elder Protection From Abuse
- ☐ QTLB - Quiet Title Land Bank
- ☐ FELA - Railroad/Seaman (FELA)
- ☐ RPRO - Real Property
- ☐ WTEG - Will/Trust/Estate/Guardianship/Conservatorship
- ☐ COMP - Workers' Compensation
- ☐ CVXX - Miscellaneous Circuit Civil Case

**ORIGIN:**
F ☑ **INITIAL FILING**
A ☐ **APPEAL FROM DISTRICT COURT**
P ☐ **APPEAL FROM PROBATE COURT**
O ☐ **OTHER**

**HAS JURY TRIAL BEEN DEMANDED?** ☑ **YES** ☐ **NO**

**Note:** Checking "Yes" does not constitute a demand for a jury trial. (See Rules 38 and 39, Ala.R.Civ.P, for procedure)

**RELIEF REQUESTED:** ☑ **MONETARY AWARD REQUESTED** ☐ **NO MONETARY AWARD REQUESTED**

**ATTORNEY CODE:**
PAR039

6/29/2026 4:47:16 AM
Date

/s/ KENNETH MARK PARNELL
Signature of Attorney/Party filing this form

**MEDIATION REQUESTED:** ☐ **YES** ☑ **NO** ☐ **UNDECIDED**

**Election to Proceed under the Alabama Rules for Expedited Civil Actions:** ☐ **YES** ☐ **NO**

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CIRCUIT COURT OF
JEFFERSON COUNTY, ALABAMA
JACQUELINE ANDERSON SMITH, CLERK

**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA**
**BIRMINGHAM DIVISION**

| | |
|---|---|
| **ROBERT B. SANSOME and JOHN BENJAMIN HILLEY,**<br><br>Plaintiffs,<br><br>v.<br><br>**HOAR CONSTRUCTION, LLC; LAKESHORE DATA CENTER, LLC; NEBIUS, INC.; THE CITY OF BIRMINGHAM, ALABAMA; and FICTITIOUS DEFENDANTS A–E,**<br><br>Defendants. | **Civil Action No.:**<br>**CV-2026-_____**<br><br>***JURY TRIAL DEMANDED*** |

**VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT, TEMPORARY RESTRAINING ORDER, PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF, AND DAMAGES**

**COME NOW** the Plaintiffs, Robert B. Sansome and John Benjamin Hilley (collectively, "Plaintiffs"), and for their Verified Complaint against Defendants Hoar Construction, LLC; Lakeshore Data Center, LLC; Nebius, Inc.; the City of Birmingham, Alabama; and Fictitious Defendants A through E, respectfully state as follows:

## I. NATURE OF THE ACTION

1. This is an action by two homeowners whose residences sit a few hundred feet from a proposed 300-megawatt, around-the-clock hyperscale artificial-intelligence computing facility — the "BHM01 AI Factory" (the "Project" or the "AI Factory") — now illegally under construction in Birmingham's Oxmoor Valley. The bottom line is simple: under the Birmingham Zoning Ordinance ("Ordinance") , the Project was never authorized, and it is being built anyway.

2. The site is zoned MXD (Planned Mixed-Use District). Birmingham's Zoning Ordinance is an *enumerated-use* ordinance: a land use that is not affirmatively authorized for a district is prohibited in that district. The Ordinance does not list, define, or authorize a "data center," a "hyperscale data center," or an "AI factory" as a use anywhere, and it provides no mechanism by which such a use could be added by right within the MXD district. To place a use of this character and intensity on this MXD site, the Ordinance required — at a minimum — the assignment of the use to a use group and an amendment of the Council-approved Conceptual Plan, adopted only after public hearings before the Zoning Advisory Committee ("ZAC") and the Birmingham City Council. None of that occurred. No use group was assigned. No Conceptual Plan amendment was sought, advertised, heard, or approved. The public hearings the Ordinance guarantees were never held.

3. The City knew the Ordinance did not authorize this use — that is why it tried to change it. On June 9, 2026, the City Council purported to amend the Zoning Ordinance to create a data-center use category, including within the MXD district. That amendment, however, is void. The City never lawfully advertised it: the City elected the notice procedure of Ala. Code § 11-52-77(2), then failed to satisfy that procedure's mandatory requirements. And the amendment is arbitrary, capricious, and not fairly debatable, because no reasonable legislative body could authorize a 300-megawatt, around-the-clock industrial AI factory in a district that also permits people to live there. The amendment is therefore a nullity — and, by the City's own admission, it does not apply to this Project in any event. The dispositive result is that there remains **no provision of the Zoning Ordinance that authorizes the Project's use within the MXD district**.

4. The Project's essential electrical infrastructure independently confirms the point. The Project cannot operate without a dedicated power substation and a high-voltage switching station, each of which is a "Utility Substation" requiring a special exception from the Zoning Board of Adjustment ("ZBA"). The developers applied for those special exceptions, fully litigated them at two public hearings, and **lost**: on March 26, 2026, the ZBA declined to approve both applications, which were denied as a matter of law. The developers appealed that denial to this Court and then **voluntarily dismissed their own appeal**, which was dismissed without prejudice on May 28, 2026. The denials therefore stand, final and unreviewed. Without those facilities the Project cannot lawfully be built or operated as configured — yet construction races ahead.

5. The City's own officials have, in their own words and on the public record, confirmed that the existing zoning does not authorize this Project and does not meaningfully constrain it. Plaintiffs do not contend that data centers are categorically forbidden in Birmingham, or that the City may ban them; Plaintiffs contend only that *this* use, on *this* MXD site, required a process the Ordinance prescribes and that the Defendants skipped.

6. The equities are not close. The Project was assembled through a coordinated, roughly twenty-four-hour "acquisition cascade" that inflated a parcel that two arm's-length sellers conveyed for about $20 million into a paper "investment" of roughly $90 million. The developers knew of the City's impending data-center moratorium no later than the City's December 16, 2025 public notice; they rushed to City Hall to file permits in an effort to manufacture a "grandfathered" position; they demolished the prior structure and advanced construction notwithstanding the moratorium; the City expedited and, in instances, same-day-issued the permits that followed the ZBA's denial; and one of the land-holding entities

tried to quietly dissolve within weeks of the moratorium notice. A party that comes to equity having engineered its own "investment" and raced to outrun the law does not come with clean hands.

7. Meanwhile, Plaintiffs live with the consequences every day: jackhammering and caisson-drilling that begins before 7:30 a.m., low-frequency noise and vibration that can be felt and heard inside their homes, dust and heavy truck traffic, the loss of the quiet enjoyment of their property, diminished marketability and value, and — for Plaintiff Hilley — cracking that has appeared in his home during the construction period that was not present before. Once the AI Factory begins operating, Plaintiffs face continuous, twenty-four-hour noise, generator exhaust, light, heat, and water-system effects in perpetuity.

8. Plaintiffs therefore seek (a) declarations that the Project is unauthorized under the Zoning Ordinance, that the City's June 9, 2026 amendment is void, and that the permits issued for the Project are void; (b) a temporary restraining order and preliminary and permanent injunctions halting further construction; and (c) compensatory and punitive damages for the nuisance, trespass, and statutory violations the Defendants' conduct has inflicted and continues to inflict on Plaintiffs.

## II. PARTIES

### A. Plaintiffs

9. Plaintiff Robert B. Sansome ("Sansome") is an adult resident and citizen of the State of Alabama who owns and resides in the single-family residence located at 3962 Sydney Trail, Birmingham, Alabama 35212 (the "Sansome Property"). The Sansome Property lies approximately 800 feet from the Project construction site.

10. Plaintiff John Benjamin Hilley ("Hilley") is an adult resident and citizen of the State of Alabama who, together with his wife, owns and resides in the single-family residence located at 3963 Sydney Trail, Birmingham, Alabama 35211 (the "Hilley Property"; with the Sansome Property, the "Properties"). The Hilley Property lies approximately 970 feet from the Project construction site, in a direct line across Lakeshore Parkway.

11. Both Properties lie within the auditory, visual, vibratory, and environmental impact range of the Project and of the substation and switching station that the Project requires. Plaintiffs are residential property owners whom the Birmingham Zoning Ordinance was enacted to protect, and the harms they suffer are of the kind the Ordinance was designed to prevent. *See* Zoning Ordinance, Title 1, Ch. 1, Art. I, § 1(B).

**B. Defendants**

12. Defendant Nebius, Inc. ("Nebius") is the developer and end-user of the Project. Nebius is the operating entity behind the BHM01 AI Factory and, with its affiliates, directs the design, construction, and intended operation of the Project. Nebius is subject to the jurisdiction of this Court because it is developing real property in Jefferson County and has availed itself of this State's permitting and judicial processes, including by filing and then dismissing an appeal in this Court (CV-2026-902080).

13. Defendant Hoar Construction, LLC ("Hoar") is an Alabama limited liability company and the general contractor performing the construction at the Project site. Hoar holds and has pursued building, demolition, and related permits for the Project and is the entity physically prosecuting the work that is harming Plaintiffs. Hoar maintains its principal business address at Two Metroplex Drive, Suite 400, Birmingham, Alabama 35209.

14. Defendant Lakeshore Data Center, LLC ("Lakeshore Data Center") is an Alabama limited liability company that briefly held the anchor parcel of the Project site during the September 30–October 1, 2025 acquisition cascade described below, capturing millions of dollars of intra-cascade markup before conveying the parcel onward. Lakeshore Data Center shares the same business address as Hoar — Two Metroplex Drive, Suite 400, Birmingham, Alabama 35209 — and Robert O. Burton is both the Chief Executive Officer of Hoar and the manager of Lakeshore Data Center. Upon information and belief, Lakeshore Data Center filed Articles of Dissolution on or about December 30, 2025, without provision for known or foreseeable claims; it remains subject to suit on claims arising from its pre-dissolution conduct.

15. Defendant the City of Birmingham, Alabama (the "City") is an Alabama municipal corporation. The City, acting through its Department of Planning, Engineering and Permits ("PEP"), its Office of the City Attorney, and the Zoning Board of Adjustment, administered the zoning, permitting, and special-exception processes at issue, issued the permits that Plaintiffs contend are void, and took the administrative actions challenged in this Complaint. The relief Plaintiffs seek against the City arises directly from the City's own administrative conduct and is not derivative of the conduct of any other Defendant.

16. Fictitious Defendants A through E are those persons or entities, whose true names and identities are presently unknown to Plaintiffs but will be substituted by amendment when ascertained, who: are otherwise liable for the conduct alleged; or are successors, affiliates, alter egos, or persons in active concert or participation with the named Defendants. Plaintiffs aver fictitious-party practice under Rule 9(h) of the Alabama Rules of Civil Procedure.

## III. JURISDICTION AND VENUE

17. This Court has subject-matter jurisdiction over this action. Plaintiffs seek declaratory relief under the Alabama Declaratory Judgment Act, Ala. Code §§ 6-6-220 *et seq.* (1975); injunctive relief under Rule 65 of the Alabama Rules of Civil Procedure; and compensatory and punitive damages on common-law and statutory theories. The amount in controversy exceeds the jurisdictional threshold of this Court, exclusive of interest and costs.

18. Venue is proper in Jefferson County under Ala. Code § 6-3-2 and § 6-3-7 (1975) because the real property at issue is situated in Jefferson County, the Defendants do business or reside in Jefferson County, and the acts and omissions giving rise to Plaintiffs' claims occurred in Jefferson County.

19. An actual, justiciable, and ripe controversy exists between Plaintiffs and Defendants concerning the lawfulness of the Project, the validity of the permits issued for it, and the harms it inflicts. The controversy is of sufficient immediacy and reality to warrant the declaratory and injunctive relief sought.

## IV. FACTUAL ALLEGATIONS

### A. The Site, Its MXD Zoning, and the Project

20. The Project is being constructed on an assemblage of approximately 79.33 acres comprising four parcels located at 201, 250, and 260 Milan Parkway and 2500 Venice Road, in the Oxmoor Valley corridor of Birmingham (the "Site"). The Site is zoned MXD (Planned Mixed-Use District) under the Birmingham Zoning Ordinance.

21. The anchor parcel at 201 Milan Parkway was improved with the Regions Lakeshore Operations Center, a bank operations and office building that operated as a conforming use under the Site's MXD classification and its Council-approved Conceptual Plan.

22. The Project is not an office use. It is a proposed 300-megawatt, twenty-four-hour-per-day, seven-day-per-week hyperscale artificial-intelligence computing campus — a two-building "AI Factory" — served by industrial-scale cooling infrastructure, on-site backup power generation, a dedicated power substation, and a high-voltage switching station. The Project's character, scale, intensity, electrical demand, water demand, noise, heat, and around-the-clock operation are categorically different from the prior office use and from any use authorized for the Site.

**B. Birmingham's Zoning Ordinance Prohibits Any Use Not Affirmatively Authorized**

23. The Birmingham Zoning Ordinance is an enumerated-use ordinance. Within any given zoning district, a land use is permitted only if it is affirmatively authorized for that district; a use that is not authorized is prohibited. There is no "permitted-unless-prohibited" default. *See*, *See* Zoning Ordinance, Chapter 1, Article II, §§ 1–2.

24. The Zoning Ordinance does not enumerate, define, or authorize a "data center," a "hyperscale data center," or an "AI factory" as a land use — in the MXD district or anywhere else. The City recognized as much: as set forth in Subsection G below, the City attempted to amend the Zoning Ordinance on June 9, 2026 precisely in order to create a data-center use category that the existing Ordinance did not contain. But that amendment is void — both because it was not lawfully advertised and because it is arbitrary and capricious — and, by the City's own account, it purportedly would not apply to this Project in any event. The result is that there remains *no* provision of the Zoning Ordinance that authorizes a data center, a hyperscale data center, or an AI factory as a use within the MXD district. A use that the Ordinance does not authorize cannot be conjured into existence by

administrative permitting; it must be authorized through the legislative and quasi-legislative processes the Ordinance prescribes.

25. Because the AI Factory is not an authorized use of the MXD Site, it is, as a matter of law, a prohibited use unless and until it is authorized through the processes the Ordinance requires — processes that have not been followed.

**C. What the MXD Classification Required — and the Total Failure to Do Any of It**

26. The MXD (Planned Mixed-Use District) classification is not a license to build anything. It is a planned district governed by a Council-approved Conceptual Plan and by the use-group and review framework of the Zoning Ordinance. To introduce a new use of the Project's character to the Site, the Ordinance required the Defendants to do each of the following — none of which they did:

27. **(a) Assignment to a use group.** The Ordinance requires that a proposed use be classified and assigned to a use group before it may be authorized in a district. No use group was ever assigned to the AI Factory use.

28. **(b) Amendment of the Council-approved Conceptual Plan.** A change of this character to a planned MXD site requires an amendment to the Council-approved Conceptual Plan governing the Site. *See* Zoning Ordinance, Ch. 4, Art. V, § 7, subsec. 3. No Conceptual Plan amendment was ever sought, advertised, or approved for the Project.

29. **(c) Public hearings before the ZAC and the City Council.** A Conceptual Plan amendment of this kind may be adopted only after public hearings before the Zoning Advisory Committee and the Birmingham City Council. Those public hearings — the very forum in which neighboring owners such as Plaintiffs are entitled to be heard — were never held for this Project.

30. **(d) Required collateral review.** Development within the Oxmoor Valley MXD framework is subject to the review structure established for that district, including review associated with the Oxmoor Steering Committee mechanism referenced by the City's own zoning staff. Upon information and belief, no such review of the AI Factory use occurred.

31. The Defendants did not satisfy *any* of these requirements. They treated a use that the Ordinance never authorized as though it were permitted by right, and the City processed administrative permits for it as though the threshold land-use question had been answered. It had not been.

**D. The Prior Use Was Conforming, and Its Demolition Extinguished Any Prior-Use Status**

32. Anticipating the Defendants' reliance on a "grandfathering" or "vested rights" theory, Plaintiffs aver that no such theory is available. The prior Regions Lakeshore Operations Center was a *conforming* use under the Site's MXD classification. Because the prior use conformed to the zoning, there was no nonconforming-use status for the Project to inherit in the first place.

33. Even assuming *arguendo* that the prior structure had carried some form of nonconforming-use entitlement, that entitlement was extinguished as a matter of law by, among other reasons, (i) the change of use and (ii) the total demolition of the structure, neither of which was accompanied by any variance. *See* Zoning Ordinance, Ch. 9, Art. VII, §§ 3.A.1, 3.A.3, and 4.B. No variance was sought from or granted by the Board. The Regions structure has been completely demolished and the Site cleared.

34. Alabama, moreover, has not adopted a vested-rights doctrine that would excuse compliance with the Ordinance, and the City's administrative issuance of permits cannot confer a use

right the Ordinance withholds. Any new construction on the Site must conform in all respects to the current requirements of the Ordinance.

**E. The Substation and Switching Station: Special Exceptions Required, Denied, and Now Final**

35. The Project cannot function without a dedicated power substation and a high-voltage switching station. Each is a "Utility Substation" within the meaning of the Zoning Ordinance, Title 1, Ch. 1, Art. III, § 1, Item 218, and each therefore required a special exception approved by the Zoning Board of Adjustment.

36. The developers recognized as much. On or about January 27, 2026, DPR Construction, acting as the authorized representative of Nebius, submitted two special-exception applications to the ZBA: Case No. ZBA2026-00007 (the substation, at 260 Milan Parkway) and Case No. ZBA2026-00006 (the switching station). Each application checked the box for a special exception, was filed under the special-exception provisions of the Ordinance, was accompanied by the special-exception fee, and was signed under a certification of truth by the developers' own representative.

37. The ZBA held public hearings on the applications on February 26, 2026 and March 26, 2026. Residents of the affected area appeared and submitted comments in opposition. On March 26, 2026, after taking evidence and hearing public comment, the ZBA voted not to approve the special exceptions, and both applications were denied as a matter of law because neither received the two-thirds concurring vote required by the Board's Rules of Procedure and by Ala. Code § 45-37A-56(b) (1975).

38. On April 9, 2026 — two weeks after the vote — the City Attorney issued an Interoffice Memorandum asserting that the proposed facilities were not "Utility Substations," that the

ZBA had lacked jurisdiction, and that no special exception was required. That Memorandum is an act of the City Attorney, not a decision of the Board, and cannot reverse or nullify the Board's exercise of its jurisdiction.

39. The developers then appealed the March 26 denials to this Court in *Nebius Inc., et al. v. Zoning Board of Adjustment of the City of Birmingham*, Civil Action No. CV-2026-902080. They then **voluntarily dismissed their own appeal**. On May 28, 2026, an order was issued dismissing that action without prejudice on the plaintiffs' own motion, and denying all other relief as a final order. The developers' voluntary dismissal of their appeal left the ZBA's March 26, 2026 denials standing as final, unreviewed decisions of the Board.

40. The consequence is dispositive: the special exceptions the Project requires were sought and **denied**; that denial is final; and no facility requiring those special exceptions may lawfully be constructed or operated. Because the Project cannot exist without the substation and switching station, the finality of the denials independently establishes that the Project, as configured, is unlawful.

41. Notwithstanding the finality of the ZBA's denials, the Defendants are proceeding to build the very facility the Board refused to allow. On April 22, 2026 — nearly a month after the March 26, 2026 denials — an application was made to the City for a permit for the "BHM01 Alabama Data Center Substation," under an application fee of $622,711.46, and the City issued that permit on June 3, 2026. The City thus issued a permit for the Project's dedicated substation more than two months after the special exception that the substation requires had been finally denied, and the Defendants are constructing it. A permit issued in derogation of the ZBA's final denial cannot authorize what the Board refused to allow;

the June 3, 2026 substation permit is therefore void, and the Defendants' continued construction of the substation in the face of the final denial underscores both the unlawfulness of the Project and the necessity of injunctive relief.

**F. The City's Own Officials Have Admitted That Existing Zoning Did Not Authorize the Project**

42. The City has publicly maintained that it had no choice — that the Project was "already zoned" and that nothing could be done to stop it. The City's own officials, speaking on the public record, have said otherwise. Their statements confirm that the existing zoning neither authorized this use nor meaningfully constrained it, and that the only way to subject the Project to ordinary land-use controls was to enact something the existing Ordinance did not contain.

43. At the City Council's June 9, 2026 public hearing and vote on a new data-center ordinance, the City's Zoning Administrator, Kim Speorl, confirmed that the Project remains within the City's regulatory reach — stating, as reported, that once the newly adopted zoning amendment is advertised as state law requires, "any changes to their permitting would be subject to the new requirements." A project that is subject to the City's zoning for its future changes is not a project that existing zoning placed beyond the City's reach.

44. The same June 9, 2026 hearing produced the City's most direct admission of all. In presenting the proposed data-center ordinance to the Council at the opening of the public hearing, the City's own officials told the public, on the record, that the Zoning Ordinance contained no data-center use at all and that the ordinance's purpose was to create one. The Deputy Director of the Mayor's Office of Resilience and Sustainability explained that the City had "recognized the need to create new definitions around all types of data centers

and develop those regulations." The City's Zoning Administrator — the official charged with administering the Ordinance — described the data-center definitions as "new terms that will be added to the city's zoning ordinance," and acknowledged, as to even the most modest category of accessory data center, that "we did not have this defined." A use cannot be "added" to an ordinance that already authorizes it; the City's own presentation is a binding admission that, until June 9, 2026, no provision of the Ordinance attempted to define or authorized a data center anywhere in Birmingham, the MXD district included.

45. Nor was that admission incidental to this Site. The Zoning Administrator identified the districts the new hyperscale rules would reach as "I1 and MXD use Group C3 properties," and confirmed that the MXD Group C3 category "applies to our Oxmoor community" — the very district and community in which the Project is being built. And the Mayor's Office advised the Council that a data center already in the permitting pipeline "could amend its permit to expand without having to comply with any of these proposed regulations" — an admission that the City regarded this Project as free to proceed, and even to expand, outside the controls the new ordinance would impose on others.

46. Councilor Hunter Williams told the chamber that, absent the new ordinance, "the project that everyone has managed to bring up today … will have free rein to do whatever they want." Councilor Josh Vasa likewise warned that "if we do not act today, there is room for growth from those entities that are currently permitted." These are admissions by the City's own elected officials that, under the existing zoning framework alone, the Project was not meaningfully regulated — the antithesis of the City's public position that the Project was properly and adequately zoned.

47. City officials further acknowledged that the new ordinance "cannot interfere with current permitting processes" for the Project, even as staff confirmed that the ordinance would apply to the Project's future expansions. The City thus simultaneously (i) treated the Project as outside the new rules for now, and (ii) conceded that the Project is the kind of use those rules are meant to govern — a use the prior Ordinance never authorized.

48. The same hearing confirmed that the City's administration had affirmatively removed from the draft ordinance the "special exception" requirement that triggers public hearings for hyperscale facilities — the very mechanism through which neighbors like Plaintiffs are entitled to be heard. As community leaders observed at the hearing, removing the special exception "remove[s] the public's ability to have any meaningful input that matters."

49. The City Council President, Wardine Alexander — who voted against the new ordinance — publicly explained that under "Birmingham's current process, businesses do not initially come before the City Council for approval," that applications "are reviewed through administrative and zoning processes," and that "in many cases, decisions are made before the Council has an opportunity to weigh in." She stated that she supported the moratorium so that the City could add safeguards "before additional data centers progressed without proper review." That is a concession, by the City's own legislative presiding officer, that this Project advanced without the legislative review the Ordinance requires.

50. Upon information and belief, and as reported on June 18, 2026, a spokesman for the City has more recently characterized the facility as "legal, non-conforming" and stated that any change to it would require a formal ZBA exception and renewed Oxmoor Steering Committee review. A "non-conforming" facility is, by definition, one that does *not*

conform to the governing zoning — a direct admission that the Project does not comply with the Ordinance.

51. Taken together, these statements establish the opposite of the City's "nothing-we-could-do" narrative: the City's own officials admit that the existing zoning did not authorize the Project, did not constrain it, and had to be supplemented precisely because the Project escaped the ordinary controls the Ordinance was supposed to impose.

**G. The City's Attempt to Amend the Zoning Ordinance Was Void, and No MXD Authorization for the Project Exists**

52. The City did not believe the existing Zoning Ordinance authorized this use. Had it believed otherwise, there would have been no need for what it did next. On June 9, 2026, the City Council purported to adopt a text amendment to the Zoning Ordinance (Ordinance No. 15-133, as amended) for the express purpose of creating a data-center use category the Ordinance had never contained. The amendment purported to amend the Ordinance's Definitions (Title 1, Ch. 1, Art. III), the Permitted Uses Table (Title 1, Ch. 2, Art. II), the Uses Permitted with Conditions, Special Exception, and Accessory Use articles (Title 1, Ch. 4, Arts. II–IV), and — of particular relevance here — the Specific Development Standards for the MXD Planned Mixed-Use District (Title 1, Ch. 4, Art. V, § 7, Subsec. 5.B). By its own terms, the amendment "will affect all property within the Corporate Boundaries" and "[n]o properties will be rezoned."

53. That amendment is void for two independent reasons, and its invalidity is dispositive: if the amendment is void, then the only provision the City has ever pointed to as authorizing data centers does not exist in law, and there remains no provision of the Zoning Ordinance authorizing the Project's use within the MXD district.

54. **First — the amendment was never lawfully advertised.** The published notice expressly elected the procedure of Ala. Code § 11-52-77(2) (1975), citing that subdivision by name. By Ala. Code § 11-52-78 (1975), the notice requirements of § 11-52-77 "apply equally to all changes and amendments" to a zoning ordinance, including a text amendment. Alabama law requires strict — not substantial — compliance with these publication requirements, which are mandatory and jurisdictional. Having elected subdivision (2), the City was bound to satisfy each of its mandatory elements, and it did not.

55. **The missing map.** Subdivision (2)(c) provides that the published notice "shall include … a map showing the location of the property." None of the City's three published insertions — run in the Alabama Messenger on May 20, May 27, and June 3, 2026, for the June 9, 2026 hearing — contains any such map. The omission of a mandatory element appears on the face of the published notices and, under the strict-compliance rule, is by itself a failure of statutory notice.

56. **The wrong notice vehicle.** Subdivision (2) is a property-specific notice track: its content elements presuppose identifiable property being zoned or rezoned, which is why it requires a map (subsec. (2)(c)) and a description of the property by common name (subsec. (2)(d)). The City's notice states the opposite — a citywide text amendment under which "[n]o properties will be rezoned." The conventional vehicle for a pure text amendment is subdivision (1), which requires publication of the ***full proposed ordinance*** followed by a synopsis and carries no map or property-description requirement. By electing subdivision (2) while disclaiming any rezoning, the City placed itself in an inescapable bind: either the property-specific elements of subdivision (2) applied and the notice failed them, or those elements were inapplicable — in which case subdivision (2) was the wrong procedure and

the requirements of subdivision (1) were never satisfied. Either way, the statutory notice failed.

57. **The unmet dual-publication requirement.** Subdivision (2) further requires that the notice be published not only in the legal section in standard form but also "one time in the regular section … in the form of at least a one-quarter page advertisement" — a requirement aimed at the general readership, not merely at consumers of legal notices. Upon information and belief, the City's notice ran only in the legal section, and no conforming quarter-page advertisement ran in the regular section; and the Alabama Messenger, which holds itself out as a medium for legal publications, may not satisfy the "regular section" and general-circulation conditions in any event.

58. Defective statutory publication renders an ordinance adopted on that notice void.

59. **Second — the amendment is arbitrary, capricious, and not fairly debatable.** A zoning enactment is valid only if it bears a substantial relation to the public health, safety, morals, or general welfare; a zoning decision that is arbitrary, unreasonable, or not connected to the public good will be stricken, and is upheld only where its reasonableness is "fairly debatable."

60. Insofar as the June 9, 2026 amendment purports to authorize a 300-megawatt, around-the-clock hyperscale data center and AI factory use within the MXD Planned Mixed-Use District — a district that simultaneously permits residential dwellings — it is not fairly debatable. No reasonable legislative body could conclude that an intense, continuously operating heavy-industrial use of this character and magnitude is compatible with, or may be sited cheek-by-jowl with, the homes the same district authorizes. Placing such a use in a district that also allows people to live there bears no substantial relation to the public

health, safety, or general welfare; it subordinates the health and repose of resident owners such as Plaintiffs to a private commercial interest; and it is therefore arbitrary, capricious, and void.

61. For either reason — defective notice or arbitrary-and-capricious substance — the June 9, 2026 amendment is void and of no effect. And because the City itself has represented that the amendment does not apply to this Project, the amendment cannot authorize the Project even if it were valid. Under any view, the bottom line is the same and is dispositive: there is **still no provision of the Birmingham Zoning Ordinance that authorizes a data center, hyperscale data center, or AI factory as a use within the MXD district**, and the Project remains an unauthorized and prohibited use.

**H. The Moratorium Barred Permitting the Project, the City Issued Permits in Violation of It, and No Lawful Path to a Data-Center Permit Now Exists**

62. Because the Zoning Ordinance did not authorize a data center, a hyperscale data center, or an AI factory anywhere in the MXD district, no application to develop such a use could lawfully be processed to approval, and any permit issued on such an application is void. The City had no power to approve a data-center application, or to issue a permit for a data-center use, unless and until the Ordinance was lawfully amended to define and authorize that use.

63. The City's own data-center moratorium confirmed precisely that. Through its December 16, 2025 public notice and its adoption of the moratorium on March 3, 2026 (Ordinance No. 26-25), the City acted to make clear that data-center proposals could not be processed or approved until the Zoning Ordinance was amended to define and authorize such a use.

The moratorium would have been unnecessary had the existing Ordinance already authorized data centers; the City imposed it precisely because the Ordinance did not.

64. The Project is a data-center proposal of exactly the kind the moratorium reached, and the Developer Defendants were subject to it. Their pending and subsequent applications should have been held, unprocessed, until a lawful amendment authorized the use. The Developer Defendants were entitled to no exemption: the prior Regions use was a conforming MXD use that left no nonconforming status to inherit, no Conceptual Plan amendment ever authorized a data center on the Site, and Alabama recognizes no vested-rights doctrine that would have carried the Project outside the moratorium.

65. The City nonetheless issued permits for the Project while the moratorium was in force. As alleged above, the Phase 2 building permit was applied for on April 10, 2026 and issued, with other permits, on April 27, 2026, and the substation permit issued on June 3, 2026 — each after the March 3, 2026 moratorium took effect. Each such permit was issued in violation of the moratorium and for a use the Ordinance did not authorize, and each is void.

66. The moratorium was a pause, not a cure. It held data-center proposals in abeyance only until the City could lawfully amend the Ordinance to authorize the use. Had the City properly amended the Ordinance, a lawful framework would have come into existence under which the Developer Defendants — like any other applicant — could have begun the permitting process. But the City did not amend the Ordinance lawfully: the June 9, 2026 amendment is void for the reasons set out above. The moratorium has since allegedly expired without any valid amendment ever having taken effect. The consequence is dispositive: there is no lawful provision under which a data-center permit may now be sought or granted, and no applicant — Nebius included — may lawfully initiate or continue

the permitting of a data center in the MXD district. Far from holding a superior position, Nebius stands in the same position as every other would-be applicant, except that it has built without authority while the moratorium was in force.

**I. The Defendants' Conduct Establishes Unclean Hands**

67. The Defendants and their affiliates assembled, permitted, and prosecuted this Project through a coordinated course of conduct designed to outrun the law. That conduct bears directly on the balance of the equities and forecloses any defense premised on the Defendants' own asserted hardship.

68. **The acquisition cascade.** On September 30 and October 1, 2025, within a span of roughly twenty-four to twenty-five hours, the Site changed hands through a rapid series of intra-affiliate conveyances memorialized in six statutory warranty deeds. Two purported arm's-length sellers — Regions Bank and U.S. Steel — received approximately $20 million in total for the land. By the end of the cascade, a Nebius-affiliated entity, Alabama ADC Holdings, LLC, is alleged to have "paid" approximately $90 million for the same four-parcel Site. On the anchor parcel, Regions conveyed to Lakeshore Data Center for $17.2 million; sixteen minutes later, Lakeshore Data Center conveyed the same parcel to 201 Milan Birmingham, LLC for $27 million — capturing $9.8 million of markup in sixteen minutes — before the parcels were conveyed onward to Alabama ADC Holdings. The roughly $67.5 million of markup over the approximately $20 million of arm's-length consideration was internal profit, not investment that increased the true value of the land or that was placed into the ground.

69. **Common control between Hoar and Lakeshore Data Center.** Lakeshore Data Center and Hoar share the same business address — Two Metroplex Drive, Suite 400,

Birmingham — and Robert O. Burton is simultaneously the Chief Executive Officer of Hoar and the manager of Lakeshore Data Center. Burton signed the cascade deeds as Lakeshore Data Center's manager. That convergence of address, agent, and senior management reflects common control and concerted conduct between Hoar and Lakeshore Data Center that exceeds any ordinary contractor-developer relationship.

70. **Knowledge of the impending moratorium.** The Defendants were on notice of the City's impending data-center moratorium no later than December 16, 2025, when the City issued its first public notice of intent to implement a data-center ordinance and overhaul the applicable regulatory framework. The moratorium could not have come as a surprise.

71. **The rush to City Hall to manufacture a "grandfathered" position.** Approximately three weeks after the City's December 16 notice — on January 7, 2026 — the Defendants requested permitting for the Project, in an evident effort to file first and claim a grandfathered or vested position before the moratorium took effect. The City approved the moratorium on March 3, 2026 (Ordinance No. 26-25).

72. **Dissolution of Lakeshore Data Center.** Within roughly two weeks of the City's December 16, 2025 moratorium notice — on or about December 30, 2025 — Lakeshore Data Center, having captured its markup, filed Articles of Dissolution, upon information and belief without provision for known or foreseeable claims.

73. **The post-denial permitting campaign and expedited, same-day issuance.** After the ZBA denied the special exceptions on March 26, 2026, the Defendants launched a coordinated post-denial permit-filing campaign. The Phase 2 building permit (BLD2026-00724) was applied for on April 10, 2026 — the same day the developers filed their notice of appeal — and issued only seventeen days later. On April 27, 2026, the City issued three

Project-related permits in a single day, including the demolition permit and the Phase 2 building permit; the following day, April 28, 2026, the City issued an electrical permit that was applied for and approved the same day. In total, the Defendants obtained or pursued at least six Project-related permits with disclosed fees of approximately $34,866,222.53.

74. **Demolition and construction in defiance of the unresolved land-use question.** Demolition of the Regions structure commenced before the building permits authorizing the Project shell were issued, and the Defendants demolished the structure and advanced mass grading and foundation work while the lawfulness of the Project's use remained unresolved and the moratorium was in effect. The permitting record, moreover, contains owner-of-record and permit-holder anomalies that are the proper subject of discovery.

75. These are not independent or innocent acts. They are the components of a single, coordinated scheme to acquire, assemble, and develop a 300-megawatt hyperscale data center on a site the Ordinance did not authorize for that use, and to make the Project appear to be too difficult to undo before the public could be heard. A party that engineers its own "investment" and races to outrun the regulatory process does not come to equity with clean hands, and cannot be heard to complain of the hardship of being enjoined from conduct it had no right to undertake.

**J. The Project as It Exists Today**

76. Construction is ongoing and advancing rapidly. As of June 18, 2026, the Site had been cleared, mass-graded, and committed to industrial use, with foundation and caisson work, cranes, and heavy equipment operating across the Site, as depicted in the aerial photograph below:



*Figure 1.* Aerial photograph of the BHM01 "AI Factory" construction site as of June 18, 2026, showing site clearance, mass grading, foundation and caisson work, cranes, and heavy equipment within approximately 800 to 970 feet of Plaintiffs' homes.

77. Every day of continued construction makes the Project more difficult to undo, commits the Site further to an industrial use the Ordinance never authorized, and deepens the irreparable harm to Plaintiffs and the residential character of their neighborhood.

**K. Proximity and the Harm to Plaintiffs**

78. Plaintiffs' homes sit just across Lakeshore Parkway from the Site, at the end of Sydney Trail. The Sansome Property is approximately 800 feet, and the Hilley Property approximately 970 feet, from the construction site, as depicted in the following aerial location map:




*Figure 2.* Google Earth aerial depicting the BHM01 "AI Factory" site (labeled "Regions/Nebius") in relation to the residences of Plaintiffs Sansome and Hilley on Sydney Trail. Imagery © 2026 Airbus.

79. Since construction began, Plaintiffs have experienced, on a near-daily basis, the following intrusions emanating from the Site: jackhammering and the drilling of caissons beginning in the morning, typically between 7:00 and 7:30 a.m., and continuing into the late afternoon; low-frequency, low-tonal noise that can be heard inside their homes; vibration that can be felt inside their homes, including a perceptible rumbling and shaking of the structure; dust and dirt deposited in and along the streets; and heavy truck and construction traffic. The demolition of the Regions structure was especially loud and was accompanied by the heaviest machinery. These intrusions are severe enough to disturb Plaintiffs while they work and while they attempt to rest and enjoy their homes, and they have deprived Plaintiffs of the use, quiet, and enjoyment of their property.

80. Plaintiff Hilley has additionally observed cracking in and about his home that appeared during the construction period and that was not present before the Project began.

81. Plaintiff Sansome, whose home is nearer to the Site than Hilley's, experiences each of the foregoing construction-phase intrusions — the noise, vibration, dust, traffic, and loss of quiet enjoyment — to the same or greater degree, with, so far, the exception of the foundation cracking described in the preceding paragraph.

82. The harm is not limited to the construction phase. Once the AI Factory is operating, it will impose upon Plaintiffs, continuously and in perpetuity, twenty-four-hour noise and low-frequency hum from cooling systems and generators; exhaust and fine-particulate (PM2.5) emissions from on-site backup generators, which Plaintiffs are informed and believe will run for months before the facility is connected to the electrical grid; nighttime light pollution; and heat effects. These continuous operational effects will permanently impair Plaintiffs' use and enjoyment of their homes.

83. The Project has also impaired, and will continue to impair, the value and marketability of Plaintiffs' homes.

## V. CAUSES OF ACTION

### COUNT I

### Declaratory Judgment — The Project Is an Unauthorized, Non-Enumerated Use

### (Ala. Code §§ 6-6-220 et seq.) (Against All Defendants)

84. Plaintiffs re-allege and incorporate by reference each of the foregoing paragraphs as though fully set forth herein.

85. The Birmingham Zoning Ordinance is an enumerated-use ordinance under which a use not affirmatively authorized for a district is prohibited in that district. The Ordinance does not

enumerate, define, or authorize a data center, hyperscale data center, or AI factory as a land use in the MXD district or anywhere else.

86. To authorize a use of the Project's character on the MXD Site, the Ordinance required, at a minimum, the assignment of the use to a use group and an amendment of the Council-approved Conceptual Plan, adopted only after public hearings before the ZAC and the City Council. None of those steps was taken. No use group was assigned, no Conceptual Plan amendment was sought, advertised, heard, or approved, and the required public hearings were never held.

87. Because the AI Factory is not an authorized use of the MXD Site and was never authorized through the processes the Ordinance prescribes, it is a prohibited use as a matter of law. The administrative permits the City issued for the Project could not, and did not, authorize a use the Ordinance withholds, and those permits are therefore void.

88. An actual, justiciable controversy exists between Plaintiffs and Defendants concerning the lawfulness of the Project and the validity of the permits issued for it. Plaintiffs are entitled to a judgment declaring that (a) the Project is an unauthorized and prohibited use of the MXD Site under the Zoning Ordinance, and (b) the building, demolition, grading, electrical, and other permits issued by the City for the Project are void.

**COUNT II**

**Declaratory Judgment — No Grandfathered or Vested Right; Prior-Use Status Extinguished**

**(Ala. Code §§ 6-6-220 et seq.) (Against All Defendants)**

89. Plaintiffs re-allege and incorporate by reference each of the foregoing paragraphs as though fully set forth herein.

90. The prior Regions Lakeshore Operations Center was a conforming use under the Site's MXD classification and Council-approved Conceptual Plan. Because the prior use conformed to the zoning, there was no nonconforming-use status for the Project to inherit, and no "grandfathered" entitlement exists.

91. Even assuming arguendo that some nonconforming-use entitlement had existed, it was extinguished as a matter of law by the change of use and by the total demolition of the prior structure, neither of which was accompanied by any variance. *See* Zoning Ordinance, Ch. 9, Art. VII, §§ 3.A.1, 3.A.3, and 4.B. No variance was sought from or granted by the Board.

92. Alabama has not adopted a vested-rights doctrine that would excuse compliance with the Ordinance, and the City's administrative issuance of permits cannot confer a use right the Ordinance withholds. Plaintiffs are entitled to a judgment declaring that no grandfathered, nonconforming, or vested right excuses the Project from full compliance with the current requirements of the Zoning Ordinance.

**COUNT III**

**Declaratory Judgment — Special Exceptions Denied and Final; Dependent Permits Void**

**(Ala. Code §§ 6-6-220 et seq.) (Against All Defendants)**

93. Plaintiffs re-allege and incorporate by reference each of the foregoing paragraphs as though fully set forth herein.

94. The Project cannot function without a dedicated power substation and a high-voltage switching station, each of which is a "Utility Substation" within the meaning of the Zoning Ordinance, Title 1, Ch. 1, Art. III, § 1, Item 218, and each of which therefore required a special exception approved by the ZBA.

95. The developers applied for those special exceptions (ZBA Case Nos. 2026-00006 and 2026-00007), litigated them at two public hearings, and the ZBA denied both applications on March 26, 2026 because neither received the two-thirds vote required by the Board's Rules and Ala. Code § 45-37A-56(b) (1975). The developers appealed and then voluntarily dismissed their own appeal, which this Court dismissed without prejudice on May 28, 2026. The March 26, 2026 denials are therefore final and unreviewed.

96. The April 9, 2026 Interoffice Memorandum of the City Attorney is an act of the City Attorney, not a decision of the Board, and is without power to reverse, nullify, or displace the Board's final denials.

97. Because the Project cannot lawfully be constructed or operated without the substation and switching station, and because the special exceptions those facilities require have been finally denied, Plaintiffs are entitled to a judgment declaring that (a) the proposed substation and switching station are Utility Substations requiring special exceptions; (b) the March 26, 2026 denials are final and binding; and (c) any permits issued by the City for the Project or its electrical infrastructure in derogation of those denials are void.

**COUNT IV**

**Declaratory Judgment — The June 9, 2026 Text Amendment Is Void; No MXD Authorization Exists**

**(Ala. Code §§ 6-6-220 *et seq.*; Ala. Code §§ 11-52-77, 11-52-78) (Against All Defendants)**

98. Plaintiffs re-allege and incorporate by reference each of the foregoing paragraphs as though fully set forth herein.

99. On June 9, 2026, the City Council purported to adopt a text amendment to the Zoning Ordinance for the express purpose of creating a data-center use category the Ordinance did

not previously contain, including by amending the Specific Development Standards for the MXD Planned Mixed-Use District. The amendment is void and of no effect.

100. The amendment is void for failure of statutory notice. The City elected the notice procedure of Ala. Code § 11-52-77(2) (1975), which by Ala. Code § 11-52-78 (1975) governs all amendments to the Zoning Ordinance and demands strict compliance. The City's published notices omitted the map that subdivision (2)(c) requires; employed a property-specific notice track for a citywide text amendment under which, by the City's own statement, no property would be rezoned, thereby satisfying neither subdivision (2) nor subdivision (1); and, upon information and belief, did not run the regular-section quarter-page advertisement that subdivision (2) requires. Strict-compliance and jurisdictional principles foreclose any defense of substantial compliance.

101. The amendment is independently void as arbitrary, capricious, and not fairly debatable. Insofar as it purports to authorize a 300-megawatt, around-the-clock hyperscale data center and AI factory use within the MXD district — a district that also permits residential dwellings — the amendment bears no substantial relation to the public health, safety, or general welfare, places an intense heavy-industrial use in direct proximity to homes the same district authorizes, and improperly subordinates the interests of resident owners to a private commercial interest. No reasonable legislative body could find such a juxtaposition compatible; the question is not fairly debatable.

102. Because the amendment is void, and because the City has in any event represented that the amendment does not apply to this Project, there remains no provision of the Zoning Ordinance authorizing a data center, hyperscale data center, or AI factory as a use within the MXD district. Plaintiffs are entitled to a judgment declaring that (a) the June 9, 2026

text amendment is void and of no effect, at least insofar as it purports to authorize hyperscale data-center or AI-factory uses within the MXD district; and (b) no provision of the Zoning Ordinance authorizes the Project's use within the MXD district.

**COUNT V**

**Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction**

**(Ala. R. Civ. P. 65) (Against All Defendants)**

103. Plaintiffs re-allege and incorporate by reference each of the foregoing paragraphs as though fully set forth herein.

104. Plaintiffs have a strong likelihood of success on the merits of their declaratory claims: the Project is an unauthorized use of the MXD Site; no grandfathered or vested right excuses compliance; and the special exceptions the Project requires have been finally denied. Each of these grounds independently establishes that the Project, as configured, is unlawful.

105. Plaintiffs are suffering, and will continue to suffer, irreparable injury for which there is no adequate remedy at law. Every day of continued construction commits the Site further to an industrial use the Ordinance never authorized, deepens the daily nuisance and intrusion inflicted on Plaintiffs, and makes the Project progressively more difficult to undo. The demolition of the prior structure and the alteration of the Site's topography, vegetation, and drainage cannot be meaningfully restored once accomplished, and the loss of the quiet enjoyment and residential character of Plaintiffs' homes cannot be adequately compensated in money alone.

106. The balance of the equities favors Plaintiffs. Defendants face no cognizable hardship from being enjoined from conduct they had no legal right to undertake, and any hardship they assert is of their own making, having raced to commit the Site to an unauthorized use before

the public could be heard. The public interest favors enforcement of the Zoning Ordinance and the procedural protections it guarantees to neighboring property owners.

107. Plaintiffs are therefore entitled to a temporary restraining order and to preliminary and permanent injunctions (a) enjoining Defendants Hoar, Nebius, and Lakeshore Data Center, and all persons in active concert or participation with them, from performing or causing any further demolition, grading, foundation, structural, electrical, or other construction work at the Site; and (b) enjoining the City from issuing any further permit or approval for the Project, pending final adjudication of this action.

108. Because Defendants lacked legal authority to construct the Project as configured, their exposure to being "wrongfully enjoined" approaches zero, and any security required under Rule 65(c) should be set in a nominal amount.

**COUNT VI**

**Private Nuisance**

**(Ala. Code § 6-5-120 et seq.) (Against Defendants Hoar, Nebius, and Lakeshore Data Center)**

109. Plaintiffs re-allege and incorporate by reference each of the foregoing paragraphs as though fully set forth herein.

110. The construction and intended operation of the Project work a substantial and unreasonable interference with Plaintiffs' use and enjoyment of their homes. That interference includes, during the construction phase, jackhammering and caisson-drilling beginning before 7:30 a.m. and continuing into the late afternoon; low-frequency, low-tonal noise audible inside Plaintiffs' homes; vibration perceptible inside Plaintiffs' homes; dust and dirt deposited in and along the streets; and heavy truck and construction traffic. Once the Project is

operating, the interference will include continuous twenty-four-hour noise and low-frequency hum, generator exhaust and fine-particulate emissions, nighttime light, heat effects, and water-system effects, in perpetuity.

111. These conditions would disturb and annoy a person of ordinary sensibilities in the community and have in fact disturbed Plaintiffs, depriving them of the use, quiet, and enjoyment of their property and diminishing the value and marketability of their homes. The interference is the direct and proximate result of the construction and operation of an industrial facility that should never have been sited as it was.

112. Plaintiffs are entitled to damages for the nuisance, to abatement of the nuisance, and to such injunctive relief as will prevent its continuation.

**COUNT VII**

**Trespass**

**(Against Defendants Hoar, Nebius, and Lakeshore Data Center)**

113. Plaintiffs re-allege and incorporate by reference each of the foregoing paragraphs as though fully set forth herein.

114. The construction of the Project has caused, and is causing, the physical invasion of Plaintiffs' properties by dust, dirt, and other particulate matter, and by vibratory energy, emanating from the Site and entering upon and into Plaintiffs' land and homes. That invasion is the direct and foreseeable result of the Defendants' demolition, grading, drilling, and construction activities.

115. Plaintiffs did not consent to these intrusions. Plaintiffs are entitled to recover damages for the resulting injury to their properties.

**COUNT VIII**

**Negligence Per Se — Construction in Violation of the Birmingham Technical Code**

**(Against Defendants Hoar, Nebius, and Lakeshore Data Center)**

116. Plaintiffs re-allege and incorporate by reference each of the foregoing paragraphs as though fully set forth herein.

117. Upon information and belief, the Defendants commenced demolition and construction activity at the Site before the permits authorizing that work had been issued, in violation of the Birmingham Technical Code, including §§ 103 and 105.5, which prohibit the performance of regulated work without the required permits. Upon information and belief, § 114 of the Technical Code treats each day of unpermitted work as a separate violation.

118. These provisions were enacted to protect persons in Plaintiffs' position — neighboring property owners — from the precise harms that unregulated demolition and construction inflict, including uncontrolled dust, vibration, and structural risk. Plaintiffs are within the class the Technical Code protects, and the injuries they have suffered are of the type the Code was designed to prevent.

119. The Defendants' violation of these provisions was a direct and proximate cause of injury to Plaintiffs, entitling them to damages.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs respectfully pray that this Court:

**A.** Enter a temporary restraining order, and thereafter preliminary and permanent injunctions, (i) enjoining Defendants Hoar, Nebius, and Lakeshore Data Center, and all persons in active concert or participation with them, from any further demolition, grading, foundation, structural, electrical, or other construction at the Site; and (ii)

enjoining the City of Birmingham from issuing any further permit or approval for the Project;

**B.** Declare that the Project is an unauthorized and prohibited use of the MXD-zoned Site under the Birmingham Zoning Ordinance;

**C.** Declare that no grandfathered, nonconforming, or vested right excuses the Project from full compliance with the Zoning Ordinance, and that any prior-use status was extinguished by the change of use and the total demolition of the prior structure;

**D.** Declare that the proposed substation and switching station are Utility Substations requiring special exceptions; that the ZBA's March 26, 2026 denials of those special exceptions are final and binding; and that the April 9, 2026 Interoffice Memorandum of the City Attorney is without legal effect to alter those denials;

**E.** Declare that the building, demolition, grading, electrical, and other permits issued by the City for the Project are void;

**F.** Declare that the City's June 9, 2026 text amendment to the Zoning Ordinance is void and of no effect — both for failure of the statutory publication required by Ala. Code §§ 11-52-77 and 11-52-78, and as arbitrary, capricious, and not fairly debatable insofar as it purports to authorize hyperscale data-center or AI-factory uses within the MXD district — and that, in consequence, no provision of the Zoning Ordinance authorizes the Project's use within the MXD district;

**G.** Award Plaintiffs compensatory damages, in an amount to be determined at trial, for the nuisance, trespass, mental distress and statutory violations alleged herein, including damages for the diminution in the value and marketability of their homes and the loss of the use and enjoyment thereof;

**H.** Award Plaintiffs punitive damages in an amount sufficient to punish and deter the Defendants' conduct, as permitted by law;

**I.** Set any security required under Rule 65(c) in a nominal amount, consistent with the Defendants' lack of any legal right to perform the enjoined work;

**K.** Awarding Plaintiffs damages, in an amount to be determined by the trier of fact, for diminution in property value, loss of use and enjoyment, mental anguish, stigma damages, construction-phase and operational nuisance, and trespass, , together with pre- and post-judgment interest at the lawful rate;

**L.** Awarding Plaintiffs such punitive or exemplary damages as may be permitted by Alabama law on the showing made at trial;

**M.** Awarding Plaintiffs their costs of suit, expert witness fees, and reasonable attorneys' under the Public Benefit Doctrine or other lawful basis; and

**N.** Granting such other, further, and different relief, legal or equitable, to which Plaintiffs may be justly entitled.

**JURY DEMAND**

**Plaintiffs demand a trial by struck jury on all issues so triable**.

Respectfully submitted this 29th day of June 2026.

Respectfully,

*/s/ K. Mark Parnell*
K. Mark Parnell (PAR039)
parnell@ptlawllc.com

Counsel for the Plaintiffs

**OF COUNSEL:**
**PARNELL THOMPSON, LLC**
120 19th Street North, Suite 2134
Birmingham, AL 35203
(205) 582-2766

**PLEASE SERVE THE NEW DEFENDANTS AS FOLLOWS:**

Hoar Construction, LLC
2 Metroplex Dr., Ste 400
Birmingham, AL 35209

Lakeshore Data Center, LLC
Two Metroplex Drive, Suite 400
Birmingham, Alabama 35209

Nebius, Inc. and Nebius Group N.V.
10 State Street Newburtport, MA 01950

The City of Birmingham, Alabama
c/o Office of the City Clerk and City Attorney
710 20th Street North, Birmingham, AL 35203

## VERIFICATION

STATE OF ALABAMA )
)
JEFFERSON COUNTY )

Before me, the undersigned Notary Public in and for said County and State, personally appeared **ROBERT B. SANSOME**, who, being by me first duly sworn, deposes and states as follows: I am a Plaintiff in the foregoing Verified Complaint. I have read the foregoing Verified Complaint, and the factual allegations contained therein are true and correct to the best of my own knowledge, information, and belief, except as to those matters stated upon information and belief, and as to those matters I believe them to be true.

**ROBERT B. SANSOME**

Sworn to and subscribed before me this 23rd day of June, 2026.

Notary Public
My Commission Expires: 9/11/2028

JOHN DANIEL HILLER NOTARY PUBLIC ALABAMA STATE AT LARGE COMMISSION EXPIRES SEPTEMBER 11, 2028

**VERIFICATION**

STATE OF ALABAMA )
)
JEFFERSON COUNTY )

Before me, the undersigned Notary Public in and for said County and State, personally appeared **JOHN BENJAMIN HILLEY**, who, being by me first duly sworn, deposes and states as follows:

I am a Plaintiff in the foregoing Verified Complaint. I have read the foregoing Verified Complaint, and the factual allegations contained therein are true and correct to the best of my own knowledge, information, and belief, except as to those matters stated upon information and belief, and as to those matters I believe them to be true.

**JOHN BENJAMIN HILLEY**

Sworn to and subscribed before me this 23rd day of June, 2026.

Notary Public
My Commission Expires: 9/11/2028

JOHN DANIEL HILLER
NOTARY
COMMISSION EXPIRES
SEPTEMBER 11, 2028
PUBLIC
ALABAMA STATE AT LARGE