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Attorneys for Debtor and Debtor In Possession,  
Vestavia Hills, Ltd., dba Mount Royal Towers

UNITED STATES BANKRUPTCY COURT  
Southern District of California

<p>In re</p> <p>VESTAVIA HILLS, LTD. DBA MOUNT ROYAL TOWERS,</p> <p style="padding-left: 100px;">Debtor.</p>	}	<p>CASE NO. 20-00018-LA11</p> <p>Chapter 11</p> <p><b>DEBTOR’S MOTION FOR DETERMINATION OF TAXABLE VALUE OF JEFFERSON COUNTY REAL PROPERTY; MEMORANDUM OF POINTS AND AUTHORITIES</b></p> <p>Date: May 28, 2020 Time: 2:00 p.m. Dept.: 2 Judge: Hon. Louise DeCarl Adler</p>
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**MOTION**

Vestavia Hills, Ltd., dba Mount Royal Towers (“Debtor”), the debtor and debtor in possession herein, submits this motion (“Motion”) for entry of an order determining that the taxable value of the Debtor’s Jefferson County Real Property (defined below) for the years 2019 and 2020 will be based upon the value established by the Court-approved Sale Process (defined below).

This Motion is brought pursuant to Section 505(a)(1) of the Bankruptcy Code

1 (11 U.S.C. § 101 et seq.) on the grounds that the Bankruptcy Code expressly  
2 authorizes this Court to make the requested determination. As demonstrated below,  
3 the current valuation by the Tax Assessor (defined below) is grossly inflated, which  
4 would result in inflated tax payments to become due and to be paid by the Debtor.  
5 The Sale Process will provide the best possible indication of the Real Property’s  
6 actual fair value (and will do so in the quickest and most efficient manner).  
7 Therefore, the requested relief is in the best interests of all creditors and the  
8 bankruptcy estate.

9 This Motion is based on the Memorandum of Points and Authorities below, the  
10 Declaration of Kevin Moriarty filed concurrently herewith (“Moriarty Declaration”),  
11 the pleadings and other documents on file with the Court in this case, and any  
12 argument and evidence that may be presented at the hearing on the Motion.

13 The Debtor’s proposed order on the Motion is attached as Exhibit “A” hereto.  
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1 **MEMORANDUM OF POINTS & AUTHORITIES**

2  
3 **I. PRELIMINARY STATEMENT**

4 The Debtor’s most significant asset is its improved real property, identified by  
5 the Jefferson County Board of Tax Assessors (“Tax Assessor”) as Parcel No. 28-00-  
6 17-4-002-003.000 and shown on the Tax Assessor’s records with the Site Address of  
7 126 Royal Tower Drive and commonly known by the address of 300 Royal Tower  
8 Drive (the “Real Property”). Prepetition, in the ordinary course of business, the Tax  
9 Assessor would periodically assess, and the Debtor in response would appeal the  
10 values of the Real Property as assessed by the Tax Assessor – and the Debtor would  
11 often prevail. In recent years, the Tax Assessor has raised the assessed value of the  
12 Real Property significantly. In 2017 the Tax Assessor assessed the value of the Real  
13 Property at \$23,499,500. In 2018, the Tax Assessor assessed the Real Property’s value  
14 at \$24,484,400. The Debtor engaged a consultant to appeal this 2018 assessment  
15 based on the Commonwealth purchase agreement, which was for \$19,000,000, but the  
16 consultant missed the County’s deadline for submitting appeals. For 2019, the Tax  
17 Assessor initially exorbitantly increased the assessment of the Real Property’s value to  
18 \$36,634,800. See the Moriarty Declaration, ¶ 4.

19 In the ordinary course of business, the Debtor appealed the 2019 assessment,  
20 and on December 23, 2019, the Tax Assessor issued its Result of Preliminary Hearing,  
21 a copy of which is attached as Exhibit A to the Moriarty Declaration. The Result of  
22 Preliminary Hearing reduced the valuation from \$36,634,800 to \$29,678, 900. That  
23 “reduced” valuation is still more than double the \$12,000,000 purchase price bid  
24 submitted by the Court-approved Stalking Horse (defined below) to buy both (i) the  
25 Real Property and (ii) all personal property associated with the operation of the  
26 Debtor’s business (“Personal Property”), which sale price will be further tested by  
27 open bidding after a national marketing program through the Court-approved Sale  
28 Process. Unless an overbidder prevails in the Court-supervised auction process, the

1 value has already been determined to be \$12,000,000 for both the Real Property and  
2 Personal Property. If an overbidder becomes the successful bidder, then the value will  
3 be determined to be that increased value as determined through the Sale Process—not  
4 some “assessment” value which Jefferson County has apparently pulled out of thin air  
5 for the Real Property.

6 Section 505 of the Bankruptcy Code permits the Debtor to come before the  
7 Court seeking a quick and efficient determination of its tax liability. The alternative  
8 to the expeditious process of section 505 would be the continuation of the costly and  
9 lengthy assessment appeals process at the local level. See the Moriarty Declaration, ¶  
10 6. Accordingly, the Debtor requests that the Court make a determination that the  
11 taxable value of the Debtor’s Real Property for the years 2019 and 2020 is (a) the final  
12 purchase price to be realized through the Court-approved Sale Process, minus (b) the  
13 \$1,309,100 assessed by the Tax Assessor for the Personal Property, which Personal  
14 Property assessment figure the Debtor does not dispute.

15 **II. JURISDICTION AND VENUE**

16 The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157  
17 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. §  
18 157(b)(2)(A), (B) and (O). The statutory basis for the relief requested is 11 U.S.C.  
19 §§ 505(a)(1). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and  
20 1409.

21 **III. STATEMENT OF FACTS**

22 **A. Background**

23 On January 3, 2020, the Debtor filed its petition for relief under Chapter 11.  
24 The Debtor is operating its business as a Chapter 11 debtor in possession under  
25 Sections 1107 and 1108. See ECF 1. No trustee, examiner, or committee has been  
26 appointed.

27 Additional information regarding the circumstances leading to the  
28 commencement of the Chapter 11 case and evidence in support of this Motion are set

1 forth in the Omnibus First Day Declaration of Kevin Moriarty (ECF 9), which  
2 declaration is incorporated herein by this reference.

3 **B. The Court-Approved Sale Process**

4 On February 13, 2020, the Debtor filed a motion to approve a “Stalking Horse”  
5 purchase agreement, implementing a process for the sale of substantially all assets of  
6 the Debtor subject to overbid, and related relief (“Sale Process”).<sup>1</sup> ECF 121.  
7 Following the hearing, on March 25, 2020, the Court entered its order approving the  
8 sale process. ECF 185. The sale process is now underway, and should culminate with  
9 a final sale hearing—and hopefully an auction—on May 21, 2020. The purchase price  
10 under the agreement with the Stalking Horse is \$12,000,000. See ECF 121.

11 **C. The Advantages of the Sale Process**

12 The Debtor believes that the issue can be resolved faster, and with more  
13 certainty, in this Court by virtue of the Sale Process that is already underway than it  
14 can through the County’s appeal process – which means less cost to the Debtor and  
15 without the uncertainty that is associated with competing valuation “experts.” An  
16 expedited resolution is necessary in order to distribute sale proceeds fully and fairly,  
17 and to allow for final resolution of this Chapter 11 case. And finally, the resolution  
18 reached in the Bankruptcy Court will be the fairest and most accurate. The Sale  
19 Process involves exposing the Real Property to the market. It involves extensive  
20 marketing, and opportunity for interested bidders, in addition to the Stalking Horse, to  
21 conduct due diligence and then submit their bids—thereby establishing the real market  
22 value of the Real Property. The Sale Process involves competitive bidding, which  
23 will achieve a final sale price to be confirmed at an auction and final sale hearing.  
24 There is no better indication of fair market value than the value achieved following  
25 open and fair bidding. The Sale Process will be a far better indication of the Real  
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28 <sup>1</sup> All references herein to the “Stalking Horse” mean MED Healthcare Partners, LLC.

1 Property's true fair market value than an "assessment" made by the Tax Assessor.  
2 See the Moriarty Declaration, ¶7.

3 **D. Relief Requested**

4 By this Motion, the Debtor seeks entry of an order pursuant to section 505 of  
5 the Bankruptcy Code in substantially the form attached as Exhibit "A" hereto, making  
6 a determination that the taxable value of the Debtor's Real Property for the years 2019  
7 and 2020 is (a) the final purchase price to be realized through the Court-approved Sale  
8 Process, minus (b) the \$1,309,100 assessed by the Tax Assessor for the Personal  
9 Property, which Personal Property assessment figure the Debtor does not dispute.

10 **IV. BASIS FOR RELIEF REQUESTED**

11 Section 505 of the Bankruptcy Code provides, in relevant part, as follows:

12  
13 Except as provided in paragraph (2) of this subsection, the court  
14 may determine the amount or legality of any tax, any fine or  
15 penalty relating to a tax, or any addition to tax, whether or not  
16 previously assessed, whether or not paid, and whether or not  
17 contested before and adjudicated by a judicial or administrative  
18 tribunal of competent jurisdiction.

16 11 U.S.C. § 505(a)(1) (emphasis added). Section 505(a)(1) "vests the bankruptcy  
17 court with general discretionary authority to redetermine a debtor's tax liability." New  
18 Haven Projects Ltd. v. City of New Haven (In re New Haven Projects Ltd.), 225 F.3d  
19 283, 288 (2d Cir. 2000); see also In re D'Alessio, 181 B.R. 756, 759 (Bankr. S.D.N.Y.  
20 1995) ("[B]ankruptcy courts have broad authority to review any kind of tax  
21 attributable to the estate, both federal and state."); In re Schmidt, 205 B.R. 394, 397  
22 (Bankr. N.D. Ill. 1997) (recognizing that "[t]he legislative history [of section 505(a)  
23 the Bankruptcy Code] is indicative of Congressional intent to vest the bankruptcy  
24 courts with a fairly broad jurisdictional grant" to determine a debtor's tax liabilities).  
25 Bankruptcy Courts have reviewed assessments of state retailers' occupation taxes,  
26 state real property taxes, city ad valorem taxes, and federal income taxes. See In re  
27 American Motor Club, Inc., 139 B.R. 578, fn 2 (Bankr. E.D.N.Y 1992). This broad  
28

1 authority includes the ability to make determinations of both pre- and post-petition tax  
2 liabilities. See In re Schmidt, 205 B.R. at 399. Therefore, this Court has the authority  
3 to determine the correct value for the Real Property – and the Court should do so.

4 Without the relief sought herein, the Debtor will be forced to maintain an  
5 appeal at the local level. This process is cumbersome, costly, and protracted. The  
6 appeal could be prolonged and take many months or years to conclude. Streamlining  
7 the process in this Court would considerably aid the speed and effort required to  
8 determine the Debtor’s tax liability – and likely minimize the attendant costs -- and  
9 would thus benefit both the estate and its creditors. Finally, because the Sale Process  
10 involves exposing the Real Property to a very real and immediate market, involving  
11 significant advertising and direct marketing, and opportunity for overbid, the Sale  
12 Process will prove the true fair market value of the Real Property – as opposed to a  
13 mere guess proffered by the Taxing Authority. See the Moriarty Declaration, ¶8.

14 The advantages of using section 505 in lieu of the regular local appeals process  
15 have been recognized by other courts. See, e.g., In re D'Alessio, 181 B.R. at 760  
16 (noting that section 505's purpose is to eliminate "potential obstacle[s] to the orderly  
17 administration of a bankruptcy case," which serves both the Debtor’s and creditors'  
18 interests; and “to afford a forum for the ready determination of the legality or amount  
19 of tax claims, which determination, if left to other proceedings might delay conclusion  
20 of the bankruptcy estate.”); In re Continental Airlines, Inc., 138 B.R. 430, 434 (Bankr.  
21 D. Del. 1992) [\*18] (noting the "relative speed" with which a tax issue could be  
22 handled in a bankruptcy court rather than in a state's appeals process), rev'd on other  
23 grounds, 149 B.R. 76 (D. Del. 1993). Further, the relief requested herein has been  
24 granted in other Chapter 11 cases. See, e.g., In re Buffets Holdings, Inc., Case No.  
25 08-10141 (MFW) (Bankr. D. Del. July 30, 2008) [Docket No. 1198]; In re Dura  
26 Automotive Systems, Inc., Case No. 06-11202 (KJC)(Bankr. D. Del. July 7, 2007)  
27 [Docket No. 1527]; In re Winn Dixie Stores, Inc., Case No. 05-03817 (JAF) (Bankr.  
28 M.D. Fla. June 9, 2006) [Docket No. 8349].

1 **V. NOTICE**

2 A copy of this Motion and all supporting papers will be served on all of the  
3 following: The Tax Assessor; the United States Trustee; all secured creditors; the 20  
4 largest unsecured creditors; Wells Fargo Bank, N.A.; Commonwealth Assisted Living,  
5 LLC, Series E (“Commonwealth”); Municipal Capital Appreciation Partners;  
6 Securities and Exchange Commission; Internal Revenue Service; and All Registered  
7 Users, as such term is defined in Local Rule 1001-6(b)(24). The Debtor submits that  
8 no additional notice is required.

9 **VI. CONCLUSION**

10 Based on the foregoing, the Debtor requests that the Court enter an order  
11 pursuant to section 505 of the Bankruptcy Code in substantially the form attached as  
12 Exhibit “A” hereto, making a determination that the taxable value of the Debtor’s Real  
13 Property for the years 2019 and 2020 is (a) the final purchase price to be realized  
14 through the Court-approved Sale Process, minus (b) the \$1,309,100 assessed by the  
15 Tax Assessor for the Personal Property, which Personal Property assessment figure  
16 the Debtor does not dispute.

17 Dated: April 16, 2020

SULLIVAN HILL REZ & ENGEL  
A Professional Law Corporation

19  
20 By: /s/ James P. Hill  
James P. Hill  
Attorneys for Debtor Vestavia Hills,  
21 Ltd., dba Mount Royal Towers  
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**EXHIBIT TABLE**

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<b>Exhibit</b>	<b>Description</b>	<b>Pages</b>
A	Proposed Order	10-12

**EXHIBIT A**

<b>UNITED STATES BANKRUPTCY COURT</b> SOUTHERN DISTRICT OF CALIFORNIA 325 West F Street, San Diego, California 92101-6991	
In Re	
Debtor.	BANKRUPTCY NO.
Plaintiff(s)	ADVERSARY NO.
V.  Defendant(s)	Date of Hearing: Time of Hearing: Name of Judge:

**ORDER ON**

The court orders as set forth on the continuation pages attached and numbered \_\_\_\_\_ through \_\_\_\_\_ with exhibits, if any, for a total of \_\_\_\_\_ pages. Motion/Application Docket Entry No. \_\_\_\_\_ .

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DATED:

\_\_\_\_\_  
Judge, United States Bankruptcy Court

CASE NO.:  
ADV. NO.:

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**Electronically Filed: 04/17/2020**

Attorneys for Debtor and Debtor In Possession,  
Vestavia Hills, Ltd. dba Mount Royal Towers

UNITED STATES BANKRUPTCY COURT  
Southern District of California

<p>In re</p> <p>VESTAVIA HILLS, LTD. DBA MOUNT ROYAL TOWERS,</p> <p style="text-align: center;">Debtor.</p>	}	<p>CASE NO. 20-00018-LA11</p> <p>Chapter 11</p> <p><b>DECLARATION OF KEVIN MORIARTY IN SUPPORT OF MOTION FOR DETERMINATION OF TAXABLE VALUE OF JEFFERSON COUNTY REAL PROPERTY</b></p> <p>Date: May 28, 2020 Time: 2:00 p.m. Dept.: 2 Judge: Hon. Louise DeCarl Adler</p>
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I, Kevin Moriarty, hereby declare under penalty of perjury:

1. I am an individual over the age of majority and am competent to testify as to the facts set forth in this declaration. If called upon to testify, I could and would testify to the facts set forth in this declaration. I am authorized by the Debtor to submit this declaration.
2. I am the President and Chief Executive Officer of IPG Holding, Inc., the General Partner of Vestavia Hills, Ltd., the debtor and debtor in possession herein (“Debtor”). I have held my position since 2016. Prior to that time, I served the

1 Debtor in various other capacities, some going back as far as 1998. As part of my  
2 employment and service in these capacities, I am generally familiar with the Debtor's  
3 history, day-to-day operations, business and financial affairs, and books and records,  
4 as well as the Debtor's restructuring efforts.

5 3. I submit this declaration in support of the Debtor's Motion for  
6 Determination of Taxable Value of Jefferson County Real Property. All terms not  
7 defined herein shall have the meaning given them in the motion.

8 4. The Debtor's most significant asset is its improved real property,  
9 identified by the Jefferson County Board of Tax Assessors ("Tax Assessor") as Parcel  
10 No. 28-00-17-4-002-003.000 and shown on the Tax Assessor's records with the Site  
11 Address of 126 Royal Tower Drive and commonly known by the address of 300  
12 Royal Tower Drive (the "Real Property"). Prepetition, in the ordinary course of  
13 business, the Tax Assessor would periodically assess, and the Debtor in response  
14 would appeal, the values of the Real Property as assessed by the Tax Assessor – and  
15 the Debtor would often prevail. In recent years, the Tax Assessor has raised the  
16 assessed value of the Real Property significantly. In 2017 the Tax Assessor assessed  
17 the value of the Real Property at \$23,499,500. In 2018, the Tax Assessor assessed the  
18 Real Property's value at \$24,484,400. The Debtor engaged a consultant to appeal this  
19 2018 assessment based on the Commonwealth purchase agreement, which was for  
20 \$19,000,000, but the consultant missed the County's deadline for submitting appeals.  
21 For 2019, the Tax Assessor initially exorbitantly increased the assessment of the Real  
22 Property's value to \$36,634,800.

23 5. In the ordinary course of business, the Debtor appealed the 2019  
24 assessment, and on December 23, 2019, the Tax Assessor issued its Result of  
25 Preliminary Hearing, a true and correct copy of which is attached as Exhibit A hereto.

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1           6.       Section 505 of the Bankruptcy Code permits the Debtor to come before  
2 the Court seeking a quick and efficient determination of its tax liability. The  
3 alternative to the expeditious process of section 505 would be the continuation of the  
4 costly and lengthy assessment appeals process at the local level.

5           7.       The Debtor believes that the issue can be resolved faster, and with more  
6 certainty, in this Court by virtue of the Sale Process that is already underway than it  
7 can through the County’s appeal process – which means less cost to the Debtor and  
8 without the uncertainty that is associated with competing valuation “experts.” An  
9 expedited resolution is necessary in order to distribute sale proceeds fully and fairly,  
10 and to allow for final resolution of this Chapter 11 case. And finally, the resolution  
11 reached in the Bankruptcy Court will be the fairest and most accurate. The Sale  
12 Process involves exposing the Real Property to the market. It involves extensive  
13 marketing, and opportunity for interested bidders, in addition to the Stalking Horse, to  
14 conduct due diligence and then submit their bids—thereby establishing the real market  
15 value of the Real Property. The Sale Process involves competitive bidding, which  
16 will achieve a final sale price to be confirmed at an auction and final sale hearing.  
17 There is no better indication of fair market value than the value achieved following  
18 open and fair bidding. The Sale Process will be a far better indication of the Real  
19 Property’s true fair market value than an “assessment” made by the Tax Assessor.

20           8.       Without the relief sought herein, the Debtor will be forced to maintain an  
21 appeal at the local level. This process is cumbersome, costly, and protracted. The  
22 appeal could be prolonged and take many months or years to conclude. Streamlining  
23 the process in this Court would considerably aid the speed and effort required to  
24 determine the Debtor’s tax liability – and likely minimize the attendant costs -- and  
25 would thus benefit both the estate and its creditors. Finally, because the Sale Process  
26 involves exposing the Real Property to a very real and immediate market, involving  
27 significant advertising and direct marketing, and opportunity for overbid, the Sale  
28 Process will prove the true fair market value of the Real Property – as opposed to a

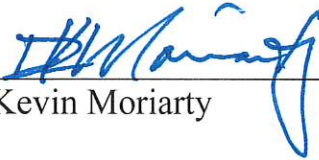
1 mere guess proffered by the Taxing Authority.

2 I declare under penalty of perjury that the foregoing is true and correct.

3 Executed on April 16, 2020, at San Diego, California.

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Kevin Moriarty

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<b>Exhibit</b>	<b>Description</b>	<b>Pages</b>
A	Tax Assessor's Result of Preliminary Hearing	6-7

**EXHIBIT A**

**Exhibit A  
Page 6**



Board of Equalization  
 716 Richard Arrington Jr Blvd N  
 Room A 500 North Annex  
 Birmingham AL 35203

18341 / 7622

Site Address: 126 ROYAL TOWER DR

VESTAVIA HILLS LTD  
 3520 PIEDMONT RD NE SUITE 410  
 ATLANTA GA 30305

**2019 RESULT OF PRELIMINARY HEARING**

- NOTICE DATE: December 23, 2019
- RETURN THIS NOTICE WITHIN 10 DAYS OF THE NOTICE DATE TO THE BOARD OF EQUALIZATION.

Case #: C19-12886 Parcel Number: 28 00 17 4 002 003.000

Market Value before Preliminary Hearing: \$36,634,800 Market Value after Preliminary Hearing: \$29,678,900

**Failure to return this notice will result in a hearing scheduled before the appointed Board at which time the market value after Preliminary Hearing is subject to an increase or decrease.**

Check one of the following:

- 1. I agree with Market Value after Preliminary Hearing.
- 2. I disagree with Market Value after Preliminary Hearing, but I choose not to contest further.
- 3. I disagree with Market Value after Preliminary Hearing. I request to be docketed to the Board for a hearing.

Signature

Date

**YOUR RESPONSE IS REQUIRED BY ONE OF THE FOLLOWING METHODS**

- A. Mail or hand deliver to the return address above OR
- B. Scan and email this completed form to [boe@jccal.org](mailto:boe@jccal.org) OR
- C. If scanning is not an option, email your response to [boe@jccal.org](mailto:boe@jccal.org) with the following
  - Include 'PH Result' in the subject line
  - Include your case number (C19-12886) and parcel number (28 00 17 4 002 003.000)
  - Include your selection from 3 choices above (1. agree/2. disagree/3. docket)

**Please keep a copy for your records.**

Case # C19-12886

[boe.jccal.org](http://boe.jccal.org)